

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

SUBCOMMITTEE ON ZONING  
AND FRANCHISES

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September 3, 2014  
Start: 10:00 a.m.  
Recess: 11:04 a.m.

HELD AT: 250 Broadway - Committee Room  
16th floor

B E F O R E: MARK S. WEPRIN  
Chairperson

COUNCIL MEMBERS:  
Daniel R. Garodnick  
Jumaane D. Williams  
Donovan J. Richards  
Antonio Reynoso  
Ritchie J. Torres  
Vincent M. Ignizio  
Vincent J. Gentile  
Rubin Wills  
Rosie Mendez

## A P P E A R A N C E S (CONTINUED)

Antonio Rappazzo  
L&W Oyster Company  
254 Fifth Avenue  
New York, New York

Jessica Loeser, Associate  
Akerman Law Firm  
665 Fifth Avenue  
New York, New York 10103

Christopher Rizzo  
Legal Counsel  
New York, New York

Neil Ritter  
Member Board of Managers  
25 Fifth Avenue Condominium  
New York, New York

Dorothy Gengeris, Resident  
25 Fifth Avenue  
New York, New York

Bob Gormley, District Manager  
Community Board 2  
3 Washington Square, Village #4  
Manhattan, New York 10012

[sound check]

CHAIRPERSON WEPRIN: We're going to get started. Good morning, everyone. Hope everyone had a nice Labor Day weekend, and I want to thank everyone for being here. My name is Mark Weprin, and I'm Chair of the Zoning and Franchises Subcommittee of the Land Use Committee. I am joined by the following members of the Subcommittee for quorum purposes Council Member Vincent Gentile, Council Member Dan Garodnick, Council Member Ritchie Torres, and Council Member Vincent Ignizio. We are also-- Where is that? Okay. We are also going to be joined by Council Member Corey Johnson who was here before, and Council Member Rosie Mendez who is on her way on one of the items on one of the items before us today.

Today we have two cafes, and were are going to start with the one that's less controversial. I am going to call up Antonio Rappazzo. This is Land Use No. 111, L&C Oyster Company in Council Member Garodnick's district. How are you, sir? Please take a seat and make yourself comfortable, and when you're ready could you just push the mic to make sure it's on? It's a little confusing sometimes. Give it a test there.

2 ANTONIO RAPPAZZO: Hello.

3 CHAIRPERSON WEPRIN: There you go. All  
4 right, and please state your name and describe your  
5 application.

6 ANTONIO RAPPAZZO: Antonio Rappazzo,  
7 Application for a Sidewalk Cafe for L&W Oyster  
8 Company on Fifth Avenue and 20th and 29th Street.

9 CHAIRPERSON WEPRIN: It's Fifth Avenue  
10 day here in the Zoning Committee. I'd like to call  
11 on Mr. Garodnick if you would have questions or a  
12 comment about this particular site.

13 COUNCIL MEMBER GARODNICK: Thank you very  
14 much, Mr. Chairman. I'll be very brief. I just  
15 wanted to point out to the Committee the reason that  
16 we called this one up is that the restaurant had not  
17 shown up to the Community Board for a consideration  
18 there. Can you shed any light onto what happened  
19 there as to why you didn't-- you didn't either have a  
20 chance or why didn't present to the Community Board.

21 ANTONIO RAPPAZZO: I myself was unaware  
22 of the meeting and to be present, and, of course, I  
23 would have come if I was aware of it, sir.

24 COUNCIL MEMBER GARODNICK: Understood and  
25 that does sometimes happen obviously.

1  
2 ANTONIO RAPPAZZO: My apologies for  
3 certain.

4 COUNCIL MEMBER GARODNICK: Well, we have  
5 spoken to them, and the District Manager advises us  
6 that Community Board 5 has no objections to your  
7 application, and as a result, I have no objections to  
8 your application.

9 ANTONIO RAPPAZZO: Thank you.

10 COUNCIL MEMBER GARODNICK: And with that  
11 I recommend approval, and we thank you for being here  
12 today.

13 ANTONIO RAPPAZZO: Thank you.

14 COUNCIL MEMBER GARODNICK: Thank you.

15 CHAIRPERSON WEPRIN: Wow, look at that.  
16 What a nice way to start. Um, we are joined by  
17 Council Member Jumaane Williams. Look at that  
18 Jumaane. Look at that. And Mr. Rappazzo, I think  
19 we're okay, then and we want to excuse you. Thank  
20 you very much. We're going to close this hearing,  
21 and um, is anyone else here to testify on 254 Fifth  
22 Avenue. I see none. So you're okay. We're going to  
23 actually vote on this item. You're welcome to stay.  
24 Lunch isn't served for a while, but whatever. We're  
25 going to vote on this right now. The other item on

1  
2 our agenda we are not going to vote on today. We are  
3 going to have the hearing, but we're not going to  
4 vote today. So, with that in mind, I'm going to call  
5 on Ann McCoy to call the roll on Land Use No. 111,  
6 L&C Oyster Company in Council Member Garodnick's  
7 district, which we just heard.

8 CLERK: Chair Weprin.

9 CHAIRPERSON WEPRIN: I vote aye.

10 CLERK: Council Member Gentile.

11 COUNCIL MEMBER GENTILE: Taking the lead  
12 of my colleague, Council Member Garodnick, I vote  
13 ayes.

14 CLERK: Council Member Garodnick.

15 COUNCIL MEMBER GARODNICK: You should  
16 always do that. I vote aye, too.

17 CLERK: Council Member Williams.

18 COUNCIL MEMBER WILLIAMS: Aye.

19 CLERK: Council Member Torres.

20 COUNCIL MEMBER TORRES: I vote aye.

21 CLERK: Council Member Ignizio.

22 COUNCIL MEMBER IGNIZIO: I vote aye.

23 CLERK: Okay. The vote is six in the  
24 affirmative, zero abstentions, and no negatives.

1  
2 Land Use Item No. 111 is approved and referred to the  
3 Full Land Use Committee.

4           CHAIRPERSON WEPRIN: Okay. All right,  
5 thank you on that item, and now we are going to move  
6 to the second item on our agenda. As I mentioned  
7 would happen, we are joined by Council Member Rosie  
8 Mendez, who represents I guess directly across Fifth  
9 Avenue from the Cafe Regenera [sp?], right? Is that  
10 where your district starts? Right on the west side  
11 where this is located 24 Fifth Avenue is Council  
12 Member Johnson, who is on his way. So I am now going  
13 to call up Jessica Loeser, who will represent  
14 Claudette Restaurant at 24 Fifth, Land Use 110  
15 representing the applicant in this matter. Ms.  
16 Loeser has been here before. So she should know the  
17 drill, and make sure you state your name, Jessica,  
18 when you start, and please describe this application.  
19 And I'm sure there will be some questions.

20           By the way, once we are finished with the  
21 applicant, I know there are a number of people here  
22 in opposition to this cafe. We will call them up as  
23 a panel altogether, and they will each be given I'll  
24 say three minutes each to testify. So if you could  
25 try to make your testimony concise to three minutes.

1  
2 We probably should make that two, but we'll give you  
3 three since there aren't that many of you. So try to  
4 work that out in your head. Ms. Loeser, whenever  
5 you're ready.

6 JESSICA LOESER: Thank you very much,  
7 Chairman. My name is Jessica Loeser, and I'm an  
8 associate with the Akerman Law Firm. Am I on?  
9 Better? Yeah? Okay. And I represent 24 Fifth  
10 Avenue, LLC, which is also known as Claudette. I'm  
11 in an application for an unenclosed sidewalk cafe at  
12 the intersection of Fifth Avenue and 9th Street. The  
13 sidewalk cafe is in an R-10 zoning district where  
14 sidewalk cafes are presently not allowed as of right  
15 now. However, both the restaurant and the sidewalk  
16 cafe at the subject site meet the requirements to be  
17 grandfathered as a pre-existing non-conforming use.  
18 The pre-existing use was-- I'm sorry, the use pre-  
19 exists the 1980 Zoning Resolution Regulations that  
20 control sidewalk cafes.

