

MEMORANDUM

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To: Manhattan Community Board 3

From: George M. Janes, AICP
Marie Winfield

RE: Regulating commercial uses in CB3

Manhattan Community Board 3 (CB3) has been discussing concerns about the changing nature of commercial uses along certain commercial streets. This memo discusses those concerns and mechanisms CB3 may wish to consider to address those concerns.

CB3 concerns and discussed solutions

As we understand the issues, CB3 is concerned about the loss of retail diversity in the area between 14th Street and Houston on Second and First Avenues, and Avenues A, B, C, and D. Loss of retail diversity means that this was at one time a place that provided a myriad of goods and services but which now provide a more limited selection of goods and services. There is special concern over nightclubs and bars, which primarily serve people from outside the neighborhood and an influx of national chain stores.

The bars and nightclubs are either not open or generate very little foot-traffic early in the day, which has resulted in decreased daytime foot traffic and sapped some of the neighborhood's vitality during those hours. Further, the increased number of nightclubs and bars that stay open late has led to widespread quality of life issues, especially noise, but also pedestrian and vehicular congestion at night, litter and disorder. This is of particular concern on the residential side streets that have non-conforming commercial uses that have been grandfathered. These include some eating and drinking places that do not close until 4am.

CB3 has been considering the following four ways to address these issues in the area of concern:

1. Place restrictions on total square footage of new and expanding retail and commercial establishments and residential lobbies.
2. Prohibit the combining of storefronts within buildings, across separate buildings, and across separate zoning lots.
3. Permit formula retail establishments only on 14th and Houston Streets.
4. Prohibit new eating and drinking establishments in buildings with "grandfathered" non-conforming commercial uses that impact quality of life on residentially zoned side streets.

Zoning tools can help to address some these concerns. Other concerns can be addressed through other means.

Zoning tools for CB3 to consider

CB3 is not the first community district to have concerns about their retail corridors. A special New York City zoning district was developed to address common concerns about local retail streets, called Special Enhanced Commercial Districts.

Special Enhanced Commercial Districts

In 2011, New York City developed a new special district called Special Enhanced Commercial Districts (ECDs) designed to address community-based retail and urban design concerns at a very fine grain. The first ECD was adopted in 2011 and applied to Fourth Avenue in Brooklyn and shortly afterwards again on the Upper West Side of Manhattan in 2012. A total of six ECDs have been designed and mapped, the latest being adopted in 2016. A map of all ECDs in New York City is shown below:



ECDs are still relatively new and uncommon. Even though there are six ECDs, two were adopted on the UWS at the same time and two were adopted in East New York at the same time. The reason separate ECDs were adopted in the same neighborhoods at the same time reflected the individual needs of the commercial streets they were designed to serve.

ECDs are designed with “a la carte” regulations, which means that each ECD applies several regulations designed to address a specific need of a commercial district. Consequently, not all ECD regulations found in the chapter (132) apply in every ECD. This makes perfect sense, as the regulations for ECDs are tuned to the need of the street. For example, the concerns of retail districts on the Upper West Side of Manhattan are different from the needs of retail districts in East New York; the design of ECDs recognizes those different needs.

The subject areas ECDs currently cover are as follows:

- Entrances to ground floors must be within 2 feet of grade (132-20)
- Minimum percentage of Commercial Uses (50%) & mandatory non-residential uses, limitation on size of residential lobbies (132-22(a, b, c))
- Minimum number of establishments (A minimum of 2 for every 50 feet of frontage) (132-23)
- Maximum street wall widths for specific uses (No more than 40 feet, no more than 25 feet for banks)
- Transparency (e.g. requirements for a minimum amount of windows for new establishments)
- If setback from the streetline, area must be improved as a sidewalk
- Parking limitations (curb cuts, location of parking)

Attached to this memo are diagrams produced by the Department of City Planning when the Fourth Avenue ECD was being developed. These are helpful in visually explaining how these regulations impact a commercial street.

