



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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JOHN WEIS
Chair

ROBERT J. BENFATTO, JR., ESQ.
District Manager

November 23, 2009

Amanda Burden, Commissioner
City Planning Commission
22 Reade Street
New York, New York 10007

Michael Ben-Asher
Legal Department
Department of Consumer Affairs
42 Broadway
New York, New York 10004

Re: ULURP Application No.: N 090345 ECM
DCA No.: 1309115
Applicant: C.A.P. Restaurant Corp. d/b/a Sombrero
Premises: 303 West 48th Street

Dear Director Burden and Mr. Ben-Asher:

At the recommendation of its Clinton/Hell's Kitchen Land Use Committee, Manhattan Community Board No. 4 ("CB4"), having held a duly noticed public hearing on ULURP application number N 090345 ECM, adopted the following resolution at its meeting on November 4, 2009.

We are fundamentally opposed to new enclosed sidewalk cafes in the Special Clinton District and therefore cannot recommend approval. If the application is nonetheless approved, we recommend that the approval be subject to certain conditions to which the applicant has agreed.

The Application contemplates the addition of a permanent, enclosed sidewalk café ("Café") that will be able to accommodate 8 tables and 16 seats. The Café is located at the northwest corner of West 48th Street, just west of Eighth Avenue and is also known as 303 West 48th Street. This location is in the Special Clinton District.

We note too that the Applicant also operates Corner 47th Restaurant d/b/a Pietrasanta, the subject of a recent denial of an application for an enclosed sidewalk café. The application was denied because the Applicant had operated an outdoor café without obtaining the necessary permits. Recognizing that this is unacceptable and that it made a mistake, the Applicant has committed to being a good neighbor and operating its restaurants within the confines of applicable laws and permitting processes.

Community Concerns:

1. Enclosed Sidewalk Cafes in general

Enclosed sidewalk cafes are permanent structures, extending private property into the public realm. Unlike unenclosed sidewalk cafes, which can add to community ambiance and create more vibrant streetscapes, enclosed sidewalk cafes separate diners from sidewalk activity. Enclosed sidewalk cafes are generally not allowed in special zoning districts, except as indicated in Section 14-44 of the Zoning Resolution. Section 14-44 lists the Special Clinton District as one of only four special districts in which enclosed cafes are allowed. We believe that it is either an accident or an anachronism that the Special Clinton District should be so listed. Our sidewalks have become increasingly crowded. In November 2007 we wrote to the Department of City Planning requesting a text amendment to prohibit enclosed cafes in the Special Clinton District and are now, once again, submitting a second request seeking the same relief. In conversations, DCP staff has been sympathetic to our request, but we continue to await a formal response.

2. This location

There are only two enclosed cafes in the Special Clinton District, one at the corner of 57th Street and Ninth Avenue, and one on 42nd Street between Ninth and Tenth Avenues. Both are on wide streets with broad sidewalks. In contrast, the proposed Sombrero café would be largely on a narrow side street, and would leave the bare minimum of 8 feet clearance. This location has regular pedestrian traffic as it is steps away from Eighth Avenue.

CB4 is all too familiar with the impact of rapid unplanned growth of permanent enclosed outdoor cafes as is illustrated by the recent explosion of restaurants and cafes throughout the district. As in other sections within the confines of CB4, the impact on pedestrian safety and sidewalk usage now and in the future must be carefully considered.

3. Clearance requirements should be the same as for newsstands

Under DCA's standards for newsstands, those built structures must generally leave 10 feet of sidewalk clear between the newsstand and the property line. Since enclosed cafes are similar sidewalk encroachments, the same 10-foot clearance should be required. DCA's regulations for built structures on public sidewalks should be consistent. We would like to see the Applicant use the more strict standards in the construction process to ensure future sidewalk space and create uniformity in construction on all sidewalks.

4. Disability Accessibility

The drawings provided by the architect show accessibility into the Café as required in Article 1, Chapter 4, Section 14-122 of the NYC Zoning Resolution.

However, the two hinged doors depicted in its plan prevent wheelchair access and are in violation of Department of Building's Regulation. Without full accessibility for persons with physical disabilities, CB4 cannot recommend approval. Accordingly, the Applicant has stated that they will change their current architectural plans and bring these doors into compliance with the appropriate regulations prior to operation of its proposed enclosed café.

Now, therefore, be it resolved that Manhattan Community Board No. 4 recommends denial of Application No. N 090345 ECM; if the application is nonetheless approved, it must be subject to the following conditions, to which the applicant has agreed:

Conditions:

1. The proposed hinged doors allowing ingress and egress to both the Café and the restaurant must meet the ADA standards and the ADAAG standards as are denoted in the DOB's ADAAG;
2. The Café shall be completely removed if and when the Applicant ceases to do business at this site;
3. The Applicant will contact Times Square Alliance and secure removal of the street furniture on the sidewalk directly in front of its proposed Café ; and
4. Ensure that the pavers surrounding the tree pit are flush with the sidewalk.

Sincerely,



John Weis, Chair
Manhattan Community Board 4



Elisa Gerontianos, Co-Chair
Clinton/Hell's Kitchen Land Use Committee



Sarah Desmond, Co-Chair
Clinton/Hell's Kitchen Land Use Committee

cc: NYC Council Speaker Christine Quinn
NYC Council Speaker Quinn's Office – Kate Seeley-Kirk, Melanie Larocca
NYC Council Land Use Division – Danielle DeCerbo
NYS Senator Thomas K. Duane
NYS Assemblyman Richard Gottfried
MBPO – Anthony Borelli, Deborah Morris
Applicant – Patrick S. Lima, VP, C.A.P. Restaurant Corp.