21 There has been no period of  
22 discontinuance of the use in excess of two years, and  
23 the modification from an enclosed sidewalk cafe to  
24 unenclosed sidewalk cafe meets the requirements  
25 stipulated in Zoning Regulation 5234, which regulates

1 commercial uses in residential districts. The Zoning  
2 Resolution states in part:

3  
4           In all resident districts a non-  
5 conforming use may be changed initially or in any  
6 subsequent change only to a conforming use or to a  
7 use group listed Use Group 6. I would like to  
8 submit, and I think it's been distributed an historic  
9 photo from the 1940s, one from 1970, and one from  
10 1971 showing the evolution of the sidewalk cafe from  
11 an unenclosed sidewalk cafe to an enclosure, which  
12 was erected in 1971. This sidewalk enclosure has  
13 been verified by the Department of Consumer Affairs,  
14 the Department of City Planning, and the Landmarks  
15 Preservation Commission. When the applicant decided  
16 to modify the pre-existing enclosed sidewalk cafe to  
17 unenclosed cafe, the DCA and DCP were immediately  
18 consulted to ensure that the applicant had legal  
19 standing to modify the cafe.

20           I have a letter from the DCA's Counsel's  
21 office confirming that there was a valid licensee at  
22 the subject site since 2003, which is the time that  
23 DCA was granted the authority to license sidewalk  
24 cafes. The DCA letter also confirms that the period  
25 of inactivity at the subject site from when the

1 previous restaurant surrendered the site to when the  
2 applicant took possession of the site, and pulled the  
3 Department of Building permits is less than the  
4 maximum two-year period. There have been many  
5 individuals and board of directors of call-up  
6 buildings in the community who have come forward to  
7 support the sidewalk cafe application on 24 Fifth  
8 Avenue. Boards at 24 Fifth Avenue and 39 Fifth  
9 Avenue, which is across the street, have endorsed the  
10 application. More than 60 emails and letters of  
11 support from residents and community members have  
12 been received by the offices of Council Member  
13 Johnson and Community Board 2. The strongest support  
14 has been from 24 Fifth Avenue, which is the building  
15 in which the cafe is located.

17           However, the sidewalk cafe has created  
18 some controversy in the community. And to respond to  
19 the concerns by members by the community and the  
20 Community Board's request for a reduction in seats,  
21 the applicant has notified Council Member Johnson's  
22 office that they will modify their application to  
23 allow 20 seats as stipulated in the City 2 Resolution  
24 as opposed to the 40 seats previously and legally  
25 requested. The need for this minimal request of 20

1  
2 seats goes to the economic necessity to remain a  
3 viable restaurant at this location, which has had  
4 numerous previous tenants that have failed. In light  
5 of the 50% reduction of seats, and the fact that the  
6 applications required as part of their renewal to  
7 come back to the community next year, we respectfully  
8 request a favorable consideration.

9 CHAIRPERSON WEPRIN: Thank you, Ms.  
10 Loeser. Can I-- I just want to get the timeline  
11 straight on this.

12 JESSICA LOESER: Sure.

13 CHAIRPERSON WEPRIN: In 1971, what was  
14 there at that location?

15 JESSICA LOESER: Before 1971, there was  
16 an open cafe, which was then enclosed.

17 CHAIRPERSON WEPRIN: In 1971, they  
18 enclosed the cafe?

19 JESSICA LOESER: Right.

20 CHAIRPERSON WEPRIN: And it's been an  
21 enclosed cafe ever since?

22 JESSICA LOESER: Up until a couple months  
23 ago.

24 CHAIRPERSON WEPRIN: Right, and why did  
25 your client decide to take down the enclosed cafe?

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JESSICA LOESER: It was a business

decision. There were two very strong restaurants

that had been in that spot over the last I guess six

years that for whatever reason did not do well. In

order to create a viable restaurant, they felt that

the enclosure was impediment to sidewalk activity

coming in and out of the cafe. And that it was a

very large enclosure, and that an unenclosed cafe

would be much more inviting and open up the sidewalk

a little bit, and allow the free flow of energy from

the restaurant onto the sidewalk.

CHAIRPERSON WEPRIN: Uh-huh, and how many

months a year do you expect the sidewalk cafe to be

open?

JESSICA LOESER: It will be about four or

five months depending on the weather.

CHAIRPERSON WEPRIN: Especially the

spring and summer months?

JESSICA LOESER: Yes.

CHAIRPERSON WEPRIN: All right.

[Pause]

CHAIRPERSON WEPRIN: Let me ask does

anyone on this panel have a question about this

particular site?

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2 COUNCIL MEMBER JOHNSON: Mr. Chair, I  
3 will ask a question.

4 CHAIRPERSON WEPRIN: Oh, okay, Mr.  
5 Johnson.

6 JESSICA LOESER: Good morning.

7 COUNCIL MEMBER JOHNSON: Good morning. I  
8 have a question. You know, there has been, as you  
9 mentioned in your testimony, considerable controversy  
10 around this cafe. And there have been buildings, as  
11 you said, that have come out in favor, but there's  
12 also a significant number of people who are opposed  
13 to the cafe, and do not want it there given that  
14 Lower Fifth Avenue doesn't have any other outdoor  
15 sidewalk cafes. And people I think have enjoyed that  
16 on the Avenue. You have said that there has been a  
17 continuous use. So this is allowed under Zoning  
18 moving forward so this is a valid application. If  
19 for some reason, the City Council decided that this  
20 was not an appropriate location for a sidewalk cafe,  
21 do you believe that your client would take legal  
22 action to ensure that they would receive a sidewalk  
23 cafe at the site?

24 JESSICA LOESER: That's a very  
25 interesting question. I have not discussed that

1  
2 option with my client yet. We are very hopeful that  
3 the Council will, in fact, admit it as a legally  
4 valid license, and space for a sidewalk cafe. I  
5 would just take a step back, and say that there has  
6 been a lot of voices issued on both sides of the cafe  
7 both in favor and opposed. And it's hard to say  
8 where the significant voices are, if they're in  
9 number or in volume. But we are very, very clear in  
10 our right to have-- to be grandfathered in as a pre-  
11 existing use. As I mentioned earlier, I have not  
12 discussed our legal options with our client. Moving  
13 forward, that has been passed onto the Council. But  
14 based on conversations with the City agencies, our  
15 own research into the uses and into the Zoning  
16 Resolution that regulates the uses, we're very  
17 confident that this can be grandfathered.

18 COUNCIL MEMBER JOHNSON: And there was a  
19 Community Board 2 Resolution, a State Liquor  
20 Authority Resolution when Claudette came to apply for  
21 their liquor license.

22 JESSICA LOESER: Uh-huh.

23 COUNCIL MEMBER JOHNSON: And I believe in  
24 that resolution at that time in 2013, the applicant  
25 stipulated with the Community Board that they would

1  
2 not apply for a sidewalk cafe moving forward, or at  
3 least at that time. That representation was made by  
4 the applicant. What has changed since then?

5 JESSICA LOESER: It's an interesting  
6 question. Thank you for the opportunity to address  
7 it. You know, this is a very interesting case I  
8 think of how the Zoning Resolution interacts with the  
9 closure versus and un-enclosure. And I think one  
10 issue that makes it even more complicated is this  
11 issue of the SLA Committee Resolution. I have a  
12 signed stipulation from the application that does not  
13 mention the promise to open up a sidewalk cafe. And  
14 then there is a typed up resolution from the  
15 Community Board at a later date, not at the actual  
16 meeting of the committee, which does list the promise  
17 not to open up a sidewalk cafe.

18 COUNCIL MEMBER JOHNSON: Was that signed  
19 by the applicant?

20 JESSICA LOESER: It was not. So ours is  
21 notarized and signed, and it does not mention-- it is  
22 silent with respect to a sidewalk cafe. And then  
23 there is a later Community Board resolution that does  
24 mention a cafe. So I can't speak to that  
25 discrepancy. I can only tell you what my client has

1  
2 signed and notarized. I can tell you that there was  
3 a period where we were unsure if we could be  
4 grandfathered. We were unsure short of a City  
5 Planning special permit rezoning of a whole area that  
6 there would be any other hope for a sidewalk cafe.  
7 But based on the evidence I have seen, there is no  
8 signed and notarized stipulation from my client that  
9 says that there will not be a sidewalk cafe at the  
10 site.

