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COMMUNITY BOARD NO. 2, MANHATTAN

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June 20, 2014

Julie Menin, Commissioner
NYC Department of Consumer Affairs
42 Broadway
New York, NY 10004

Dear Commissioner Julie Menin:

At its Full Board meeting on June 19, 2014, Community Board #2, Manhattan (CB#2, Man.) adopted the following resolutions:

New App. for revocable consent to operate a SMALL sidewalk cafe for:

1. 267 Lafayette Grocery LLC, d/b/a Bottega Falai, 267 Layfayette St. (btw Spring St & Prince St), with 5 tables & 10 chairs (6531-2014-ASWC)

Block:495 Lot:11

Year Built:1926(estimated)

Residential Units: 93 Total # of Units:102

Lot Frontage:163.33' Lot Depth:81.83

Number of Buildings:1; Number of Floors:6

Zoning: C6-2

Whereas,

- a. the area was posted, community groups notified and there were no community members present regarding this application, and the applicant's manager, Veronica Leonardo, was present, and
- b. this SMALL café is proposed for a sidewalk of 15'11" – just 3" wider than the minimum required width – which is somewhat constrained by a sidewalk grate just south of the restaurant entrance and a USPS mailbox opposite the south edge of the property, and
- c. the supplied print shows 6 tables & 12 chairs instead of the applied-for 5 tables & 10 chairs, and
- d. the print also showed the tables/chairs arranged perpendicular to the façade and the committee pointed out that, with patrons seated, this would not stay within the 4'6" allowed under the small sidewalk café rules, and
- e. Ms. Leonardo assured the committee a new plan would be filed with DCA removing the extra table and 2 chairs, and rotating the furniture to ensure it complies with the small sidewalk café rules,

THEREFORE BE IT RESOLVED that Community Board 2 Manhattan recommends **APPROVAL** of this NEW application for revocable consent to operate an SMALL sidewalk café for **267 Lafayette Grocery LLC, d/b/a Bottega Falai, 267 Lafayette St. (btw Spring St & Prince St), with 5 tables & 10 chairs (6531-2014-ASWC)**

CONDITIONAL UPON the applicant filing a new plan with DCA removing the extra table & 2 chairs, with all furniture rotated to comply with the 4'6" limit required for a SMALL sidewalk café.

VOTE: Unanimous, with 38 Board Members in favor

New App. for revocable consent to operate an Unenclosed sidewalk cafe for:

2. 24 5th Ave LLC, d/b/a Claudette, 24 5th Avenue (NW corner W 9th St), with 25 tables & 52 chairs (6789-2014-ASWC)

Block:573 Lot:43

Year Built:1926

Residential Units: 421 Total # of Units:426

Lot Frontage:92.25' Lot Depth:230.33

Number of Buildings:1; Number of Floors:21

Zoning: R6 R10

Whereas,

- a. the area was posted, community groups notified and there were many community members present regarding this application, and the applicant, Carlos Suarez, and his representatives, land use attorney Jessica Loeser and expediter Marc Glazer, were present, and
- b. this café is proposed for a sidewalk of 23'6" which is constrained by one of a series of tree pits with fences to a usable width of 19' 4" and a traffic signal at the corner, and
- c. the café is proposed for a sidewalk in an R6 zone, in which sidewalk cafes are not allowed under Article 1; Chapter 4 (Sidewalk Café Regulations); Section 14-011 of the Zoning Resolution, and additionally is on 5th Ave between Washington Square North and 12th St, which Section 14-40 of the ZR states "*No #enclosed# or #unenclosed# sidewalk cafes# shall be permitted...*", and
- d. the applicant had previously received from the building owner and multiple agencies, including the LPC, permission to demolish two sidewalk enclosures (only one of which was in the applied-for area) which had been previously licensed as enclosed cafes, and
- e. this application was made following the applicant receiving a letter from DCA, with supporting opinions from the Dept. of City Planning stating an application could be filed for an unenclosed café in this location only if the following could be shown:
 - i. the non-conforming use of the ground floor could be extended to the sidewalk, allowing the legal licensing of any café at any time
 - ii. the enclosures were legally built and were not sidewalk encroachments
 - iii. the previous south enclosure had been continuously licensed with no breaks of at least 2 years since first being licensed as a sidewalk café which would allow grandfathering of the café
 - iv. that grandfathering of an enclosed café can be applied to a different class of cafe
- f. a non-conforming use is not a legal non-conforming ("grandfathered") use unless it was a legal use prior to the zoning change that made it non-conforming and it ceases to be a legal non-conforming use if it is discontinued for any period of two years, and
- g. the applicant presented to the committee evidence that the enclosure had been built in or around 1971 but was unable to provide any evidence that the construction was legal, nor

that the non-conforming use could legally be extended to the public sidewalk, nor that the café was legally licensed on a continuous basis since 1971 with no breaks of more than 2 years, and