Underlying zoning

ECDs do not change the underlying zoning: they just layer on additional regulations on top of the underlying zoning. Is the underlying zoning a good fit for this area? Most of the avenues in question are zoned with residential districts with C1-5 and C2-5 commercial overlays, which are designed for neighborhood commercial. There are no obvious mismatches with the commercial overlays. There is, however, a small C6 district on the southern part of Second Avenue and along Houston. C6 districts allow for heavier commercial uses, like destination retail, which are retail uses designed to draw people from outside the neighborhood. This includes department stores or variety stores greater than 10,000 SF (e.g. a Target store).

Commentary on zoning solutions to CB3's issues

The existing ECD regulations may be helpful for some of CB3's concerns but not all. ECD regulations are driven by urban design considerations. They discourage blank walls, either from retail establishments, building lobbies or parking areas. They require a minimum amount of non-residential uses, which ensures that there will not be dead areas in the streetwall occupied by building lobbies, community facility uses, parking or driveways.

The minimum amount of commercial use and streetwall limitations helps to support vitality at the ground level and can be effective at keeping the size of commercial storefronts small, which are not desirable for some formula retail (like most formula drug stores), but which work for others, like Starbucks. Smaller storefronts are good for retail diversity: they tend to be more affordable and leave more spaces to occupy, which means more establishments. More establishments do not necessarily ensure retail diversity but they can help to promote it.

CB3 should carefully consider the needs of each individual avenue it wishes to regulate. Does Second Avenue have the same issues as Avenue D? The CB should closely evaluate the issues each of the avenues are facing and identify only the regulations that are relevant to the avenue (or part of avenue) on which it is mapped. The CB also should not feel constrained by the existing language of the ECD district. If additional regulations, or the same regulations with different standards make sense for avenues in the study area, new language can be added to Chapter 132. In the a la carte design of ECDs this is like adding new items to the menu; the previous regulations remain in place and are unaffected, but there are more choices for both CB3 and for future ECDs.

That said, a solution to the CB's concern about nightclubs and bars is not well suited to existing ECD regulations or existing zoning in general. Appendix A of the Zoning Resolution is a list of all uses. While we normally reference the 18 use groups, each use group is made up of individual uses, each itemized. The ECD allows us to pick out individual uses listed in the Zoning Resolution for special treatment (like "banks and loan offices"), which was done on the Upper West Side.

There is, however, no distinction between bars and restaurants in the Zoning Resolution. They are all called "eating and drinking establishments." There are distinctions between such places that have entertainment, dancing, and are over 200-person capacity. However, there is no language about the service of alcohol or hours such establishments operate.¹

Reasonable people might ask if the index of uses in the Zoning Resolution can be amended so that there is a distinction between restaurants and bars. It certainly

¹ If the CB had issues with large nightclubs, zoning might be able to help, but from my understanding, the primary concern is about the number of establishments, many of them small, rather than size.

can be but the reality is that it would take considerable effort. Uses in the zoning resolution have not been amended at all in 15 years, and they have never been significantly changed since they were first introduced in 1961, which means that they are hopelessly out of date. They need a complete overhaul, and so have become a huge problem that no one wants to touch. While this may be the worst reason for not wanting to amend the index of uses, there is no appetite at DCP for such a proposal, at least at this time.

Therefore, since bars and restaurants are the same for the purposes of zoning, the CB may wish to consider some of the non-zoning tools outlined below.

Non-zoning tools

Zoning is not the only tool for CB3 to consider to address their concerns. New zoning will take a substantial period of time to implement and it likely cannot do everything that CB3 wants. The following is a non-exhaustive list of other tools, programs and initiatives that CB3 may wish to consider when addressing their concerns. We understand that CB3 already knows, and is actively participating in many of the following. Your district manager would be able to provide specifics on CB3's experience on the effectiveness of each tool.

