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Bo Riccobono, *First Vice Chair*
Alison Greenberg, *Second Vice Chair*
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Antony Wong, *Treasurer*
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COMMUNITY BOARD NO. 2, MANHATTAN

3 WASHINGTON SQUARE VILLAGE

NEW YORK, NY 10012-1899

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May 29, 2012

Meenakshi Srinivasan, *Chair*
NYC Board of Standards & Appeals
40 Rector Street, 9th Floor
New York, New York 10006-1705

Dear Chair Srinivasan:

At its Full Board meeting on May 24, 2012, CB#2, Manhattan (CB#2-Man.), adopted the following resolution:

63 8th Avenue (Block: 616 Lot: 46) BSA Cal. No: 678-74-BZ Board of Standards and Appeals Application seeking a minor amendment to BSA resolution 678-74-BZ to amend the approved fueling islands location & layout and to permit the installation of replacement underground storage tanks and fueling equipment with no change in use. Located in a C1-6 district.

Whereas: the applicant is applying for a minor technical change as to the underground tanks positioning in an already approved variance, and

Whereas: this gas station is one of the few remaining in lower Manhattan, but located on a very irregular strip of land bordering on a major avenue and crossing street, and

Whereas: a resident complained about the chaotic traffic and turning problems on the avenue caused by cars entering, exiting and queuing up at the station awaiting service, and the danger it presents for pedestrians crossing, especially for school kids from near-by PS 41, and

Whereas: while the Committee has agreed to the necessity of granting this variance, we urge the BSA to take into consideration these traffic problems when it reviews the application and request some ideas for improvements from ownership,

Therefore Be It Resolved: CB#2, Man. approves this application and requests that the BSA consider the problems noted in the 3rd and 4th whereas clauses above.

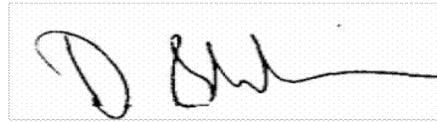
Vote: Unanimous, with 43 Board members in favor.

Please advise us of any decision or action taken in response to this resolution.

Sincerely,



Brad Hoylman, Chair
Community Board #2, Manhattan



David Gruber, Chair
Land Use & Business Development Committee
Community Board #2, Manhattan

BH/fa

cc: Hon. Jerrold L. Nadler, Congressman
Hon. Thomas K. Duane, NY State Senator
Hon. Daniel Squadron, NY State Senator
Hon. Deborah J. Glick, Assembly Member
Hon. Scott M. Stringer, Man. Borough President
Hon. Christine C. Quinn, Council Speaker
Hon. Margaret Chin, Council Member
Hon. Rosie Mendez, Council Member
Pauline Yu, CAU
Vivian Awner, Community Board Liaison, Dept. of City Planning
Jeff Mulligan, Executive Director, Board of Standards & Appeals
Derek Lee, Man. Borough Commissioner, NYC Department of Buildings

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Meenakshi Srinivasan, *Chair*
NYC Board of Standards & Appeals
40 Rector Street, 9th Floor
New York, New York 10006-1705

Dear Chair Srinivasan:

At its Full Board meeting on May 24, 2012, CB#2, Manhattan (CB#2-Man.), adopted the following resolution:

216 Lafayette Street (Block: 482 Lot: 28) Board of Standards and Appeals application filed pursuant to Section 72-21 and Section 42-14(D)(2)(b) to permit the conversion of a portion of the first floor of the existing building to Use Group 6 (eating and drinking establishment) on the ground floor with accessory use in the cellar. The Premises lies within an M1-5B zoning district.

The application seeks permission for an extension of the Osteria Morini restaurant at 218 Lafayette to expand into the ground floor of the adjoining building at 216 Lafayette Street. This requires either a variance from the BSA or a request to City Planning for a rules modification under section 42-141.

The applicant also wants to expand into the second floor of the same 216 building to enlarge his restaurant and has applied for a modification of his liquor license to do that. The SLA Committee of CB#2, Man. has recommended denial of that application.

The applicant also originally obtained a permit to proceed with a expansion in the ground floor by claiming there was a prior grandfathered restaurant at the site (and therefore did not require BSA or CPC actions), but the application had inaccurate information and the permit to construct was rescinded.