- h. the committee feels strongly that the opinions from City Planning noted in the letter from DCA were preliminary at best and appeared not to be supported by a careful investigation of the facts by either DCP or DCA, and this letter was virtually the only support for the application supplied by the applicant, and
- i. the committee was otherwise provided a Department of Building Temporary Certificate of Occupancy for 24 5th Avenue dated May 16, 1991 stating:
“Violations noted: Sidewalk encroachments contrary to C26-407.1, C26-407.5, C26-408.1 & impermissible extension of non-conforming use contrary to section S2-40 zoning resolution.”
- j. given this document was the only DoB documentation to be obtained by the committee, and no documentation was provided by the applicant contradicting it, the committee feels that none of the 4 requirements noted in Whereas e. above have been satisfactorily met by the applicant, and
- k. even if it is subsequently shown that the café can be grandfathered and licensed, the supplied print shows the café using 11’ of the sidewalk, but the café can use no more than ½ the unobstructed sidewalk, so the applicant agreed that the outer row of seating must be removed to restrict the café to the allowable 9’7” of sidewalk (½ of 19’4”), reducing the café in any case to a maximum of 19 tables & 40 chairs, and
- l. Mr. Suarez and Ms. Loeser assured the committee that if this application moves forward, a new plan would be filed with DCA removing the outer-most 6 tables & 12 chairs, and
- m. nearly 20 members of the immediate community attended and spoke at the hearing, almost all to oppose any café in this primarily residential block, and
- n. their primary concerns were the legality of any café at this property, and the effect it would have on the immediate area, almost all of which is residential, and
- o. it was also noted by the residents and the committee that an *unenclosed* café would have substantially more impact on neighboring residents than the previous enclosed café, and
- p. several people spoke of the noise issue they are already having with the interior of the restaurant as it has French doors along most of the façade which are consistently left open, and
- q. the committee notes that Mr. Suarez stipulated to CB2 in Sept. 2013 as part of his SLA application that “all doors and windows would be closed by 10:00 p.m. each daily” but when questioned about any such stipulation, after only 3 weeks of operation of the restaurant, Mr. Suarez seemed unable to remember if he had made any such commitment, leading the committee to doubt the commitment has been fulfilled, and this appeared to be born out by statements from multiple area residents, and
- r. as part of those same stipulations Mr. Suarez also agreed to “not use any backyard garden space or sidewalk café”,

THEREFORE BE IT RESOLVED that Community Board 2 Manhattan recommends **DENIAL** of this NEW application for revocable consent to operate an Unenclosed sidewalk café for **24 5th Ave LLC, d/b/a Claudette, 24 5th Avenue (NW corner W 9th St), with 25 tables & 52 chairs (6789-2014-ASWC), AND**

UNLESS it can be shown, conclusively and contrary to other documentation, that the enclosed café was legally constructed and then operated since as a legal non-conforming use and there has been no discontinuation of such use exceeding two years

FURTHER BE IT RESOLVED that IF it is subsequently established that

- **the previous enclosures were legally built AND**
- **the non-conforming use could at any time be legally extended to the sidewalk AND**
- **the previous enclosed café had been continuously licensed since being built in 1971 with no breaks of more than 2 years AND**
- **that any ‘grandfathering’ of the enclosed cafes can subsequently be extended to an unenclosed café**

then the café seating be restricted to 10 tables & 20 chairs, all immediately adjacent to the façade with no seating placed to the south of the restaurant entrance, in order to ensure the least possible disruption to the residential nature of this block and that of W. 9th St around the corner

AND FINALLY BE IT RESOLVED as this is still a virtually entirely residential area, the café should not be approved in any form if the applicant does not receive approval on an application he stated is pending with the NYC Landmarks Preservation Commission to install an awning covering all seating areas.

VOTE: Passed

For: 36 Full Board Members

Against: 2 Full Board Members (Dawson, Frost)

3. Carapina LLC, d/b/a GROM, 233 Bleecker St. (NE corner Carmine St), with 4 tables & 8 chairs (5981-2014-ASWC)

Block:589 Lot:48

Year Built:1920(estimated)

Residential Units:2 Total # of Units:8

Lot Frontage:25' Lot Depth:100

Number of Buildings:1; Number of Floors:2

Zoning: R7-2; Commercial Overlay: C1-5

Whereas,

- a. the area was posted, community groups notified and there were no community members present regarding this application, and the applicant was present, and
- b. this café is a new application for a downsized café by the applicant who has previously operated the café with seating of 8 tables & 16 chairs, and
- c. the café has been operated for several years by the applicant with few known issues, but the committee was informed that cleanup in the café has been a substantial problem but this information was not received in time to discuss it with the applicant,

THEREFORE BE IT RESOLVED that Community Board 2 Manhattan recommends APPROVAL of this NEW application for revocable consent to operate an SMALL sidewalk café for Carapina LLC, d/b/a GROM, 233 Bleecker St. (NE corner Carmine St), with 4 tables & 8 chairs (5981-2014-ASWC)

VOTE: Unanimous, with 38 Board Members in favor

4. E.D.O Food IV LLC, d/b/a Hummus Place, 71 7th Ave. S. (NE corner Bleecker St), with 4 tables & 8 chairs (6853-2014-ASWC)

