INSTRUCTIONS
1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant’s representatives as indicated on the Notice of Certification.

APPLICATION # C 150076 ZMK - Hamilton’s Patio

In the matter of an application submitted by Lulu Enterprises, LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 22c:

Establishing within an existing R5 District a C2-4 District bounded by Fort Hamilton Parkway, a line perpendicular to the southeasterly street line of Fort Hamilton Parkway distant 25 feet northeasterly (as measured from the street line) from a point of intersection of the southeasterly street line of Fort Hamilton Parkway and easterly street line of East 4th Street, a line 100 feet southeasterly of Fort Hamilton Parkway, and a line perpendicular to the southeasterly line of Fort Hamilton Parkway distant 30 feet southwesterly (as westerly street line of East 4th Street) to apply to two existing commercial uses to allow a pre-existing legal non-conforming restaurant use to be brought into conformance to facilitate an application with the Department of Consumer Affairs to permit a sidewalk café.

COMMUNITY DISTRICT NO.7
BOROUGH OF BROOKLYN

RECOMMENDATION

☐ APPROVE
☐ APPROVE WITH MODIFICATIONS/CONDITIONS

☐ DISAPPROVE
☐ DISAPPROVE WITH MODIFICATIONS/CONDITIONS

BOROUGH PRESIDENT

December 24, 2014

DATE
Recommendation for the proposed Hamilton's Patio Rezoning 150076 ZMK

The applicant, Lula Enterprises, LLC, is seeking a zoning map change to add a C2-4 commercial overlay within an existing R5 District on two parcels located on the corner of Fort Hamilton Parkway and East 4th Street to allow pre-existing legal non-conforming uses to be brought into conformance and to facilitate an application to the Department of Consumer Affairs (DCA) to permit for a sidewalk cafe within the Windsor Terrace neighborhood of Community District 7 (CD 7).

On December 4, 2014, the Borough President held a public hearing on the proposed rezoning.

The representative for the applicant (Hamilton’s) noted that the purpose of the requested rezoning is to enable the restaurant to apply for a sidewalk cafe license.

Through a representative, Council Member Brad Lander expressed his enthusiastic support for the zoning change to enable an application to DCA to permit a sidewalk cafe.

In response to questions from the representative of the Borough President, Hamilton’s representatives noted that the issue of the potential for inadequate sidewalk clearance due to placement of the building’s residential garbage is intended to be addressed by shifting the placement to between the two mid-building doors along East 4th Street, away from the sidewalk cafe. In order to reflect feedback from the neighbors prior to the City Council hearing regarding the rezoning, the applicant intends to be in contact with all those who provided contact information at the Community Board 7 (CB7) public hearing. An example of the seating arrangement would be set up with neighbors being invited to see the layout. In addition, the restaurant space would be used during off-peak hours to invite the neighbors in for further discussion.

The establishment is a family-owned restaurant that serves beer and wine. They do not serve liquor. The intent is to operate to the extent permitted by the DCA license. As these licenses are up for renewal every two years, there would be an opportunity to observe the operation and make changes during any subsequent renewal process.

Picnic tables that Hamilton’s previously used were offered to the community garden as a donation, though no response was received. The tables have since been donated to a local church for community use and are no longer on Hamilton’s premises.

Hamilton’s anticipates that the sidewalk cafe will bring more seasonal business, which will result in the need for additional servers and potential kitchen staff. It intends to fill these seasonal positions by using locally-based hiring, as they have recognized that local employees are more reliable, dedicated and loyal.

Consideration
CB7 approved the application by a vote of 36 in favor, 0 opposed and 0 abstained.

The project area is located in the Special Ocean Parkway District (OP) on the border of the Windsor Terrace and Kensington neighborhoods in an R5 zone. Fort Hamilton Parkway serves as a small local retail and access corridor to transit and services. It has a particularly wide sidewalk within the OP district area, measuring approximately 30 feet deep. By comparison, East 4th Street, which runs alongside a large portion of the proposed outdoor cafe, measures approximately 15 feet deep.
The proposed mapping of the C2-4 commercial overlay on the project site would allow the applicant, which operates the retail establishment at the site, to apply for an unenclosed sidewalk café in the Fort Hamilton Parkway ‘front yard’ and the East 4th Street ‘side yard’ areas of Hamilton’s Restaurant. The zoning map amendment would not create new floor area, induce new development or enlarge the building, as the existing 4,515 square feet building exceeds the permitted residential and community facility floor area ratio.