Whereas: the application was laid over last month at the request of the applicant, and

Whereas: the applicant is requesting a variance to change the use group to allow an eating and drinking establishment in an M1-5 A zone, and

Whereas: the applicant had previously filed an inaccurate application to the Department of Buildings stating that the subject property had already been grandfathered as an eating and drinking establishment on the ground floor and wanted to extend their restaurant in the adjoining ground floor space without coming to either the Planning Commission under 42-141 for a modification or to the BSA for a variance, and

Whereas: the DOB had a re-consideration of their prior approval based on that inaccurate information, and

Whereas: the committee was greatly concerned about that inaccurate filing and the resultant demolition and construction that ensued until halted by the DOB, and

Whereas: the applicant is now seeking a variance to allow eating and drinking uses, and

Whereas: in order to be granted that relief, five findings must be met, including at least three that that are questioned by this committee:

1. **Unique Conditions** The claim of uniqueness of the site was not proven at all. The applicant makes most of his arguments about the uniqueness of the building rather than the physical irregularity of the zoning lot (as the zoning resolution denotes) and uses BSA prior decisions to make his case. The applicant states that this two-story building is unique, implying that there are few, if any, two-story buildings in the M1-5a/b. The applicant argues that this uniqueness creates a hardship that can only be relieved by a variance. However, the applicant's claim of uniqueness is belied by the facts. Indeed, in the M1-5a/b, a cursory search produced not only dozens of two-story buildings supporting as-of-right thriving businesses, but also dozens more one-story buildings, presumably with even less profit-potential than a two-story, distributed throughout every street in the district. The applicant claims the building is obsolete for an as-of-right use, but then contradicts himself and says the building houses JLW artist successfully which is of as-of-right. Moreover, the only claims about the actual physical irregularity of the zoning lot is the shallowness of the lot because of the wall that separates a JLW artist and the prior commercial use; a wall that was created by the landlord.

2. **Character of the Neighborhood** The required finding that the variance "will not be detrimental to the public welfare" (ZR 72-21) was adamantly contested by many residents surrounding or in the area of the subject property. While several people directly associated with the applicant spoke in favor of the application, a much greater number of people spoke against the application and about the hardship it would bring to an already oversaturated restaurant area where noise, odors and other food service factors now overwhelm the neighborhood. There were also complaints about the hardships of the existing exhaust stacks being almost immediately adjacent to their windows (approx 5 ft) and the dirt, smoke and fumes they emit and the problems that would be caused by additional exhaust stacks by this restaurant or future ones. Additionally, the SLA Committee of CB2 Manhattan has recommended denial for their application to modify and extend their liquor license to the floor above the subject property.

3. **Self-Created Hardship** The committee also felt that the finding that prohibits an applicant from causing a self-created hardship was not met, given that a legal as-of right tenant was at first proffered a lease renewal even after the applicant claims that the said tenant was earlier legally evicted. The space was then rented to, we presume, a higher-paying restaurant user. That original tenant then signed a lease for almost the exactly same size space at the same rent he offered the landlord, just one block away on Lafayette Street, thus establishing that he offered the landlord a true market rent and diluting the landlords claim that there is no market for as of right tenants, and

Whereas: several speakers testified that there was an active and acute shortage of spaces for as-of-right JLWQA applicants, and

Whereas: the applicant presented no confirmation beyond a broker's letter that they attempted to attract a suitable as-of-right commercial tenant at a realistic rent, or even advertised at all for a qualified as-of-right JLWQA, and

Whereas: the applicant also rejected the suggestion of accepting a variance that prohibiting eating and drinking establishments,

Therefore Be It Resolved that CB#2, Man. recommends denial of this application, as the findings for said variance have not been met and this variance will cause additional hardships to an already overburdened community, and

Be It Further Resolved that if the BSA does determine that a financial hardship does exist and that it was not self-created, and is not detrimental to the community, and that it is a unique site, and decides to grant a variance, we strongly urge that the variance prohibit eating and drinking establishments of any kind.

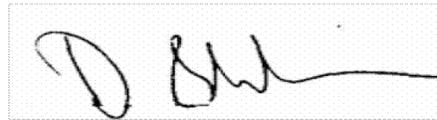
Vote: Passed, with 36 Board members in favor, and 6 in opposition (W. Bray, C. Dawson, M. Derr, J. Paul, E. Ma, R. Sanz,) and 1 abstention (D. Collins).

Please advise us of any decision or action taken in response to this resolution.

Sincerely,



Brad Hoylman, Chair
Community Board #2, Manhattan



David Gruber, Chair
Land Use & Business Development Committee
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