



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

330 West 42nd Street, 26th floor New York, NY 10036
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CHRISTINE BERTHET
Chair

JESSE R. BODINE
District Manager

May 7, 2015

Dennis Rosen
Chairman
New York State Liquor Authority
80 S. Swan Street, 9th Floor
Albany, New York 12210

Re: 7 Washington Lane Corp.
d/b/a Xai Xai
369 West 51st Street (8th/9th Avenues)
NEW LICENSE APPLICATION

Dear Chairman Rosen:

Manhattan Community Board 4 (MCB4) recommends denial of the application of 7 Washington Lane Corp. for a new On-Premise license in connection with an existing establishment, Xai-Xai. Given the long history of complaints and the disruption to residential quality of life caused by this establishment, as well as issues that the community and MCB4 have had with a near-by establishment also owned by the proposed new Xai Xai owner (Roberto Passon), granting this new On-Premise license would not serve, and would be contrary to, the public interest. This is particularly the case because the present application would seek to extend the establishment's liquor license to a sidewalk café for the first time.

This application presents the problematic situation of an existing establishment that has been the subject of community complaints for years, coupled with a new owner, Roberto Passon, who also owns a licensed establishment across the street from this location -- Briciola, 370 West 51st Street, New York, NY 10019, RWB License # 1261168 -- that has its own long history of community complaints. (A copy of MCB4's February 2013 letter to the SLA regarding problems at Briciola is attached.) Our understanding is that the present owner/operator of Xai-Xai would remain

involved with the establishment under the new license, and therefore we believe that both the operational history of the Xai-Xai location and the proposed new owner's record at his other establishment are highly relevant to, and require the denial of, the present application.

Xai Xai has been the subject of multiple complaints from community members going back to 2008 and has appeared before MCB4's Business Licenses and Permits (BLP) and Quality of Life (QoL) Committees several times in our attempts to address the community's concerns. For example, although Xai Xai stipulated in its MCB4 Liquor License Application Questionnaire in 2010 (when it sought to upgrade to an On-Premise license) that the floor-to-ceiling French doors that comprise its façade would be kept closed, that stipulation -- based on reports of community residents and CB4 members -- has been repeatedly and consistently ignored and violated. The result is that the entire front of the establishment has been open to the sidewalk and the street, spilling amplified music and patron noise into this residential block.

The problems at Xai Xai increased in 2014 when the Department of Consumer Affairs (DCA), over MCB4's objection, granted Xai Xai's application for a sidewalk café. Most seriously, and as the SLA is aware, Xai Xai served alcohol at the sidewalk café without seeking an alteration to its license to permit it to do so. Xai Xai also appeared to violate city regulations regarding sidewalk café operations, for example, by expanding its operation beyond the space permitted by the DCA, by not arranging the café furniture in accordance with the DCA-approved sidewalk plan, and by not ensuring that its service staff used only the three-foot waiter service aisle approved by the DCA. Despite having these issues repeatedly called to its attention, Xai Xai refused to correct them.

This establishment falls within the 500 foot rule as there are **38 (thirty-eight)** On-Premise liquor licenses within 500 feet of this address (per the SLA's website) and granting a new On-Premise license to this establishment's license would not be in the public interest. Granting a new license to this establishment -- a license that would for the first time also allow alcohol service at the sidewalk café -- will likely increase the noise and congestion at this mid-block location on a residential block. The refusal by Xai Xai to adhere to its stipulation to keep its French doors closed already has subjected residents of this block to excessive and late-night noise emanating from this establishment, as has the proposed new owner's refusal to adhere to the

stipulations agreed to in connection with his existing establishment, Briciola. Given the failures to adhere to the stipulations at both Xai Xai and Briciola, granting a new license at the Xai Xai location would seemingly only continue these problematic practices and their highly negative effect on the community.

When Xai Xai presented its new On-Premise license application at the April 14, 2015 meeting of MCB4's BLP Committee, multiple individuals spoke in support of Xai Xai because they enjoy their visits there. Those comments, however, were considered in conjunction with the comments of the individuals and block associations who have suffered from the nuisances created by both Xai Xai and the proposed new owner and who raised their problems and concerns both at this meeting and in other meetings and communications with MCB4 extending back several years. We also note that, at the BLP meeting, Xai Xai proposed agreeing to close the sidewalk café at 8:00 p.m. Given Xai Xai's track record of failing to comply with its agreements with MCB4 and the community, however, MCB4 had no confidence that Xai Xai would adhere to an agreed-to earlier closing time or would begin to conduct its operations in a community-minded fashion.

Thank you for your attention to this application and MCB4's concerns.

Sincerely,



[signed 5/7/15]



Christine Berthet
Chair

Burt Lazarin
Co-Chair
Business License &
Permits Committee

Frank Holozubiec
Co-Chair
Business License &
Permits Committee



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COREY JOHNSON
Chair

ROBERT J. BENFATTO, JR., ESQ.
District Manager

February 6, 2013

Dennis Rosen
Chairman
New York State Liquor Authority
80 S. Swan Street, 9th Floor
Albany, New York 12210

Re: Briciola
370 W 51st Street (8/9)
License # 1261168

Dear Chairman Rosen:

Manhattan Community Board 4 (CB4) requests that the SLA deny the renewal for the Wine and Beer license # 1261168 due to expire on 02/28/2013, for Briciola, an eating and drinking establishment with an RWB license, located at 370 West 51st Street, New York, NY, 10019. This establishment is located in the Clinton Special District, a residential enclave on the west side of Manhattan.