Department of Buildings

Grandfathered commercial uses, which in CB3 normally means non-conforming commercial uses on side-streets, can expire. If spaces holding non-conforming uses are vacant for two years, that use is no longer grandfathered and must revert to residential or community facility use (e.g. a doctor's office, day care, etc.) DOB is not good about enforcing this provision, but they will respond to documentary evidence (like photographs), and questions asked by your elected officials. I have found that the Borough President and your Council Member can get the DOB to respond to such issues, when a normal citizen will have trouble.

Additionally, if there is a place of assembly where it seems like too many people are gathered, concerned residents should call 311 to report it, every single time. A 311 complaint--on-line complaints are the best as they allow the uploading of photographs or other documentary evidence--will trigger an inspection, but if the inspector goes and does not see the condition themselves, no violation can be written.

While these activities both take effort and vigilance, we have a system where the rules as written will address these concerns, the CB just has to make sure they are enforced.

Office of Small Business Services: Neighborhood 360° program

The Neighborhood 360° program is run through Small Business Services (SBS). SBS has expanded its programming to include tools that can be used to support preserving retail diversity. Some of these tools include:

Commercial District Needs Assessments (CDNAs)

Through the Neighborhood 360° program, SBS is completing Commercial District Needs Assessments (CDNA) for neighborhoods through the city. CDNAs include data on storefront vacancy in commercial corridors. This information could be helpful to the CB directly on the status of these corridors but could also be used in justifying and supporting zoning solutions. The Neighborhood 360° Grants program provides funding to support recommendations identified in CDNA or other commercial revitalization programs, which could focus on maintaining retail diversity.

Neighborhood 360° Fellows and Leadership program

The CB can identify and partner with a local community-based organization(s) (CBOs) to apply as a host site for a 360° Fellow one-year placement to create a community plan for diverse retail in the East Village. Applications for becoming a host site will reopen in the fall. Fellow applications occur in March of the following year.

Office of Small Business Services: Other initiatives

Avenue NYC grants

These grants provide organizational development funding for local CBOs already implementing commercial revitalization efforts related to retail diversity. These grants are specifically for low-income, moderate-income areas.

Neighborhood Challenge 5.0

This SBS initiative seeks to identify CBO partners to pair with tech companies to create and implement tools to address issues in individual commercial districts. The program seeks to fund tools and solutions which address the following areas, many of which can fall under the goal of preserving and increasing retail diversity:

- Capital construction impact mitigation
- Community engagement and stakeholder outreach
- Management of public space and streetscape amenities
- Quality of life conditions and tracking
- Real estate development and land use changes
- Retail/office vacancy tracking and commercial leasing
- Sanitation and district maintenance
- Small business assistance and promotion
- Street vendor siting and fine reduction
- Sustainability and energy efficiency
- Transportation, transit, and parking

