

September 24, 2024

By E-Mail to *teycc@toronto.ca*

Toronto and East York Community Council
Toronto City Hall
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Ms. Catherine Regan

**Re: Agenda Item 2024.TE16.16 for Toronto and East York Community Council
("TEYCC") Meeting on September 25, 2024
Appeal pursuant to Article 4 of Chapter 742 of the Toronto Municipal Code
Cafe X Bica Corp. Sidewalk Café Permit Application (C425342)
160 Pears Avenue, Unit 110, Toronto**

We are counsel to Cafe X Bica Corp. ("**Cafe X Bica**").

Cafe X Bica operates an indoor café at the address municipally known as 160 Pears Avenue, Unit 110, in the City of Toronto (the "**City**").

We are in receipt of the City's Report for Action, dated September 9, 2024, regarding the appeal of the City's refusal of our client's application for a Sidewalk Café Permit, which will be considered by the TEYCC at its meeting on September 25, 2024.

For background, on April 5, 2024, Café X Bica submitted a complete application for a Sidewalk Café Permit with the City's Municipal Licensing and Standards Division and received application number C425342. The purpose of the application is to permit Café X Bica to operate a 64-seat outdoor café on Pears Avenue as shown on the architectural drawings included in Attachment 1 to the City's Report for Action.

On May 2, 2024, the Municipal Licensing and Standards Division issued its refusal of the application.

On May 23, 2024, our office, on behalf of Cafe X Bica, submitted an appeal of the City's refusal. A copy of the Notice of Appeal is enclosed.

Following our review of the City's Report for Action, we write to request that the TEYCC approve the application for the proposed Sidewalk Café Permit. The reasons and grounds for our request are set out in the enclosed Notice of Appeal.

We will be in attendance at the meeting on September 25, 2024, to make submissions and answer any questions the members of the TEYCC may have. We ask that a copy of this letter and the enclosure be circulated to the members of the TEYCC in advance of the meeting on September 25, 2024.

Please do not hesitate to contact us if you have any questions or require further information.

Yours truly,
DAVIES HOWE LLP



John M. Alati

JMA:LV

Encl. Notice of Appeal (May 23, 2024)
Copy: Client

May 23, 2024

By E-Mail Only to *Pat.Thornback@toronto.ca*

City of Toronto
Municipal Licensing and Standards
East York Civic Centre
850 Coxwell Avenue, 3rd Floor
Toronto, ON M4C 5R1

Attention: Pat Thornback

Dear Mr. Thornback:

**Re: Notice of Appeal pursuant to Article 4 of Chapter 742 of the Toronto Municipal Code
Cafe X Bica Corp. Sidewalk Café Permit Application (C425342)
160 Pears Avenue, Unit 110, Toronto**

We are counsel to Cafe X Bica Corp. (“**Cafe X Bica**”). Cafe X Bica operates an indoor café at the address municipally known as 160 Pears Avenue, Unit 110, in the City of Toronto (the “**City**”). We are writing to appeal your decision dated May 2, 2024, refusing Cafe X Bica’s application for a sidewalk café permit (the “**Decision**”).

Background

Throughout the winter and spring of 2024, Cafe X Bica worked with the City to file an application for a Sidewalk Café Permit. On April 5, 2024, Café X Bica submitted a complete application with the City’s Municipal Licensing and Standards Division and received application number C425342. The purpose of the application is to permit Café X Bica to operate a 64-seat frontage café on Pears Avenue as shown on the enclosed architectural drawings prepared by Elviano Construction Ltd. on March 14, 2024 (the “**Plans**”).

On May 2, 2024, the Municipal Licensing and Standards Division issued its refusal of the application. The operative part of the Decision provides as follows:

Sidewalk Cafes are governed by the criteria set out in Chapter 742 of the City of Toronto Municipal Code. One of the provisions of the Code is that a notice will be sent out to the residents of an establishment on a local road.

Multiple objections were received from the residents that we notified in relation to your application.