This restaurant has a less-than-25 person occupancy with hours of operations of 12 Noon to 11 p.m. seven days a week (Attachment A). An Alteration was approved in July 2012, to include the commercial space next door as part of their wine and beer license, with the same hours of operation and additional stipulations concerning noise and exhaust (Attachment B).

It is very unusual that our board would make a recommendation to deny the renewal of a license. But after months of intervention, mediation and enforcement, by the Block Association, the Community Board and the Precinct, we have lost trust in this operator. He does not operate within the stipulations set forth by CB4 as noted in Attachment A and B and agreed upon by the operator and has in fact come before the community board to respond to complaints and been misleading and untruthful in his responses. We had hoped that the stipulations agreed to as part of the July 2012 Alteration would resolve the situation. The operator simply has ignored them:

- The operator routinely violates his license by remaining open well beyond 11p.m. When confronted, the operator has denied this, however, he states that it will not happen again, only to find him operating past the agreed upon hours of operation. In one instance, the operator came before the community board at 7 p.m., denied he was open past 11 p.m. and committed publicly to closing by 11 p.m., but personal inspection that same night

revealed that the establishment was open past 11, a blatant infraction and outright lie made to the community.

- In spite of warnings by the board, the operator continues to operate in an unsafe manner with candles lit in his establishment creating a fire hazard for the entire building. The Fire Department does not have an Open Flame Permit or a Range permit on file for this address.
- Neighbors have had to endure months of noise, a situation aggravated by the later closing hours, and compounded by allegations of unpermitted and mismanaged construction. Additionally, cooking fumes have also plagued the neighbors.
- After 6 months, the remedies stipulated in the Alteration have yet to be put in place.

CB4 members observed first hand this establishment remaining open later than 11:00 p.m. in violation of its license stipulations. They immediately documented such by email and by photographs (Attachment C). The first time on Tuesday December 11, 2012, at 11:39 p.m., the second time on Wednesday 12, 2012 at midnight, the third time on January 7, 2013 at 11:15 p.m. and the fourth time on January 7, 2013 at 11:20 p.m.

This behavior is particularly disturbing because the applicant had appeared many times in front of the community for various violations of its method of operations:

- Three times in the last 6 months in front of the Business and Licenses Committee (BLP) - including on Tuesday December 11, 2012, a few hours before the first verified violation. At the December 11th BLP meeting, the violations of the hours of operation were specifically discussed and the applicant had committed to respect the terms of his license.
- The operator also appeared in front of the Midtown North Police Precinct on November 20th, following a complaint received by NYPD related to late hours of operation. The operator pleaded ignorance, even though this meeting took place just few days after CB4's BLP committee gave him formal warnings concerning that very subject. (Attachment D).
- The operator had also appeared in April 2012 in front of the 50/51st Street Block Association, whose members spent time investigating the noise complaints related to this establishment. (Attachment E)

As the emails show, CB4 members reported in December 2012 and again in January 2013 that candles were burning outside on the sidewalk and inside the establishment, in clear violation of the New York's Fire Department regulations. The Fire Department verified such on October 9, 2012 (Attachment E). This matter had also been discussed with the operator at the December 2012 BLP meeting and he had assured us that he would use electric candles going forward. Since appearing in front of CB4 at that meeting he has yet to switch to electric candles and in fact continues to have open flame candles in use.

Further the applicant had agreed in the method of operation for both the original application and the alteration to not install a storm enclosure. As reported, he installed a very large storm enclosure that covers most of his frontage and encroaches illegally on the pedestrian right of way.

The applicant had stated in his method of operation that he will have background music playing in the restaurant, and speakers will be placed away from ceiling. After months of noise complaints by residents (over 50 “311” complaints in the last 12 months – Attachment E and 311 tracking system), the operator applied for an alteration in July 2012 in order to expand his restaurant, and CB4 required the applicant to take sound measurements and install sound insulation immediately in both the new and existing space. The applicant signed off on this additional stipulation. Six months later, sound insulation has not yet been installed in the existing space, nor has the applicant worked with neighbors in taking sound readings from the affected apartments above the restaurant.

The applicant had stated in his method of operation that his kitchen equipment would be electric and not require exhaust. After many complaints by residents, the operator applied for an alteration in July 2012 in order to expand his restaurant and CB4 required – and the applicant agreed – to install a kitchen exhaust immediately in both the new and existing space. There were six complaints in the last four months. Six months later, we do not believe that an exhaust has been installed in the existing space.

Considering the ongoing concerns about this operators method of operation and ongoing misleading and dishonest responses to the community, egregious imposition to the neighbors, the safety risks, and the time and efforts the board and the community have invested in trying to accommodate this applicant and give him time to amend his ways, we now believe the applicant is incapable of respecting the terms of his license, and his word cannot be trusted. We respectfully ask the State Liquor Authority to deny the renewal of this license.

Sincerely,



Corey Johnson
Chair

[signed 2/6/13]

Paul Seres
Co-Chair
Business License & Permits
Committee

[signed 2/6/13]

Lisa Daglian
Co-Chair
Business License & Permits
Committee