

Re: Jose Del Carmen  
d.b.a.: Terra Luna Café  
Premises: 225 Essex Street  
City/Town: Lawrence, MA 01840

## **DECISION**

This was an appeal from the action of the Licensing Board of the City of Lawrence for denying the application of Jose Del Carmen d.b.a. Terra Luna Café for an extension to the premises.

The licensee is currently the holder of an All Alcohol License for Terra Luna Café. They are seeking to serve alcohol outside in an enclosed public area. On March 11, 2009, the Licensing Commission for the City of Lawrence held a hearing on an application for a change in description so the licensee could serve alcohol outside.

At said hearing, the owners of Terra Luna Café appeared in support of their application. Counsel for the City of Lawrence spoke in opposition to the application. The City denied the licensee's application to extend the premises and the licensee appealed to the Alcoholic Beverages Control Commission (herein after referred to as A.B.C.C.).

### Issues

Was the ruling by the Local Licensing Board reasonable?

### Discussion

The licensee testified that he had been operating, in good standing, a restaurant in Lawrence for several years. He provided documentary evidence to show work that he had done on his establishment to improve its aesthetic value. He also provided photographs of the restaurant and the patio for the Commission to view. He testified to the area and where he believed vehicles could enter and exit. He also testified to the fact that he had removed, or would in the future, any obstacles that would prevent any emergency vehicles from entering or exiting.

The licensee also testified that he believed he had made every effort to make this extension "safe and sound" and that he was willing to work with the City and cooperate in any manner. He has maintained a beautiful restaurant, has patio dining and stated that he would like to incorporate and extend liquor outside to his patio area so that his customers could enjoy dining outside with the pleasure of the alcohol. The licensee believes that by

denying him the opportunity to extend the premises, the Local Board acted in an unreasonable manner.

The attorney for the City of Lawrence testified that the extension could not be granted because it would be extended on to a public way. Under law, a public way is clearly defined as any way the public has access to. The City is responsible for any tort misfeasance that would occur on this area and the City Counsel clearly voiced concerns over this. This has never been done before and the City has reservations about implementing this now. Counsel also voiced concerns about the area in terms of access for emergency vehicles. Due to the costs that could be incurred by the City if anything should occur on the premises and the financial strain the City of Lawrence is under at this time, Counsel stated that there is no way it could approve such an endeavor by the licensee. Counsel agreed that the licensee maintained a beautiful restaurant and that the restaurant was an asset to the City. However to extend the premises to the public area of the City would be too great of a risk to the City at this time.

Conclusion

Since it would be at such great cost and inconvenience to the City of Lawrence to extend the premises, with no redeeming benefit, the Commission does not view the decision as being unreasonable and affirms the denial of the extension of premises.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner \_\_\_\_\_

I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Robert H. Cronin, Commissioner \_\_\_\_\_

Dated in Boston, Massachusetts this 22<sup>nd</sup> day of July 2009.

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty days of receipt of this decision.

cc: Local Licensing Board  
Charles D. Boddy, Jr., Esq.  
File