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## Land Use, Housing & Zoning

May 2023, Land Use, Housing & Zoning Committee



### **1633 Broadway POPS, API Restaurant renewal for an outdoor café (Block 1022, Lot 43) in the Special Midtown District, Manhattan Community District 5.**

At the regularly scheduled monthly Community Board Five meeting on Thursday, May 11, 2023, the following resolution passed with a vote of 28 in favor; 0 opposed; 2 abstaining:

WHEREAS, This is an application by API Restaurant, Inc. (the "Applicant"), the owner and operator of Azalea Ristorante (the "Restaurant"), for a follow up action, pursuant to Subsection 4 of the Amended and Restated Notice of Restrictions, dated as of June 4, 2019 and recorded against the Property in the Office of the City Register, New York County (the "Register's Office") under City Register File Number CRFN 2019000177815 (the "2019 NOR"), to the approval granted under the third modification of the special permit described below to allow outdoor café seating in a 740 square foot ("sf") portion of the non-bonused publicly accessible open space (the "Open Space") surrounding the Paramount Building at 1633 Broadway in Midtown Manhattan (Block 1022, Lot 43 (the "Development Site"); and

WHEREAS, 1633 Broadway, (Between 50th and 51st Street) is located within a C6-7 commercial district within the Theater Subdistrict of Special Midtown District, within CB5 with the Restaurant located in the northwest corner of the Development Site, along the mid block of West 51st Street and next to a through-block arcade and driveway providing access to the Gershwin Theater and West 50th Street; and

WHEREAS, No changes are proposed to the Open Space except for the addition of the Proposed Open Air Café adjacent to the Restaurant; and

WHEREAS, The Commission granted Special Permit CP-20250 to allow for modifications of height, setback and tower regulations pursuant to former Section 74-72 of the New York City Zoning Resolution ("ZR") and to increase the permitted floor area ratio ("FAR") from 15.0 to 20.8 in exchange for the provision of two new theaters pursuant to former ZR Section 81-06 in connection with the development of the site with a 48-story commercial building with offices, two theaters and retail space; and

WHEREAS, Finding (c) of former ZR Section 81-06 required the provision of open space to ease congestion in the area by aiding in the circulation of vehicles or pedestrians, Special Permit CP-20250 approved a 13,700 square foot Open Space which included two sunken plazas facing Broadway, widened sidewalks along West 50th Street and West 51st Street and a through-block arcade and driveway at the western end of the development site; and

WHEREAS, On November 20, 1989, the Commission approved a minor modification to Special Permit CP-20250 (M890860 ZSM) to add additional seating, planting, lighting and trees to the portion of the Open Space fronting Broadway, to relocate steps in the upper plaza closer to the lot line and to add an additional stair connection to the southern sunken plaza; and

WHEREAS, On August 6, 2012, the Commission approved a second minor modification of Special Permit CP-20250 (M 890860(A) ZSM) allowing the northern sunken plaza to be decked over to increase the area of the Open Space at grade, the addition of a 1-story glass entry pavilion to provide access to the below-grade retail space beneath the northern sunken plaza, and increases in the amount of planting and seating provided; and

WHEREAS, On May 5, 2014, the Commission approved a third modification of Special Permit CP-20250 (M890860(B) ZSM) to allow an Open Air Café with table service to be located in a portion of the Open Space adjacent to the Azalea Ristorante (the "Azalea Open Air Café"); and

WHEREAS, A NOR was recorded on May 9, 2014 (CRFN 2014000159972; the "Original NOR") against the development site which allowed for a follow-up action resulting in a second three-year term (the "Renewal"). On July 23, 2019, the Chairperson of the Commission approved the Renewal (N180515 CMM) for a three-year term expiring on July 23, 2022, and a modification to the Original NOR was recorded on June 6, 2019 (CRFN 2019000177815); and

WHEREAS, Applicant is requesting a fourth modification to Special Permit CP-20250 to allow a 639 sf Proposed Open Air Café in the non-bonused Open Space surrounding the existing building on the development site and concurrent with approval of the fourth modification, and the Applicant would draft and execute a NOR appurtenant to the development site; and