11 COUNCIL MEMBER JOHNSON: When I see that  
12 Community Board 2 is here, when they're here--

13 JESSICA LOESER: Sure.

14 COUNCIL MEMBER JOHNSON: -- I will ask  
15 them about the resolution regarding the stipulation.  
16 Thank you for your testimony today.

17 JESSICA LOESER: Thank you.

18 CHAIRPERSON WEPRIN: Are there any  
19 members of the committee or any of the other council  
20 members who have any questions for Ms. Loeser? Yes.  
21 Council Member Rosie Mendez.

22 COUNCIL MEMBER MENDEZ: Thank you, Mr.  
23 Chair. Good morning, Ms. Loeser. It is a pleasure  
24 to see you here.

25 JESSICA LOESER: Thank you.

1  
2 COUNCIL MEMBER MENDEZ: You know, we met  
3 yesterday, and for me the big issue about this  
4 Community Board resolution is so-- More recently,  
5 the full board voted for a reduction in chairs, which  
6 you are going to do, which is 10 tables, 20 chairs.  
7 So, I have contacted Community Board 2, and they are  
8 actually reviewing minutes. And I was given some  
9 papers, and it got to me late yesterday. So, you  
10 know, I want to review all of this, but it does seem  
11 that once we review the minutes, that the applicant  
12 at the time did not believe that zoning allowed this.  
13 And so--

14 JESSICA LOESER: In fact it was an  
15 uninformed belief.

16 COUNCIL MEMBER MENDEZ: It was uninformed  
17 yes. So, therefore, his-- In the minutes, if he  
18 acquiesced to not put a sidewalk cafe, it was based  
19 on his belief that he couldn't. And then if he  
20 could, then he would want to pursue that as what  
21 you're saying.

22 JESSICA LOESER: Right, right, it was  
23 not, and just to be clear, it was not intended, and I  
24 think I mentioned this yesterday. Not intended to be  
25 inconsistent before the Community Board, or to try

1  
2 and get away with something. Or present it to the  
3 cafe either before the SLA Committee in one way, and  
4 before the Sidewalk Cafe Committee in another way.  
5 It was clearly an evolution in a business plan to  
6 keep the business viable.

7 COUNCIL MEMBER MENDEZ: And when he came  
8 to the Community Board again did he say, I was her  
9 previously before another committee and now my plans  
10 have changed and I want to--?

11 JESSICA LOESER: We did that. We did  
12 that.

13 COUNCIL MEMBER MENDEZ: Thank you very  
14 much.

15 CHAIRPERSON WEPRIN: Thank you, Ms.  
16 Mendez. Does anyone have any other questions? Well,  
17 I see none, thank you, Ms. Loeser.

18 JESSICA LOESER: Thank you, Chair.

19 CHAIRPERSON WEPRIN: You're welcome to  
20 stick around. I want to acknowledge that we've been  
21 joined by the Chair of the Land Use Committee David  
22 Greenfield as well as members of the Subcommittee  
23 Antonio Reynoso. And before I call up the other  
24 people to testify, I'd like to ask Ann to please call  
25 Mr. Reynoso's name so he can vote on the first case.

1                   CLERK: On Land Use Item 111, Council  
2  
3 Member Reynoso.

4                   COUNCIL MEMBER REYNOSO: I vote aye.

5                   CLERK: The vote now stands at seven in  
6 the affirmative, zero abstentions, and no negatives.

7                   CHAIRPERSON WEPRIN: Thank you very much.  
8 I'd like to now call up Christopher Rizzo, Neil  
9 Ritter, and Dorothy-- Is it Gengetis? Gengeris?  
10 All they all here? Yes, they are. Again, we're  
11 going to have you on a three-minute clock. So if you  
12 could try to keep it as quiet-- as close as  
13 possible, I know there will be questions for at least  
14 some of you. So there may be things that you wanted  
15 to add that you can add during the question and  
16 answer portion of our day. So whenever you're ready,  
17 you can decide who goes first. Just make sure when  
18 you speak to state your name before you speak. This  
19 is important because there are three of you. We want  
20 to have the record be-- If someone is reading the  
21 record to be able to know who is speaking at that  
22 time. And there are going to be questions. So  
23 before you answer that question, restate your name  
24 again before you answer the question. Does that make  
25 sense? Okay, because they won't be hearing your

1 voice. They may just be reading it. So whenever  
2 you're ready, please state your name, and let's get  
3 started.  
4

5 CHRISTOPHER RIZZO: Great. Good morning,  
6 Chairman Weprin and other members of the  
7 Subcommittee. My name is Christopher Rizzo. My name  
8 is Christopher Rizzo. My law firm represents the  
9 board of 25 Fifth Avenue, which is across the street  
10 from Claudette's, and 24 Fifth Avenue, which is the  
11 subject of this application. I'm joined by a member  
12 of the Board, and a resident of that building, and  
13 they're here to speak about the feeling of all of the  
14 residents of that building. We're here today to  
15 register our opposition to the issuance of a sidewalk  
16 cafe license for Claudette's, and the reason is  
17 because the application is clearly illegal. We've  
18 written letters to the members of this Subcommittee  
19 as well as to the Department of Consumer Affairs,  
20 which outline those. I've made copies available  
21 today. I also can circulate them again. I'm sure  
22 you have them. But I just want to summarize the  
23 issues we outlined. Number one, the Certificates of  
24 Occupancy for 24 Fifth Avenue indicate that this was  
25 an illegal sidewalk cafe. The Department of

1  
2 Buildings noted that, and the law is very clear an  
3 illegal sidewalk cafe, an illegal use can never be  
4 grandfathered. This is a residential zone. This is  
5 not allowed in this location.

6           Number two, even if it were grandfathered  
7 at one time, the sidewalk cafe ceased operation for  
8 over a period of two years. The restaurant may or  
9 may have operated within that two-year period. The  
10 sidewalk cafe did not. It lost its grandfathered  
11 status.

12           Number three, an enclosed sidewalk cafe,  
13 even if it were grandfathered, even if it operated  
14 within that two-year period cannot form the basis for  
15 an unenclosed sidewalk cafe. They are very different  
16 uses. They have very different community impacts.  
17 So in sum, it's unclear to me why the Department of  
18 Consumer Affairs issued this license, and why it is  
19 before the Subcommittee. It should not be. It  
20 should be denied. There has been a suggestion here  
21 that perhaps the applicant might undertake litigation  
22 if it weren't allowed to get this license. That  
23 doesn't make any sense. There are other options  
24 available to this restaurant, to this property owner  
25 including a zoning variance. But the issuance of a

1 license based on an illegal use is clearly improper.  
2  
3 It also raises serious policy questions around the  
4 City where illegal sidewalk cafes may give rise to  
5 licenses where sidewalk cafes might be allowed in  
6 residential zoning districts where they are not  
7 allowed because they have impacts on the community.

8           So I would like to ask this Subcommittee  
9 to deny this license. I don't believe the Department  
10 or the Subcommittee has the authority to approve it,  
11 and I'm going to turn it over to residents who can  
12 speak about the impacts on their quality of life.  
13 Thank you.