Our client wishes to appeal the Decision to the Toronto East York Community Council (the “**Community Council**”).

Reasons for Appeal

The reasons and grounds for the appeal are as follows:

1. The City overlooked important factors related to the design and location of the proposed sidewalk café:
 - a. The proposed sidewalk café is compatible with and complementary to the surrounding area. It will front a commercial building on Pears Avenue, which, between Bedford Road and Avenue Road, hosts a mix of medium and high-density residential buildings. Additionally, there are four other sidewalk cafés within 500 metres, including one on Bedford Road just 61 metres away, and another on Dupont Street only 280 metres away. The proposed café will also be approximately 500 metres from Ramsden Park.
 - b. The sidewalk café's design, as detailed in the Plans, integrates the existing mature trees, providing cover and reducing its visual impact from the street and nearby residential buildings. Additionally, the eastern fence of the sidewalk café provides a 1.7 metre high visual screen, further reducing the visual impact of the sidewalk café.
 - c. The sidewalk café will enhance the animation along Pears Avenue with increased vibrancy and opportunities for pedestrian engagement.
2. The reasons provided for the refusal are insufficient and inadequate. The Decision lacks transparency and is not *justified* in relation to the relevant factual and legal constraints that bear on the decision.
3. The Decision breached the procedural fairness owed to Cafe X Bica. A fundamental principle of procedural fairness is knowing the case to be met. Cafe X Bica was not notified of the residents' objections and had no opportunity to respond or address the merits of their concerns. Consequently, Café X Bica could not adequately understand or address the case against it.

On May 21, 2024, Municipal Licensing and Standards informed us that the residents' concerns relate primarily to noise, traffic, garbage, and intoxicated patrons. We can advise that:

- There are no plans to install speakers or have amplified music on the sidewalk café. Further, Cafe X Bica does not even feature live or recorded amplified music events inside, and the café closes at 7:00 p.m., ensuring that it does not contribute to noise in the area after this time. Therefore, there is no potential for disruptive noise from the sidewalk café.
- Most of Cafe X Bica's customers arrive by foot. Consequently, the addition of the sidewalk café will not result in a noticeable increase in vehicular traffic or parking congestion.
- The Plans maintain a 1.55 metre pedestrian clearway, and in areas where new interlock will be added, the pedestrian clearway is increased to 1.8 metres. Therefore, the pedestrian flow will not be negatively impacted by the sidewalk café.
- While the application process did not require information on garbage disposal, the Plans do not include an area on the sidewalk café for garbage or even an outdoor server station. Garbage from the sidewalk café will be collected by table service or disposed of inside the café. Cafe X Bica's garbage disposal plans will likely remain unchanged because of the sidewalk café.
- Cafe X Bica does not have a liquor license, nor has it applied for one. The café focuses primarily on artisanal and specialty coffee and baked goods, and there is no liquor served in the café. Therefore, Cafe X Bica does not contribute to the number of intoxicated people in the area.

Our client's small local café, specializing in coffee and baked goods, complements the character of the surrounding neighbourhood. The design of the sidewalk café enhances the area's charm and vibrancy, offering a welcoming space for residents and visitors alike. Allowing this appeal would not only benefit the community but also support a local business that adds value to the neighbourhood.

The City overlooked key factors, as detailed above, and failed to give Cafe X Bica an opportunity to respond to the concerns raised by nearby residents. As this letter shows, our client could have addressed the residents' concerns if given the chance. Therefore, we request that the Community Council grant the appeal and direct that the permit be issued subject to any reasonable terms and conditions as determined by the Community Council.

Representatives of our client and its consultants, including our firm, are prepared to appear before the Community Council and answer any questions if required.

We trust this is satisfactory and look forward to receiving your response as soon as possible.

In the meantime, please do not hesitate to contact us if you have any questions or require any clarification regarding this appeal.

We would appreciate receiving your confirmation of receipt of this appeal.

Yours truly,
DAVIES HOWE LLP



John M. Alati

JMA:LV

encl.: as above
copy: Client

