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25 Fifth Avenue Condominium
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New York, NY
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September 18, 2014

Hon. David Greenfield
Chair
NYC Council
Land Use Committee
250 Broadway
New York, NY 10007

*For the
Record*

Re: Premises – 24 Fifth Avenue NY, NY
Application by 24 Fifth Avenue LLC for Unenclosed Sidewalk Café' (“Applicant”)
Notice of Opposition to the Applicant’s Application

Dear Chair Greenfield:

I am a member of the Board of Managers of the 25 Fifth Avenue Condominium and am corresponding in order to express formal opposition to this Application on behalf of the entire Board and the Unit Owner of the Condominium.

A vote to approve this Application by your committee would represent nothing less than bad precedent, bad policy and bad planning.

Bad Precedent

In terms of bad precedent, approval of this Application would operate to reward an applicant which has, at best, left uncorrected, its positions before the local Community Board, the State Liquor Authority and the Department of Consumer Affairs and, at worst, affirmatively misrepresented and intentionally omitted material information from these entities.

At this point in time, there can be no doubt, that the Applicant affirmatively agreed, at an open meeting before the SLA Committee of Community Board #2 in the Fall of 2013, that it would, “...not use any ...sidewalk café’ ...” It is also a fact that this representation was adopted as part of a formal resolution of the full Community Board at its meeting on September 24, 2013 and that this was formally conveyed to the Director of the Licensing Issuance Division NY State Liquor Authority by letter to it dated October 16, 2013.

Furthermore, it is a fact that the Applicant included the above-mentioned documents in its application to the NY State Liquor Authority as well as an affirmative statement that there would be no outside areas used for the consumption of alcoholic beverages.

At the hearing of this matter before the Zoning and Franchises Committee on September 3, the representative of the Applicant indicated that notwithstanding these affirmative representations due to a purported change of business plan and some reversal of thought on whether zoning would allow for an unenclosed café’, inquiry was made to the Department of Consumer Affairs and that based on a communication issued by that agency dated April 22, 2014, this Application was made and submitted (“DCA Letter of April 22”).

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In this regard, it is important and significant to note that nowhere in the DCA Letter of April 22, is any mention made of the September 24 Community Board Resolution, the October 16 Letter to SLA or the contents of the SLA Application, all of which recite, in one way or another, that statements and representations had been made to the Community Board and the SLA that that there would not be a sidewalk café' involved in this restaurant.

Imagine if the Applicant had indeed stated, affirmatively, to Eileen Yap, the Assistant General Counsel who authored the April 22 DCA letter that these representations had been made. Can anyone seriously doubt that such a statement would have had an impact on DCA's counsel?

Whether an omission by design or oversight, the fact of the matter is that I challenge this body to find any reference to those facts in this most critical document in this matter for it forms the entire basis, it seems, for the underlying Application.

Bad Policy

I know that you attended a portion of the hearing on September 3 and the vote this past Monday so I will not reiterate the legal arguments which our counsel, Christopher Rizzo, Esq., has put forth both orally and in several written submissions.

However, I do not think that there can be any serious dispute, as a matter of common sense, that an unenclosed sidewalk café' is materially and fundamentally different, than an enclosure which serves to expand the interior of a restaurant onto a street. The two are, quite simply, not comparable in terms of use and neighboring impact in relation to matters such as noise, congregation, nighttime light and change of streetscape ambiance.

Essentially, the DCA and restaurant argue that because the restaurant is grandfathered, it can expand to include a new use....the sidewalk café' This logic has no basis and while a sidewalk café' may seem harmless, which it is not in this location, such logic, if applied to other commercial and industrial zones would be potentially disastrous. For example, can a gas station expand to include a repair shop? A decision to approve this application as a zoning law matter would,

Bad Planning

Given the reversal on representations made and the noted omission of material information, it would appear that the accelerated rush to approve this Application is bad planning at its most apparent. Little if any discussion has been had about the impact to the surrounding neighborhood, the immediate neighbors and the change in character to this area of lower Fifth Avenue. No mention of noise and light impact has been provided, nor has there been any apparent consideration given to the safety and security impact to the neighborhood by such new venture. It is, as if, the goal is to get something, even if there were misrepresentations made all along the way.

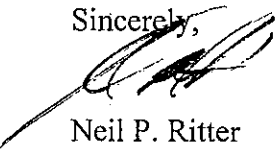
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By letter to the Zoning and Franchises SubCommittee dated September 9, 2014, the Greenwich Village Society for Historic Preservation has weighed in in opposition to this Application.

No less that Corey Johnson has been quoted as saying that sidewalk cafés should not be located on residential blocks and there is nothing more residential than this stretch of lower Fifth Avenue and the NY Times, as recently as yesterday, in its review of the Applicant's business has stated that, with respect to lower Fifth Avenue, it has "...wide, leisurely sidewalks..."

While I recognize that at Monday's vote, Councilmember Weprin read from a statement which I have yet to see and examine and while I also am aware of the fact that the Applicant's legal representative authored a communication dated September 8, which I did not see until after Monday's vote, as was so aptly stated at the vote taken on Monday by Councilmember Gentile, bad actors should not be rewarded and given the totality of these circumstances, this Application before your Committee and the New York City Council should be denied.

Sincerely,



Neil P. Ritter

cc: NYC Council Land Use Committee