14           CHAIRPERSON WEPRIN: Thank you, sir.

15           NEIL RITTER: Thank you, Chairman--  
16 Chairman Weprin, distinguished members of the  
17 Committee and guests. My name is Neil Ritter. I am  
18 a member of the Board of Managers of the 25 Fifth  
19 Avenue Condominium. Thank you for the opportunity to  
20 be heard in opposition to this application by the  
21 owners of Claudette's Restaurant. I am going to  
22 digress for a moment and speak to the fact that I  
23 would like to read into the record a short set of  
24 words from the member of the Board of 33 Fifth  
25 Avenue. John Fleischer [sp?] writes:

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To Whom it May Concern:

As a board member and resident of 33 Fifth Avenue, I strongly oppose the application for an unenclosed outdoor cafe at 24 Fifth Avenue. Zoning Regulations expressly prohibit sidewalk cafes on Lower Fifth Avenue, and none on of the extremely problematic legal and zoning issues that Community Board 2 detailed in its resounding denial of the application on June 19th, have been resolved. Approval of such a cafe would detract from the neighborhood's residential historical, and landmark character and set a critical precedent for land use citywide. I ask for your help in defeating this application, and ensuring that an illegal cafe is not installed at 24 Fifth.

Mr. Chairman, and members of Committee, as indicated, I appear today not only on behalf of myself, but also on behalf of the entire Board of Managers for the 25 Fifth Avenue Condominium, as well as the building's residents who have approached Board members since becoming aware of the intent and application in late spring of this year. There is good reason why it only happened in the late spring of this year because apparently the applicant did

1  
2 make representations to the Liquor-- The SLA  
3 Committee of the Community Board in September 2013  
4 when it said that it agreed to the stipulation that  
5 there would be no sidewalk cafe at this site. And  
6 it's a little curious why the attorney for the  
7 applicant is now indicating that there is some of  
8 change in business plan. Nonetheless, we have heard  
9 from our counsel that this application is legally  
10 flawed for several separate and distinct reasons.  
11 And I don't need to take up your time in reviewing  
12 those again. Instead, what I will do is once again  
13 make mention of the fact that this lower portion of  
14 Fifth Avenue is pristine from the point of view of  
15 commercial sidewalk activity. And the notion of a  
16 sidewalk cafe operating virtually unrestricted with  
17 all of the attendant congestion, noise, nighttime  
18 lighting, and traffic use would not only set a bad  
19 legal precedent, but furthermore alter nature and  
20 character of this landmark district, which is  
21 uniquely residential in character.

22 I would also like to quote from an  
23 article in a recent newspaper, a local newspaper that  
24 says that Council Member Johnson said that, I believe  
25 that sidewalk cafes should not be located on

1  
2 residential lots unless there is grandfathered  
3 zoning. It will negatively affect the quality of  
4 life for residents, and bring a commercial feel of  
5 the Avenue to a residential block. This is exactly  
6 what the circumstances are here. [bell]

7 CHAIRPERSON WEPRIN: Thank you very much.  
8 Ma'am.

9 DOROTHY GENGERIS: Good morning. My name  
10 is Dorothy Gengeris [sp?] and I live at 25 Fifth  
11 Avenue since 2007. I am resident owner of a condo,  
12 and I represent not only the residents within my  
13 building that rent or have lived there a long time,  
14 but not only owners but other people in the community  
15 that I have spoken to. I have not heard back from  
16 one person that they would be in favor of some kind  
17 of outdoor space. I look directly across my windows  
18 onto Fifth Avenue, and restaurant as it conducts  
19 business now as an enclosed space open their doors  
20 every evening when the weather permits. And the  
21 noise generated from that alone was the original  
22 complaint that everyone had because it would follow  
23 right up through the street and into people's  
24 apartments if there windows be open or closed. And  
25 it would really destroy the flavor and the living

1  
2 that we've come to expect by living on Lower Fifth  
3 Avenue. Lower Fifth Avenue in addition to being a  
4 residential place is also home to many NYU students  
5 so they, too, increase the pedestrian that is  
6 constantly walking the street.

7           And to add to that already small space  
8 and outdoor space that intends to conduct business to  
9 1:00 in the morning. As one of the meetings they  
10 were going to bring the tables out at 8:00 in the  
11 morning and bring them back in at 1:00 in the  
12 morning. It would generate a lot of complicated  
13 noise, and potential issues that would make the  
14 neighborhood really a very unpleasant and unsafe  
15 place to live. I could say the property values.  
16 Many people have spoken if this is allowed to change  
17 the complexion of the neighborhood, it would also  
18 depreciate the property values of those that have  
19 invested in the neighborhood. And plus the location  
20 of the restaurant alone, which sits on the corner of  
21 9th Street and Fifth Avenue is a heavily trafficked  
22 east/west corridor, and north/south corridor or going  
23 south corridor by taxis. And the potential for even  
24 damage or bodily harm to pedestrians, or a dining  
25 member is really problematic. So I would like to say

1  
2 I think the restaurant is lovely, but I think it  
3 should stay within doors.

4 CHAIRPERSON WEPRIN: Thank you.

5 DOROTHY GENGERIS: Just one more thing.

6 CHAIRPERSON WEPRIN: Yes.

7 DOROTHY GENGERIS: There is the potential  
8 for another restaurant also taking occupancy at 24  
9 Fifth Avenue further north of this. And if this is  
10 allowed to happen for that restaurant, it will only  
11 potentiate the problem to become worse because that  
12 other restaurant could possibly ask for the same  
13 privileges. Thank you.

14 CHAIRPERSON WEPRIN: Thank you. I would  
15 like to call on Council Member Johnson who I know has  
16 questions. I want to just remind this panel before  
17 you answer the questions just make sure you state  
18 your name again because it seems like we may actually  
19 have someone read this record someday. So who knows.  
20 So, Mr. Johnson.

21 COUNCIL MEMBER JOHNSON: Thank you for  
22 your testimony today, for coming down to testify on  
23 this matter, and I understand the concerns that have  
24 been articulated here today. Let me just sort of  
25 state up front I'm not an attorney, and it's my

1  
2 understanding that the Department of Consumer Affairs  
3 and their attorneys have reviewed this. Now, I  
4 understand that you believe there are still flaws to  
5 this application that it is not-- [clears throat]  
6 excuse me-- legally sound, and that it never should  
7 have arrived here to begin with. I really can't sort  
8 of comment on that.

9 I mean there are folks both on your side,  
10 the applicant's attorney and the folks at the agency  
11 that reviews these things that did, in fact, find  
12 that they met the criteria to move forward. And that  
13 is why the application made it here. And that is why  
14 this Committee is considering this application and  
15 hearing the testimony here today. It is my belief  
16 that as was stated, we need to balance interests.  
17 And where, you know, on primarily residential streets  
18 where there have not been sidewalk cafes, it's in our  
19 best judgment to try to ensure that the quality of  
20 life stays high and stays the same.

21 My office had received many emails and  
22 phone calls of people opposing, but also the building  
23 this is located in nearly every correspondence we  
24 have received from people who live at 24 Fifth Avenue  
25 has been in favor of this application. Fervently in

1  
2 favor of this application talking about the quality  
3 of this operator. That they want this restaurant to  
4 succeed, and that they think these folks are good  
5 folks for the community and for the neighborhood. It  
6 is my judgment that if we are able to, in fact, get--  
7 And I understand that this is not your judgment. If  
8 we are able to, in fact, get a reduction for less  
9 than half than what was applied for, that that is a  
10 win.

11           And in the past while I was on the City  
12 Council, there have been lawsuits by applicants who  
13 have won in the courts, and they have been able to  
14 get a lot more than what they agreed to and what was  
15 stipulated. If, in fact, they can't predict these  
16 things, there was a lawsuit on this that the Council  
17 denied, and there was a lawsuit. There is the  
18 potential that the applicant could get 40 seats or  
19 more. In many of these things that the Community  
20 Boards deal with, whether they be liquor licenses or  
21 hours of operation or sidewalk cafes.

22           Many times there is compromise that takes  
23 place to try to ensure that something happens that  
24 isn't going to be to the biggest detriment of the  
25 local community. So at this point, the application

1  
2 is before us, and I believe it is incumbent upon us  
3 to try to figure out the best path forward. And to  
4 me, 19 seats, potentially 20 seats is a better option  
5 than potentially 40 seats. And again, this  
6 application made it here because the lawyers at City  
7 agencies found that there was a continuous us, and it  
8 was, in fact, valid. So I just wanted to be upfront,  
9 and let you all know where I am currently given all  
10 the facts that are before us. And I also look  
11 forward to hearing from the Community Board as well.