Block:590 Lot:54
Year Built:1900
Residential Units:0 Total # of Units: 2

Lot Frontage:39.5' Lot Depth:75.17
Number of Buildings:1; Number of Floors:1
Zoning: C2-6

Whereas,

- a. the area was posted, community groups notified and there were no community members present regarding this application, and the applicant, Ori Apple, was present, and
- b. this café is a new application due to the operator allowing the license to lapse, and
- c. the café has been operated for several years by the applicant with few known issues, but one committee member raised the question of whether there is wait service to the café and the applicant assured the committee that there is,

THEREFORE BE IT RESOLVED that Community Board 2 Manhattan recommends **APPROVAL** of this NEW application for revocable consent to operate an SMALL sidewalk café for **E.D.O Food IV LLC, d/b/a Hummus Place, 71 7th Ave. S. (NE corner Bleecker St), with 4 tables & 8 chairs (6853-2014-ASWC).**

VOTE: Unanimous, with 38 Board Members in favor

5. 55 Greenwich, Inc., d/b/a Bluestone Lane, 55 Greenwich Ave. (SW corner Perry St), with 11 tables and 40 chairs (7542-2014-ASWC)

Block:612 Lot:57
Year Built:1940(estimated)
Residential Units:8 Total # of Units:10

Lot Frontage:21' Lot Depth:40.92
Number of Buildings:1; Number of Floors:5
Zoning:C1-6

Whereas,

- a. the area was posted, community groups notified and there were no community members present regarding this application, and the applicant's representative, Hari Kalyan, was present, and
- b. this café is proposed for a sidewalk of 17' on Greenwich Ave which is constrained to the left of the entry doorway by a phone booth, and for a sidewalk of 15' on Perry St which has no legal obstructions constraining it, and
- c. the committee was immediately concerned about the amount of seating proposed, particularly on a quiet residential block of Perry St, and felt it was excessive relative to the amount of interior seating, and that an air conditioning unit on Perry St would interfere with the last set of tables there, and
- d. there was also substantial concern about the use of 3 different table sizes and 6-seat tables on Greenwich Avenue which the committee feels may lead to an unacceptable level of noise from large groups, and
- e. Mr. Kalyan agreed to the committee's request that the seating be reduced to a total of 9 tables & 24 seats by the following changes:
 - i. reduce the three 6-seat tables on Greenwich Ave to 4-seat tables
 - ii. remove the 2 tables & 6 chairs that are furthest west on Perry St due to the a/c unit, and to reduce the potential impact on neighbors
 - iii. reduce the remaining two 4-seat tables on Perry St. to 2-seat tables,

THEREFORE BE IT RESOLVED that Community Board 2 Manhattan recommends **APPROVAL** of this NEW application for revocable consent to operate an SMALL sidewalk café

for 55 Greenwich, Inc., d/b/a Bluestone Lane, 55 Greenwich Ave. (SW corner Perry St), with 11 tables and 40 chairs (7542-2014-ASWC)

CONDITIONAL UPON the applicant filing a new plan with DCA removing the seating detailed in Whereas “e” for a seating total of 9 tables & 24 chairs.

VOTE: Unanimous, with 38 Board Members in favor

FYI Renewals:

Whereas, the renewals below were posted on the CB2 Manhattan website and there were no community members requesting these applications be heard, and

Whereas, these cafés have been operated for at least 2 years by these applicants and the Board has not been notified of any issues with their operation,

- Bonarue Bleu Industries Inc., Florencia Inc., 185 Sullivan St. with 4 tables & 8 chairs (1301635-DCA)
- Lu-Ann Bakery Shop, Inc., d/b/a Bruno Bakery S/C #362, 506 LaGuardia Pl., with 8 tables & 16 chairs (0762511-DCA)
- Travertine LLC, d/b/a Ken & Cooks Restaurant, 19 Kenmare St. with 15 tables & 30 chairs (1434421-DCA)

THEREFORE BE IT RESOLVED that Community Board 2 Manhattan recommends **APPROVAL** of the RENEWAL applications for revocable consent to operate the indicated sidewalk café for the above applicants.

VOTE: Unanimous, with 38 Board Members in favor

Please advise us of any decision or action taken in response to these resolutions.

Sincerely,



David Gruber, Chair
Community Board #2, Manhattan



Maury Schott, Chair
Sidewalks & Public Access Committee
Community Board #2, Manhattan

DG/EM

c: Hon. Jerrold L. Nadler, Congressman
Hon. Nydia Velázquez, Congresswoman
Hon. Brad Hoylman, NY State Senator
Hon. Daniel L. Squadron, NY State Senator
Hon. Sheldon Silver, Assembly Speaker
Hon. Deborah J. Glick, Assembly Member
Hon. Gale Brewer, Man. Borough President
Hon. Corey Johnson, Council Member
Hon. Margaret Chin, Council Member
Hon. Rosie Mendez, Council Member