A portion of the ground floor of the building is occupied by Hamilton’s Restaurant, which took over a 15-year lease from the previous restaurant that occupied the premises. Hamilton’s has approximately 12 years remaining on this lease. The ground floor of the non-applicant leased property that is included in the proposed rezoning contains Joya Yoga, which purchased that entire building in 2010.

The unenclosed sidewalk café would include about 40-45 seats within an approximate 574 square foot area. The section along Fort Hamilton Parkway currently presents the appearance of a front yard with a bare concrete surface. The addition of a sidewalk café would result in an improvement to the appearance of the affected yard area adjacent to Hamilton’s Restaurant. No other changes would occur to the remainder of the building containing Hamilton’s. No redevelopment is anticipated for the building containing the yoga studio on the south side of East 4th Street. Joya Yoga does not possess the necessary kitchen facility to operate a sidewalk café. Joya Yoga is aware and supportive of the proposed rezoning map change.

The ground floor of the Hamilton’s building also contains three small commercial spaces with use consistent with the proposed zoning. These include: the Department of Sanitation, which has occupied the space for about 30 years and renews their lease every 10 years with the next renewal for 2015; a contractor storage space which is in year two of its five-year lease; and an artist studio that has occupied the space for two years.

Though the existing zoning typically does not permit commercial use, based on existing zoning the commercial tenants of both buildings maintain legal occupancy according to Zoning Resolution (ZR). In fact, even if these uses were to cease, there is a range of commercial uses can be reactivated according to ZR section 52-61, vacant ground floor or basement stores in buildings designed for residential use located in R5, R6 and R7 Districts where the change or reactivated use is listed in Use Groups 6A, 6B, 6C or 6F, with a few excluded uses is permitted. In addition, this section requires conformance with ZR 52-34 which states that eating and drinking places, thus permitted as a change of use, shall be limited exclusively to the sale of food or drink for on-premise consumption by seated patrons within a completely enclosed building. So while the existing zoning permits neighborhood retail use, it does not provide opportunities to permit sidewalk café use, where appropriate.

Approval of this rezoning will bring previously legal-conforming commercial uses back into conformance - a status that was in effect until the 1961 rezoning of this area. The zoning would be neutral in terms of how much floor area is permitted, with the difference being that the ground floor of a residential building would permit commercial use. In addition to Use Group 6, the proposed zoning permits Use Groups 7, 8 and 9 which typically provides for home maintenance and repair, limited automotive servicing establishments, and, limited amusements and service type establishments. Under the proposed zoning, there would be
the opportunity for Hamilton’s to lawfully restore outdoor table service by becoming eligible to apply for a sidewalk café permit with DCA.

The Borough President believes the addition of a commercial zone is appropriate based on the land use and generally supports efforts that facilitate the creation and/or growth of Brooklyn-based businesses. This includes rezoning opportunities that are consistent with the predominant land-use patterns and provides an opportunity for one business to grow in a manner that provides for seasonal hiring and activates the street.

The Borough President believes that this land use process provides an opportunity to further address concerns that have been shared with regard to this rezoning during the Community Board’s public hearing. Already the proprietors of Hamilton’s have coordinated with their landlord towards shifting the placement of the building’s residential garbage in a manner at an ample distance away from the closest seating area of the proposed outdoor café, in order to maintain adequate clearance for those walking alongside the intended sidewalk café. The DCA renewal process provides a check and balance to see that noise and other operational aspects are within reason as such sidewalk café licenses are up for renewal every two years and it goes in front of CB7.

The Borough President recognizes that those with apprehension towards approving the rezoning would benefit from continued dialogue with Hamilton’s as it develops its layout of the sidewalk café. He believes that rather than waiting for the DCA licensing process, it is best to proceed in a dialogue during the public process pertaining to the requested rezoning. The Borough President supports Hamilton’s intent to engage its neighbors through the preparing of mock-ups and having meetings. He urges Hamilton’s to proceed swiftly with such consultation with its neighbors, towards achieving consensus prior to the City Council Zoning and Franchises’ Subcommittee public hearing.

RECOMMENDATION
Be it resolved that the Borough President of Brooklyn, pursuant to sections 197-c and 201 of the New York City Charter, recommends that the City Planning Commission and City Council approve the land use action requested according to the condition that Hamilton’s develops its layout of the sidewalk café, in consultation with its neighbors, towards achieving consensus prior to the City Council Zoning and Franchises’ Subcommittee public hearing.