12 CHRISTOPHER RIZZO: Yeah, my name is  
13 Chris Rizzo. I appreciate the reduction in the  
14 number of seats that's been agreed to. But there is-  
15 - has been no written determination as far as I can  
16 see from the Department of Consumer Affairs or the  
17 Department of City Planning the legal issues we have  
18 raised and resolved. To my knowledge, they have not  
19 been resolved. On the face of this application, the  
20 Certificates of Occupancy registered this enclosed  
21 sidewalk cafe as illegal. It, therefore, cannot  
22 serve as the basis for grandfathering. The sidewalk  
23 cafe also on its face was closed and not operated for  
24 more than two years. It, therefore, lost its  
25 grandfathered status even if it ever had it. These

1  
2 issues have never been addressed by the Department of  
3 Consumer Affairs or the Department of City Planning  
4 in writing, as far as I know unless there's a letter  
5 or document out there that I haven't seen. I also  
6 think it's not useful to mention the threat of  
7 litigation when there are ample opportunities to  
8 operate restaurant in a residential zoning district,  
9 or to seek other relief. A license is reserved for  
10 grandfathered legal uses. This is not one of them.

11 CHAIRPERSON WEPRIN: Thank you, Mr.  
12 Rizzo. I'd like to call on Council Member Mendez,  
13 who has a comment or question.

14 COUNCIL MEMBER MENDEZ: Thank you. So, I  
15 met with constituents last week, and with the  
16 applicant. And after reading all of the  
17 documentation, I have three issues. One is the  
18 Community Board Resolution of 2013 and the more  
19 recent resolution, which calls for reduction in size.  
20 And I want to be clear from Community Board 2 which  
21 one, which resolution is the one that they want to  
22 follow; the reductions in seats? And I'm assuming it  
23 all depends on whether this is a legal non-conforming  
24 use or an illegal non-conforming use.

25

1  
2           The other two issues is about the use of  
3 the enclosed cafe for a period of two years, and I  
4 also wrote to the Department of Consumer Affairs to  
5 determine, and I think it's a close call. It could  
6 go about a month in either direction, which could  
7 mean that it was just short of two years. So, I've  
8 asked the applicant if they have anything to prove  
9 that there was continuous use. Though the burden is  
10 not on the individuals who are opposing this, I'd  
11 like to ask if you have any proof to show that this  
12 enclosed cafe was, in fact, not in use for two or  
13 more years.

14           And then the last issue, which concerns  
15 me and which has yet to be addressed is the issue  
16 about the 30-day-period, when the applicant  
17 requested more time on this matter, and they re-filed  
18 certain plans at the behest of the Department of  
19 Consumer Affairs. And it seems that there  
20 potentially may be a due process issue. Depending on  
21 how the new law gets interpreted and some of the  
22 newer rules by the Department of Consumer Affairs, it  
23 could be that the applicant's request is, in fact,  
24 fine. And it could be that it my have been time  
25 barred. So, if you can address any of those issues.

1  
2           CHRISTOPHER RIZZO: Yeah, I can't address  
3 the first one, which is the Community Boards. Chris  
4 Rizzo again on behalf of 25 Fifth Avenue. I can't  
5 address the first issues, which is the Community  
6 Board's feeling on the reduction in seats, though the  
7 last resolution I saw was obviously not positioned.  
8 And I can't address the third issue, which is how DCA  
9 is interpreting its timing rules. I can address the  
10 second issue. There is a close question of whether  
11 this restaurant re-started operations within the two-  
12 year period. Thus saving the restaurant from lapsing  
13 as a grandfathered use. I think there is a lot of  
14 evidence that it ceased operation for more than two  
15 years. This is the restaurant, but there is no  
16 question that the sidewalk cafe has not operated in a  
17 period of over two years. The sidewalk cafe,  
18 therefore, lost its grandfathered status. I don't  
19 think there is any dispute about that. What the  
20 applicant here is trying to do is expand a non-  
21 conforming use that's barred by the Zoning  
22 Resolution. So even if the restaurant slipped in  
23 under the clock within that two-year period to  
24 preserve its grandfathered status, the sidewalk cafe  
25 has not operated within a period of much more than

1 two years. It has, therefore, lost its status.

2 Thank you.

3  
4 NEIL RITTER: If I may, Mr. Chair.

5 CHAIRPERSON WEPRIN: Is that okay? Do  
6 you want to do that first? Yes, please just make  
7 sure to state your name.

8 NEIL RITTER: This is Neil Ritter again.  
9 Yeah, on the issue of continuous use, I think Mr.  
10 Rizzo stated that accurately, but just to make sure  
11 everyone understands. There is an enclosure on that  
12 sidewalk. That enclosure was removed. If you add  
13 the removal of that enclosure to that two-year time  
14 limit, that is where the grandfathering, if it was  
15 legal at all in the first instance, would be lost.  
16 And I want to go, if I may, and respond to a few of  
17 the points that Councilperson Johnson spoke to. I  
18 have-- When I was at the Sidewalk Committee meeting,  
19 a member of the board of 24 Fifth Avenue spoke, and  
20 he spoke in favor of the application. It's quite  
21 understandable. They have an economic interest.  
22 What the details of that economic interest are is not  
23 fully known, but I can appreciate as a member of the  
24 Board of 25 Fifth Avenue. But I don't think that  
25 that should really sway the issue.

1  
2           What I'd also like to speak to is the  
3 Department of Consumer Affairs' letter that was  
4 issued on April 22 of 2014. You don't have to be a  
5 lawyer to read that letter, and realize that there is  
6 so much hearsay and double hearsay within the content  
7 of that letter. That it's very clear that the  
8 Department of Consumer Affairs is relying on some  
9 information that is being provided to it by the  
10 attorney for the applicant as related to the City  
11 Planning Commission. And the information is quite  
12 convoluted in there.

13           So you have to rely on representations  
14 that are made that are not fully disclosed in that  
15 letter. So I don't think the letter issued by the  
16 Department of Consumer Affairs carries the day. And  
17 in terms of the balance and compromise, I really  
18 fully appreciated that. I think we do, too.  
19 However, the circumstances of this application is  
20 such that whatever the balance and compromise that's  
21 being offered it has to be weighed against the legal  
22 issues that could set a precedent not just for this  
23 site, but for the City overall. You have sites  
24 throughout Manhattan and the other boroughs that  
25 would be similarly situated and would use this

1  
2 circumstance perhaps as legal precedent going  
3 forward. So, while there is balance and compromise  
4 now being offered what is represented I believe in  
5 September of 2013 that there would not be a sidewalk  
6 cafe is the representation that should be relied upon  
7 by the community and by the Community Board. In  
8 terms of the legal issues, those are unresolved, and  
9 I think that those need to be before any further  
10 action is taken. And I think the application should  
11 be denied accordingly.

12 CHAIRPERSON WEPRIN: Thank you, Mr.  
13 Ritter and I think that Ms. Mendez had one more  
14 question. Do you want to let Corey go first? Okay,  
15 Mr. Johnson.

16 COUNCIL MEMBER JOHNSON: If I may. I  
17 don't have a copy of that letter. If I may see that  
18 DCA letter, if you feel comfortable with that.

19 MALE SPEAKER: [off mic]

20 COUNCIL MEMBER JOHNSON: I don't have it.  
21 Oh, it's right here. Thank you. So, in fact, this  
22 letter is signed by the Assistant General Counsel for  
23 DCA, Eileen Yap, and the determination in this letter  
24 as you said is convoluted. But they in this letter  
25 are giving, in fact, the green light in stating that

1  
2 they believe that the requirements have been met for  
3 the continuous use, and that it should be able to  
4 move forward. Isn't that the determination of this  
5 letter?

