

Brooklyn Borough President Recommendation

CITY PLANNING COMMISSION
22 Reade Street, New York, NY 10007
FAX # (212) 720-3356

INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representatives as indicated on the Notice of Certification.

APPLICATION #: 080491 ZMK

Teddy's Bar and Grill

In the matter of an application submitted by The Glef, Ltd. Pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, by establishing within an existing R6B District a C2-4 District bounded by a line midway between North 9th Street and North 10th Street, Berry Street, North 7th Street, and a line 100 feet northwesterly of Berry Street.

COMMUNITY DISTRICT NO. 1

BOROUGH OF BROOKLYN

RECOMMENDATION

APPROVE

APPROVE WITH

MODIFICATIONS/CONDITIONS

DISAPPROVE

DISAPPROVE WITH

MODIFICATIONS/CONDITIONS

CONSIDERATION

Community Board One approved the proposed rezoning on April 12, 2011. Proponents noted that: businesses have historically existed along Berry Street within the boundaries of the proposed rezoning; the mixed-use occupancy has led to a more vibrant and lively street character; and, the rezoning would not likely result in building enlargements because few sites had any excess floor area.

Opponents to the application cited potential quality-of-life challenges that might result should the proposed zoning be adopted. Concerns pertained to noise and nuisance impacts that are associated with uses that permit social gathering, such as restaurants and bars, including on-premise noise when such uses are not completely enclosed, compromising quiet enjoyment of rear yards and yards facing living spaces. Also noted were: the possible loss of neighborhood parking should there be installation of metered parking; the anticipated added activity and sidewalk crowding through vendor truck operations and street peddlers; and, the extra truck traffic associated with deliveries.

There was also concern pertaining to the potential that the rezoning could induce construction and the related impact it could have on the community – specifically the loss of residential units in favor of retail space or even total building replacement by bulkier buildings.

PROPOSED ZONING

The proposed zoning would add a commercial overlay to the west side of Berry Street between recently adopted mixed-use districts to the north and south.

The borough president generally supports efforts that facilitate the creation or growth of Brooklyn-based businesses, including rezonings that are consistent with the predominant

land use patterns. Approval of this action will bring previously legal-conforming commercial uses back into conformance – a status that was in effect until the May 2005 rezoning of this area. In addition, it will provide the opportunity for the applicant of this action to restore outdoor table service by becoming eligible to apply for a sidewalk café permit.

Though the existing zoning typically does not permit commercial use, according to Zoning Resolution (ZR) section 52-61, vacant ground floor or basement stores in buildings designed for residential use located in R5, R6 (includes R6B) and R7 Districts where the change or reactivated use is listed in Use Groups 6A, 6B, 6C or 6F, with a few excluded uses is permitted. In addition, this section requires conformance with ZR 52-34 which states that eating and drinking places, thus permitted as a change of use, shall be limited exclusively to the sale of food or drink for on-premise consumption by seated patrons within a completely enclosed building. While the existing zoning permits neighborhood retail use, it does not provide opportunity to facilitate sidewalk cafes.

The proposed zoning is neutral in terms of how much floor area is permitted, with the difference being that either all of the floor area or at least the ground floor of a residential building would permit commercial use. In addition to Use Group 6, the proposed zoning permits Use Groups 7, 8 and 9 which typically provides for home maintenance and repair, limited automotive servicing establishments and, limited amusements and service type establishments. Under the proposed zoning, restaurants and bars would be able to provide outdoor table service in yard areas and could qualify for a process through the Department of Cultural Affairs (DCLA) to establish a sidewalk café. In the case of Teddy's Bar and Grill it would be an opportunity to re-establish its sidewalk café through the DCLA process.

The borough president believes the addition of a commercial zone is appropriate. He acknowledges that the block between North 7th and North 8th Streets is primarily non-residential for the ground floor space, with the sole non-retail or restaurant use being a sculpture studio at 104-106 Berry Street. Based on existing zoning the occupant of that property has the right to convert such use pursuant to ZR section 52-332, which contains a range of commercial uses which are also permitted according to the proposed zoning. Although currently there are just two purely active commercial uses between North 7th and North 8th Streets, historically, several of the buildings had contained ground floor commercial use. Under ZR 52-61, these buildings could have such uses restored, though such regulation does not address the opportunity to provide sidewalk cafes where appropriate.

COMMUNITY CONCERNS

The borough president understands the concerns that have been shared with regard to this rezoning. Most of the lots are at or exceed the amount of floor area permitted by the existing and proposed zoning, thus the rezoning poses little risk of redevelopment. One exception is the sculpture studio, which will have the potential to maximize the permitted floor area through a complete tear down of the current structure. Whether the zoning remains the same or changes to the proposed, the property has the right to be a store or restaurant as the existing use may convert according to the existing zoning as noted above.