WHEREAS, While the application for minor modification has not yet been reviewed by the City Planning Commission and has not yet been evaluated, Community Board Five agreed to review the proposal out of sequence, taking into consideration the extenuating circumstances caused by the CoVID-19 pandemic and specifically the inability for the New York City Planning Commission to resume holding hearings and review sessions, with the understanding that the out-of-sequence review is authorized solely on the dire circumstances caused by the global pandemic, and with the clear and firm understanding by all parties that any changes to the proposal would revert to in-sequence review and would be referred to Community Board Five for another review and input; and

WHEREAS, The development site covers the majority of the block bound by Broadway, West 50th Street, 8th Avenue and West 51st Street (the "Project Block") and the Project Block lies entirely within a C6-7 zoning district, except for the portion that is within 100 feet of 8th Avenue, which lies within a C6-4 zoning district; and

WHEREAS, The Restaurant is located in the northeast corner of the ground floor of the development site, between the open space fronting on Broadway and a loading dock extending over 100 feet to the west, and the mid-block of West 51st Street generally is relatively unpopulated aside from the Azalea Outdoor Café adjacent to the development site's through-block arcade along West 51st Street; and

WHEREAS, Accordingly, the Proposed Open Air Café would provide a visual anchor for the eastern end of the Open Space as well as an opportunity to activate a portion of the Open Space that is now underutilized; and

WHEREAS, The Proposed Open Air Café would occupy approximately 639 square feet of the Open Space fronting the Restaurant, would have a depth of approximately 12'11" and a width of approximately 51'7", would include 15 round tables (12 tables 2' 8" in diameter and 3 tables 3' 8" in diameter), one rectangular table (7' x 2'6"), 48 chairs and 2 large umbrellas with bases (each 96" x 96") and would be delineated by a line at least one inch wide either painted in white latex traffic and zone marking paint or chalk; and

WHEREAS, The Restaurant is open for breakfast, lunch and dinner, seven days a week with tables, chairs, umbrellas, and service station removed at night when the Restaurant is closed; and

WHEREAS, The Applicant intends to utilize the Proposed Open Air Café from April through October each year, weather permitting, with all furnishings completely removed during the off-season; and

WHEREAS, CB5 believes that open air café seating in a privately owned public space may be a public benefit only when seating and tables can be used by the public without a need for purchase of food or beverage; and

WHEREAS, CB5 recommends that the applicant must include the text "Open to the Public No Purchase Necessary" on a stanchion sign located at the Open Air Café entrance in font no smaller than 3 inches; and

WHEREAS, CB5 recommends that the applicant comply with the above referenced stipulations for the three-year term of the café; and

WHEREAS, CB5 requests that the applicant make available to us drawings and photos of the stanchion sign and table-top signs; and

WHEREAS, The operation of the open-air café will continue to operate in accordance with the requirements set forth in ZR 37-73; and

WHEREAS, CB5 believes that if the public ends up being unable to use the seating without purchase of food or beverage, the public costs associated with some commercial activity in this public space would outweigh any other potential public benefit associated with this open air café; and

WHEREAS, If signage is not required to make clear to the public that they can use seating and tables without need for a purchase, CB5 does not believe the public would have any knowledge that such seating is available to them; and

WHEREAS, If the seating ends up being available for the public to use both with and without purchase, the proposed open-air café could be a benefit; and

WHEREAS, If the agreed upon signage is NOT part of the site plan approval for the open air café, CB5 would very strongly object to City Planning Commission approval of the open air café as such an approval would constitute the privatization of public space without any benefit provided for everyday New Yorkers who do not wish to make a purchase to enjoy public space; and

WHEREAS, CB5 believes that access to bathroom facilities be available to the public be part of any approval, therefore, be it

**RESOLVED**, Community Board Five **recommends denial** of the application for the renewal of a permit to operate an open air café to be operated and managed by the restaurant leasing the retail space from API Restaurant Inc. located at 1633 Broadway for the next three years, **unless and until** the applicant agrees to open public seating, signage and bathroom availability.



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