6 NEIL RITTER: I think that there is a--

7 CHAIRPERSON WEPRIN: Say your name.

8 NEIL RITTER: I'm sorry. Neil Ritter  
9 again responding. I think there's a portion of the  
10 letter that's pretty clear that the Department of  
11 City Planning advised the Department that the non-  
12 conforming use may apply, may apply to the subject  
13 cafe it if existed and operated legally before the  
14 Zoning Resolution was enacted in 1980, and the period  
15 of discontinuing use exceeds two years. So there are  
16 a lot of conditions that appear to have been placed  
17 in this letter, and there is no resolution of those  
18 issues. And outstanding legal resolutions are such that  
19 it really is a condition of this communication.

20 COUNCIL MEMBER MENDEZ: And, Mr. Ritter,  
21 can you just--

22 CHAIRPERSON WEPRIN: Ms. Mendez.

23 COUNCIL MEMBER MENDEZ: Thank you.

24 NEIL RITTER: I'm sorry.  
25

1  
2 COUNCIL MEMBER MENDEZ: Council Member  
3 Mendez. Mr. Ritter, can you tell me exactly where on  
4 this three or four-page document we're reading from?

5 NEIL RITTER: Certainly. Neil Ritter  
6 responding. At the top the first full paragraph.

7 COUNCIL MEMBER MENDEZ: On page one.

8 NEIL RITTER: Page two.

9 COUNCIL MEMBER MENDEZ: On page two.

10 NEIL RITTER: Page two of three, the top  
11 full paragraph, the second sentence starting,  
12 'However'.

13 COUNCIL MEMBER MENDEZ: Okay, thank you.  
14 So, Mr. Chair, I just want to inform you and the  
15 members of this Committee that I think the real crux  
16 of this issue is whether this is a legal non-  
17 conforming use, which would make the sidewalk  
18 unenclosed viable, or whether it is an illegal use.  
19 I do show on the Certificate of Occupancies that  
20 indicate that there is an illegal encroachment into  
21 the sidewalk. I contacted the Department of Consumer  
22 Affairs so that I could establish a timeline to see  
23 if that illegal encroachment has been made legal at  
24 some point. The Department of Consumer Affairs'  
25 response was, You need to FOIL it. As I like to put

1  
2 it, now I have to FOIL myself, right. They contacted  
3 me yesterday to tell me that that information would  
4 be made available in five days. And, you know, maybe  
5 that will shed some light once we get these documents  
6 to determine whether this is a legal or illegal non-  
7 conforming use.

8 CHAIRPERSON WEPRIN: That's great.

9 Obviously, there are a number of legal issues that  
10 are interesting, and we're going to be dealing with.  
11 As I mentioned, we will not be voting today. So we  
12 will have time to actually see that response coming  
13 up. Is it Gengeris is the name.

14 COUNCIL MEMBER MENDEZ: Mr. Chair.

15 CHAIRPERSON WEPRIN: Okay.

16 COUNCIL MEMBER MENDEZ: Mr. Chair, any  
17 help you can provide in helping us get those  
18 documentations. I've contacted the Land Use staff as  
19 well.

20 CHAIRPERSON WEPRIN: Thank you, Ms.

21 Mendez. Ms. Gengeris.

22 DOROTHY GENGERIS: Okay, Dorothy

23 Gengeris. I'm not addressing any of these legal  
24 issues. I have no expertise, but I have lived there  
25 since 2007, and I did live in the Village in the '70s

1  
2 when it was a hotel. I do recall when I moved in the  
3 Restaurant Koo [sp?] was there and it was highly  
4 functional, but there was no outdoor space. The  
5 restaurant may have extended out, but it was not part  
6 of an outdoor cafe experience. It was incorporated  
7 into the building.

8 MALE SPEAKER: It closed.

9 DOROTHY GENGERIS: And it closed. Koo  
10 closed I think in 2008 or 2009, and then the  
11 restaurant that went in there briefly after that  
12 closed within a couple of months. But if people  
13 would actually come and visit the space, you would  
14 realize ten tables. The restaurant as it is services  
15 the public, and how it presents itself is a series of  
16 three French doors that they open evening out to the  
17 street. So you hear the dining noise constantly if  
18 they're crowded. One could even ask, what's the  
19 occupancy rate because it's quite crowded. If you  
20 add to the street, I don't know where they would put  
21 those ten tables because the three doors, the series  
22 of doors that open leave very little negotiable space  
23 to be served. You would be coming through were  
24 patrons in the restaurant already exist. Plus there  
25 are those three things. So it would leave maybe one

2 piece of sidewalk, one slab, whatever that dimension  
3 is, to the rest of the pedestrians to walk down the  
4 street. Just a thought. Thank you.

5 CHAIRPERSON WEPRIN: Okay, Council Member  
6 Mendez.

7 COUNCIL MEMBER MENDEZ: I was just  
8 wondering if we could bring Ms. Loeser back up so she  
9 can address the 30-day issue and her understanding of  
10 it? Is that okay, Mr. Chair?

11 CHAIRPERSON WEPRIN: Yes, that's okay.  
12 Yeah, well, let's finish up with this panel, and then  
13 we can see if that's okay, and we'll bring her up.  
14 Do you guys have any more questions for this panel?  
15 Mr. Gentile.

16 COUNCIL MEMBER GENTILE: I want to ask  
17 about the-- what you were saying about the SLA  
18 hearing at the Community Board last year was it  
19 sometime?

20 NEIL RITTER: Yes. I'm sorry, Neil  
21 Ritter. Yes.

22 COUNCIL MEMBER GENTILE: And that was the  
23 testimony that was given in order to obtain a liquor  
24 license for this restaurant. Am I correct?

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NEIL RITTER: That's my understanding,  
yes.

COUNCIL MEMBER GENTILE: Okay, and at  
that hearing of the Community Board, was it the same  
owners that are now here before us today making those  
representations as at the SLA hearing?

NEIL RITTER: That is my understanding  
yes.

COUNCIL MEMBER GENTILE: Do you know for  
sure?

NEIL RITTER: Unless there is--

COUNCIL MEMBER GENTILE: Has the  
ownership changed?

NEIL RITTER: Unless there is a change of  
ownership that I'm not aware of, no.

COUNCIL MEMBER GENTILE: So at that SLA  
hearing back in the fall of 2013, there was  
representation made by those owners on the record not  
to seek an open-- and open sidewalk cafe? Am I  
correct?

NEIL RITTER: I believe so. If you would  
allow me, the applicant was listed as 24 Fifth  
Avenue, LLC. The applicant appeared for a new on-  
premises license for a 4,500 square foot premises, 27

1  
2 -- 22 tables, 87 seats, one bar with 14 seats, and  
3 maximum occupancy of 155. There is no sidewalk cafe  
4 mentioned, and the Resolution reads that whereas no--  
5 in part:

6           Whereas, no Community members in  
7 opposition to this application,

8           Whereas the applicant agreed to the  
9 following stipulations:

10           Number 5. Will not use any back yard  
11 garden space or sidewalk cafe.

12           Therefore, be it resolved that the CB2  
13 recommends denial unless those conditions and  
14 stipulations agreed to by the applicant relating to  
15 the fifth whereas clause are incorporated into the  
16 method of operation on the SLA license.

17           And that was voted unanimously. And I  
18 would also make one other mention that the hours of  
19 operation for this restaurant were set out in the  
20 Stipulation to be 11:00 a.m. to 12:00 a.m. Monday to  
21 Wednesday, from 11:00 a.m. to 1:00 a.m. Thursday to  
22 Saturday, and from 11:00 a.m. to 2:00 a.m. I'm  
23 sorry. Thursday to Saturday 11:00 a.m. to 2:00 a.m.,  
24 Monday to Wednesday 11:00 a.m. to 1:00 a.m., and  
25 Sunday from 11:00 a.m. to 12:00 a.m.

1  
2                   CHAIRPERSON WEPRIN: So, Mr. Rizzo has a  
3 comment.

4                   CHRISTOPHER RIZZO: Chris Rizzo. I just  
5 want to point out that the Community Board SLA  
6 Committee Resolution on this application as well as  
7 the letter by the Community Board to the State Liquor  
8 Authority on this issue were submitted with a letter  
9 from me to the members of this Subcommittee on August  
10 28th. If you don't have copies of that, I can  
11 provide it. But those two, the Resolution as well as  
12 the Community Board's letter to the SLA in Albany are  
13 both attached to that letter. So you can see the  
14 language that Mr. Ritter quoted from.