Another property, 88 Berry Street, while not a tear-down risk under either zoning, has enough excess floor area to have a completely enclosed ground floor space (community facility according to the existing zoning or commercial use under the proposed zoning).

However, even with this opportunity to utilize such floor area, it would likely have to address the Americans with Disabilities Act (ADA) requirements due to the ground floor actually being a few steps above street level in order to convert to commercial use. In fact, implications of ADA compliance would likely impact a number of residential ground floor spaces that exist in the area of the proposed zoning as many are either a few steps up or a few steps down – thus decreasing the desirability of converting such space to commercial use. To further support the expectation that conversion of the residential ground floor space is not anticipated, one should look at Bedford Avenue, where a number of ground floor residential properties have remained despite the appeal of having retail along this commercial corridor. The borough president believes the conversion from the residentially used ground floor spaces to commercial for the properties along Berry Street is not likely and might have otherwise occurred according to ZR section 52-61.

Although commercial properties will be able to open up into their backyard, allowing for more opportunities for social gathering, the borough president believes that the logistics of doing so will deter such conversion from happening. In order to create access to establish a backyard seating area, a significant amount of existing interior space would need to be sacrificed to provide passage to the yard. In addition, adding such seating capacity might demonstrate the need to comply with public assembly requirements, which might not be viable to configure economically. The likelihood of this is occurring should not preclude a rezoning.

As for other stated quality-of-life concerns, the Department of Transportation (DOT) does not automatically install metered parking with the adoption of a commercial zoning. The typical course of action would be to act on requests made and pursue such instances in consultation with merchants and possibly with the involvement of the community board. In regards to the possibility of vending trucks attempting to set up along Berry Street, the borough president is aware that the Department of Consumer Affairs (DCA) has authority over the locations of street vendors. Per the Administrative Code, a list of restricted street for truck vendors exists and is readily enforced. The City Council would have to amend this to include Berry Street if preventing street vendor activity is desired.

BOUNDARY OF PROPOSED ZONING

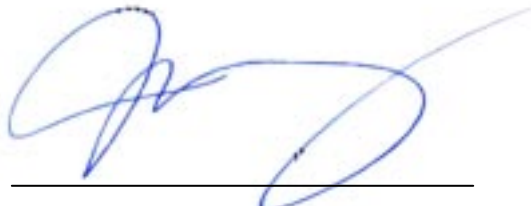
The borough president believes there is a need to balance the opportunity to support retail and restaurant uses with valid concerns of the residential community seeking to retain established quality-of-life. Therefore, he seeks to establish such boundaries where appropriate. For the section north of North 9th Street, the borough president does not agree that a commercial overlay is warranted. Based on the land use, there is only one commercial property, the corner lot, and given ZR 52-61, it does not require a commercial overlay to protect commercial use at this location. Another lot, fronting onto North 9th Street, is not developed. The lot has approved plans for a four-story residential building, though it is possible that pursuant to the proposed zoning, plans could be revised to incorporate commercial use. Mapping the proposed overlay could result in the un-built lot fronting on North 9th Street to introduce retail on the residential side of the street. This could potentially result in quality-of-life conflicts along the residential side of the street. There is no justification to give an opportunity for commercial development to this property. The existing R6B is sufficient zoning to facilitate redevelopment, while further protecting the side street from commercial intrusion. Thus, the borough president believes that the proposed overlay should not extend past North 9th Street.

TYPE OF COMMERCIAL DISTRICT

The borough president believes that under the proposed zoning, the additional permitted Use Groups 7, 8 and 9 – which typically provides for home maintenance and repair, limited automotive servicing establishments, limited amusements and service type establishments – do not reflect the context of this community. These uses typically serve wider areas which thus might generate more vehicular traffic and commercial vehicles. Mapping a C1 zoning district would more closely match what is already permitted by ZR 52-61 and would eliminate certain uses that are less desirable to the surrounding residential blocks. Therefore, the borough president believes it would be more appropriate to map a C1-4 zoning designation than the proposed C2-4 as a means to be more in keeping with the existing zoning, yet providing opportunities for sidewalk cafes where appropriate.

RECOMMENDATION

Be it resolved that the Brooklyn Borough President, pursuant to section 197-c of the New York City Charter, recommends to the City Planning Commission and City Council, the approval of this Zoning Map application on the condition that in lieu of establishing a C2-4 commercial overlay between North 7th Street and the mid-block between North 9th and North 10th Street, it be limited to a C1-4 overlay between North 7th Street and North 9th Streets.



BOROUGH PRESIDENT

May 11, 2011

DATE