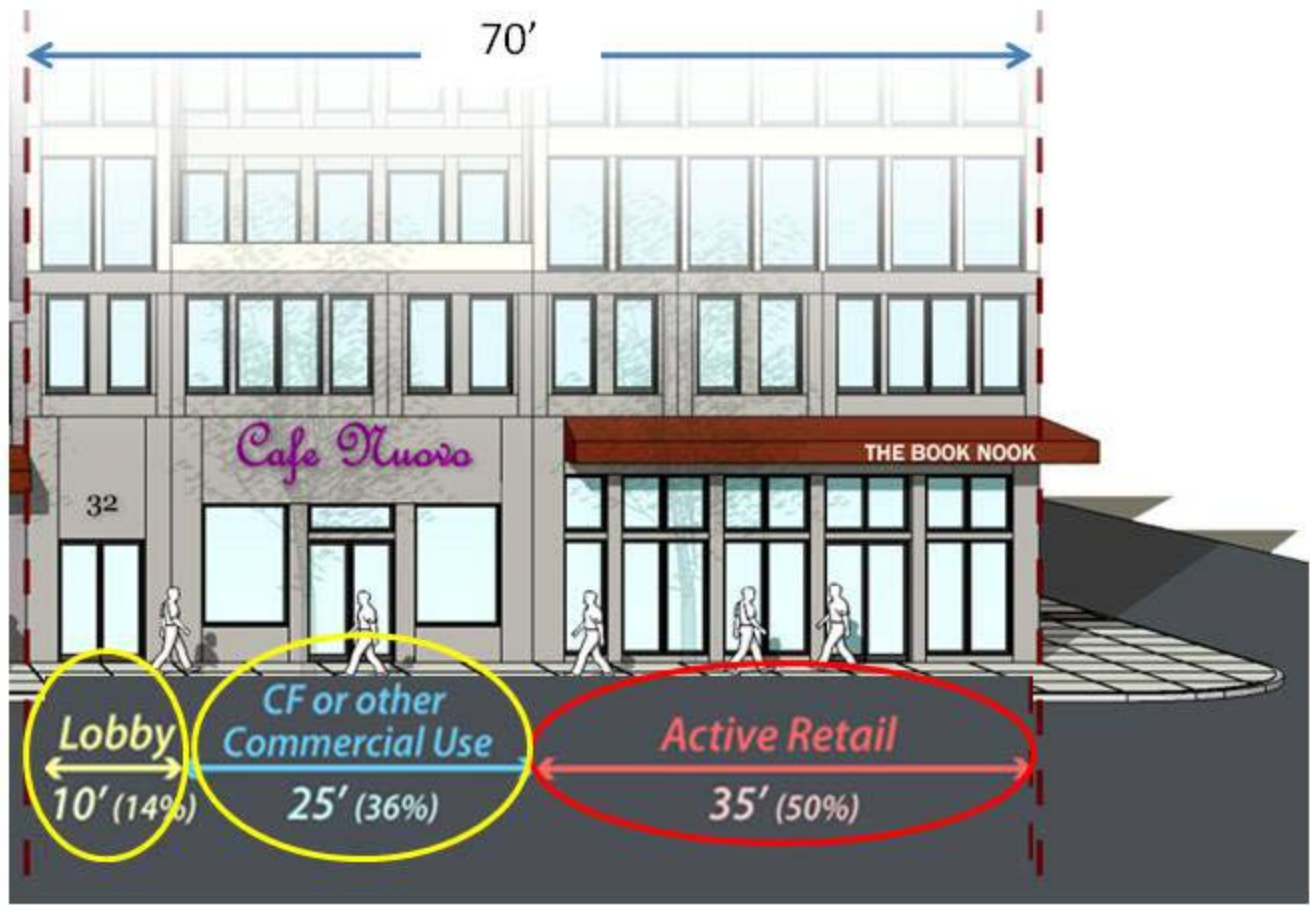
All of these grants would support work that is already being done in the community on small business services, for example, the Small Business focus

groups held by Cooper Square Committee and co-sponsored by other organizations ([East Village Independent Merchants Association \(EVIMA\)](#), [East Village Community Coalition \(EVCC\)](#), and [Renaissance Economic Development Corporation](#)).

Please let us know your comments and questions.

Attachments: Fourth Avenue ECD graphics

Special 4th Avenue Enhanced Commercial District PROPOSAL - GROUND FLOOR LAND USE



- 1. AT LEAST 50% retail/commercial frontage;
- 2. AT MOST 50% of community facilities, offices, and lobbies

PROPOSAL – GLAZING/TRANSPARENCY



Proposal components:

1. GROUND FLOOR LAND USE
2. GLAZING/TRANSPARENCY

- At least 50% of frontage must be transparent between 2 and 12 feet to maximize interaction, visibility and pedestrian-oriented environment
- Applies to all ground floor uses fronting on 4th Avenue – retail, commercial, community facility, lobby



Special 4th Avenue Enhanced Commercial District

PROPOSAL – CURB CUTS



3. Sidewalk continuity/curb cuts

- Curb cuts may not be located on 4th Avenue UNLESS it serves an interior lot with a minimum lot width of 60'