15                   COUNCIL MEMBER GENTILE: Do we know if  
16 those stipulations were incorporated into the State  
17 Liquor Authority's decision?

18                   CHRISTOPHER RIZZO: I don't know. This  
19 is Chris Rizzo. I don't know. I have submitted a  
20 FOIL Request to the State Liquor Authority to get a  
21 copy of their license, but the terms of it are not  
22 available to me right now.

23                   COUNCIL MEMBER GENTILE: But at least we  
24 know at this point that a representation was made  
25 before the Community Board at that SLA hearing?

1  
2 NEIL RITTER: There is a question about  
3 what was represented. I think that's what Councilman  
4 Johnson was about to say. I wasn't at their-- at the  
5 meeting. I don't have a copy of minutes. All I have  
6 is the Resolution from the Community Board as well as  
7 their letter to the State Liquor Authority. It would  
8 strike me as odd, however, that the Community Board  
9 would write such a letter, and record such a  
10 representation if it were not made, if it were  
11 fabricated.

12 NEIL RITTER: This is Mr. Ritter again.  
13 Let me just say that this Stipulation only became  
14 known to me as a result or consequence or happening--  
15 of my having to have gone to the Executive Committee  
16 meeting of the Community Board 2, the third week of  
17 August. I believe it was about August 20th or so,  
18 and at that time I just went to--

19 COUNCIL MEMBER GENTILE: Of 2013?

20 NEIL RITTER: Of 2014. 2014 several  
21 weeks ago, and what happened at that time is I went  
22 as a representative of 25 Fifth Avenue to just  
23 reiterate again our strong concerns relating to this  
24 application. And it was while I was making that  
25 presentation to the Executive Committee that member

1  
2 of the SLA Committee happened to mention that  
3 something concerning this sidewalk cafe application  
4 had been mentioned at the SLA Committee meeting the  
5 previous fall. And it was as a result of that, that  
6 I then went through the minutes of the Community  
7 Board. I located those minutes, which I just read  
8 from, and then presented those minutes when  
9 Councilwoman Mendez afforded us the opportunity to  
10 meet. Prior to that, I have specific knowledge and  
11 when I went to this Sidewalk Committee meeting in  
12 June of this year, which was the first time we were I  
13 think involved in this matter. And the operator  
14 attended that meeting.

15           There was no mention of this quite  
16 affirmative representation of known sidewalk cafe  
17 having been made in September of 2013. And frankly,  
18 had that representation been made at the time, the  
19 logical question would have been at the June Zoning  
20 Subcommittee meeting of the CB2, well, if you're  
21 asking for a sidewalk cafe in June before this  
22 Sidewalk Committee, how do you reconcile that with  
23 having made a former representation to the SLA  
24 Committee in the fall of 2013?

1  
2 COUNCIL MEMBER GENTILE: So what you're  
3 asking is if, in fact, that did occur in the fall,  
4 you're asking the owners to live up to that  
5 representation?

6 NEIL RITTER: Absolutely, sir.

7 COUNCIL MEMBER GENTILE: Okay.

8 CHAIRPERSON WEPRIN: Thank you. I now  
9 call Mr. Johnson. Maybe we can finish with this  
10 panel soon.

11 COUNCIL MEMBER JOHNSON: Thank you, Mr.  
12 Chair. I just want to read this. This just came  
13 into my officer literally within the last five  
14 minutes from the Department of Consumer Affairs, from  
15 the Assistant General Counsel Eileen Yap. She wrote:

16 The website for the Department of  
17 Buildings have Certificates of Occupancy showing that  
18 a restaurant has existed at 24 Fifth Avenue since at  
19 least 1951 before the residential district was  
20 created. Attached please find the 1951 Certificate  
21 of Occupancy. In addition, DCP has records showing  
22 the existence of a sidewalk cafe since 1971. The  
23 issue concerning continued use is related to the  
24 restaurant's use and occupation at 24 Fifth Avenue.  
25 Because the restaurant is a legal non-conforming use

1  
2 that pre-dates the 1961 Zoning Resolution, the  
3 sidewalk cafe is a legal non-conforming use. Thank  
4 you. Eileen Yap, Assistant General Counsel.

5           So the reason why I read that is it gets  
6 back to what I was saying at the beginning. DCA has  
7 made the determination, and you may find the judgment  
8 wrong, but they have made the determination to the  
9 City Council that they believe that the application  
10 is legally sound, and that is why it is before us.

11           CHAIRPERSON WEPRIN: Thank you. Do you  
12 want to just briefly--?

13           CHRISTOPHER RIZZO: I will briefly  
14 respond. Chris Rizzo. The letter from April of  
15 2014, and the email that you just read do not address  
16 the legality of the sidewalk cafe or whether it  
17 ceased-- whether it ceased operation for a period of  
18 two years. It addresses the restaurant. The  
19 restaurant appears to be a legal grandfathered use,  
20 and it appears to have re-started use in less than  
21 the two-year period in which it would have lost its  
22 grandfathered status. I'm sorry, I don't interpret  
23 that email to say anything about the legality of the  
24 sidewalk cafe.

2 CHAIRPERSON WEPRIN: Okay. Well, Ms.  
3 Mendez had a question. Before she does that, I  
4 wonder if Ms. Yap is watching us at the moment from  
5 her officer even maybe. That's why she got that  
6 response. Who knows. Ms. Mendez.

7 COUNCIL MEMBER MENDEZ: Thank you.  
8 Ma'am, I'm sorry. I don't remember your name.

9 DOROTHY GENGERIS: That's okay.

10 COUNCIL MEMBER MENDEZ: So you say you've  
11 lived in the area even though you have not lived in  
12 that building. Can you pull the microphone so we can  
13 capture your testimony?

14 DOROTHY GENGERIS: Yes, there was a time  
15 that I hadn't, but I've--

16 COUNCIL MEMBER MENDEZ: Can you say your  
17 name for the record?

18 DOROTHY GENGERIS: My last name is  
19 Dorothy Gengeris.

20 COUNCIL MEMBER MENDEZ: So, to your  
21 recollection, as long as you've lived there, there  
22 was-- At what point was there any closed sidewalk  
23 cafe?

24 DOROTHY GENGERIS: There was never really  
25 in my view, and I would-- I guess I could bring other

1  
2 people in who would support my position. There was  
3 no cafe. It was an enclosed part of the restaurant.  
4 It didn't operate independently of-- as I would  
5 envision an outdoor cafe. It was-- When Koo was  
6 there, it was like the bar part where you went in to  
7 have snacks before you went into the major body of  
8 the restaurant, which was more sophisticated, but, it  
9 was all enclosed. It like I mean a building. It did  
10 not ever look like what I envision, and what is being  
11 proposed as sidewalk cafe.

12 COUNCIL MEMBER MENDEZ: And so that is--

13 DOROTHY GENGERIS: Koo closed I would say  
14 by 2008 shortly after I moved in.

15 COUNCIL MEMBER MENDEZ: And that  
16 enclosure was there as long as you remember starting  
17 in what year?

18 DOROTHY GENGERIS: I couldn't say. but I  
19 couldn't say.

20 COUNCIL MEMBER MENDEZ: Okay, thank you  
21 very much. Thank you, Mr. Chair.

22 CHAIRPERSON WEPRIN: Okay, let's wrap up  
23 with this panel, and I know Ms. Mendez wanted to call  
24 Ms. Loeser up, so we'll do that afterwards. So thank  
25 you all very much. We do appreciate you taking the

1  
2 time and your testimony. Ms. Loeser, I'm going to  
3 ask you to come up. I just want to say that if there  
4 are questions here that you're not prepared to answer  
5 at the moment, if you could submit it sometime in the  
6 next couple of days it would be nice. Okay, I have  
7 Ms. Loeser. Come on up. I'm not giving you the gold  
8 star, but we have been joined by Council Member  
9 Donovan Richards, who was in the building earlier  
10 today, but didn't make it to the meeting until now.  
11 So, I know you had a conflict going on. So, I would  
12 ask Mr. Richards, I think you've been updated there  
13 was a cafe earlier that was-- that had no  
14 opposition, which we voted on. I'd like to call on  
15 the Council now to call your name to have you vote.

16 CLERK: On Land Use 111, Council Member  
17 Richards.

18 COUNCIL MEMBER RICHARDS: Aye.

19 CLERK: The vote stands 8 in the  
20 affirmative, zero negatives, and no abstentions.

21 CHAIRPERSON WEPRIN: Thank you. All  
22 right, we've been joined once again by Jessica  
23 Loeser, and I think it was Council Member Mendez who  
24 had a question for Ms. Loeser.

25

1  
2 COUNCIL MEMBER MENDEZ: Yes. One of the  
3 issues that's come up is about this 30-day period in  
4 your request to amend the application, which then was  
5 submitted with fewer tables and fewer chairs. And  
6 that request actually supersedes the 30 days. Can  
7 you talk us through that process of when that request  
8 was made. And to your knowledge why it is conforming  
9 to the current rules and laws?

10 JESSICA LOESER: In part, and I want to  
11 take the Chairman's invitation to submit a more  
12 thorough and accurate response in writing to the  
13 Committee at a later date. I don't have dates of  
14 when the request came into Consumer Affairs to the  
15 application, and I don't want to misrepresent any  
16 timeline. But there was a tree pit that was  
17 installed in the sidewalk after we had drafted and  
18 submitted our initial application, which changes the  
19 clearance on the sidewalk after the cafe-- As to the  
20 boundaries of the cafe. So we had to remove the last  
21 row of seats in order to comply with the DCA's  
22 Sidewalk Cafe Regulations. It was that modification  
23 that prevented DCA from transferring the application  
24 for the modification to approve to the Council. And  
25 it's that 30 days, and I believe that there is a

1  
2 discrepancy or a sort of missed step between the  
3 rules and the Administrative Code. And I would like  
4 to, if I can, respond to that in writing so that I  
5 don't read any misinformation into the record.

6 CHAIRPERSON WEPRIN: Okay. That's fine,  
7 and we look forward to that.

8 JESSICA LOESER: May I address Council  
9 Member Gentile's question about--

10 CHAIRPERSON WEPRIN: Sure you may.

11 JESSICA LOESER: --representations that  
12 the applicant had made at the SLA Committee hearing.  
13 I have a signed and notarized stipulation from the  
14 applicant that is silent with respect to sidewalk  
15 cafes, which was done at the SLA Committee hearing.  
16 Subsequently, there were minutes that were drafted,  
17 and read into the record from the Community Board  
18 that are different from the signed and notarized  
19 Stipulation that we have. There is a discrepancy in  
20 the information, and just wanted to be clear there  
21 was no attempt on the part of the applicant to  
22 misrepresent their business plan to the community.

23 CHAIRPERSON WEPRIN: Thank you. Mr.  
24 Gentile, do you want to comment?

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COUNCIL MEMBER GENTILE: Yes. Mr.

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Chairman, you know, this meeting only happened last

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fall. So there have to be people around. There have

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to be people around that could verify what went on in

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that hearing, and tell us whether or not a

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representation-- such a representation was made. I

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don't see this as being that typical.

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JESSICA LOESER: Oh, I agree. I agree,

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but there is a-- There are two documents from the

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same meeting that say different information, one of

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which is notarized and signed by the applicant. And

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this is what is included in their Application to the

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State Liquor Authority. Now, I'm not making any

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representations of what happened at the Community

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Board, or what was written down at the Community

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Board. I can only speak to a signed and notarized

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stipulation.

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COUNCIL MEMBER GENTILE: It still doesn't

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answer the question of what actually was represented

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then.

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JESSICA LOESER: But it does address what

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they agreed to because they signed it. Minutes

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[sic]that are a type of outdoors are not done in the

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presence of the applicant.

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CHAIRPERSON WEPRIN: Okay, thank you.  
Anyone else? Thank you, Ms. Loeser.

JESSICA LOESER: Thank you.

CHAIRPERSON WEPRIN: I didn't realize that Bob Gormley, the DM from Community Board 2 has been here. He hadn't signed up until just now. So we are going to call him up now, and you're right on time on this comment. So make sure, Mr. Gormley-- You've been sitting here. You know to state your name when you speak, and we'll see if there are any questions.

BOB GORMLEY: My name is Bob Gormley, District Manager of Community Board 2. I did not intend to testify today. The Community Board's Resolution stands for, you know, opposition, but just to clarify a couple of things. There seems to be a discrepancy raised by a couple of Council Members regarding the Resolution that was passed by SLA Licensing Committee, and the Stipulations that were signed by the applicant. I spoke with one of the co-chairs one of that committee yesterday.

Here's what happened. The Committee in their view there is no way a sidewalk cafe was going to be-- would be happening in that location because

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2 the zone-- the zoning didn't allow it. The Committee  
3 kind of knew that. They knew it was a residential  
4 zone, and the statements made by Carlos Flores, the  
5 owner, saying that I can't have a sidewalk cafe here.  
6 The zoning doesn't allow it. He told the committee,  
7 If we're going to have a sidewalk cafe, we'll have to  
8 apply to rezoning the location. So based on that, in  
9 the Resolution, the SLA Licensing Committee and  
10 Community Board recognized that if there wasn't  
11 agreement as part of the mini-stipulation that was  
12 agreed to by the applicant, that there would not be a  
13 sidewalk cafe. They didn't include it in the signed  
14 Stipulation Agreement because they thought it was  
15 something that could never happen. They thought it  
16 was not a possibility that there could be a sidewalk  
17 cafe because the zoning did not allow it. So, as far  
18 as that question, that's the answer to that, that's  
19 the discrepancy.

20 CHAIRPERSON WEPRIN: Thank you. Mr.  
21 Gentile.

22 COUNCIL MEMBER GENTILE: So, are you  
23 saying that the owner at the time said that he would  
24 have to go for a zoning waiver? That would be his

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1  
2 process, that would be the correct procedure if they  
3 decided they wanted an unenclosed sidewalk cafe?

4 BOB GORMLEY: That's correct. One of the  
5 co-chairs of our SLA License Committee actually  
6 digitally records all of the meetings, and he sent me  
7 part of the transcript yesterday, which I forwarded  
8 to Council Member Mendez after we spoke yesterday  
9 afternoon, and he explicitly says that on the  
10 recording, yes.

11 CHAIRPERSON WEPRIN: Okay, Mr. Johnson.

12 COUNCIL MEMBER JOHNSON: It's good to see  
13 you, Bob. Thanks for being here to give us some  
14 clarification to this complicated issue. So is it  
15 still the Community Board's position since the Board  
16 voted on this that if, in fact, it is legal that you  
17 all would be okay with a reduction of seats to either  
18 19 or 20 seats that that's your position? If it's,  
19 of course, not legal, then you don't want anything  
20 there. Is that the Community Board's position?

21 BOB GORMLEY: Very much so. Yes.

22 COUNCIL MEMBER JOHNSON: Thank you.

23 CHAIRPERSON WEPRIN: Thank you, Mr.  
24 Johnson. Ms. Mendez, are you okay? All right.  
25 Well, thank you very much for testifying. We're

1  
2 going to let him go. Anyone else here who wants to  
3 testify? Seeing none, we're going to close this  
4 public hearing. As I mentioned, we will not be  
5 voting on this item today, but there is some  
6 information we'll be getting as well as other  
7 discussions that need to be had. But we thank  
8 everyone for participating in what was a very  
9 interesting hearing for those of us who love sidewalk  
10 cafes, and I don't know if this Pete Janna's [sic]  
11 dream or nightmare, but it's something like that.

12                   So we thank you all very much for coming,  
13 and with that in mind, the Zoning and Franchises  
14 Subcommittee is now adjourned. [gavel]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date September 6, 2014