

RESOLUTION

Date: December 6, 2011

Committee of Origin: Business and Consumer Issues

Re: 2728 Broadway, Pending Serial #1259523

Full Board Vote: 35 in favor of disapproval, 4 against, 3 abstentions, 1 voting “present”

This resolution concerns the application to the State Liquor Authority of Papasito Midtown Corp., Inc. d/b/a Papasito Mexican Grill and Agave Bar, Eusebio Chavez, president and applicant, for a two-year on-premises liquor license.

Introduction

Community Board 7/Manhattan ("CB7") and its members have devoted many hours to this application. The Business and Consumer Issues Committee ("BCI") of CB7 devoted more than 4 hours to the consideration of this application, including over three and one-half hours at its regularly scheduled meeting on November 9, 2011, and over one-half hour at a special meeting on December 6, 2011, immediately prior to the CB7 December full Board meeting. At both the November 9 and December 6 meetings, this application was the only item on the agenda. The full CB7 Board also devoted an extended period to the discussion and consideration of this application at its December 6 meeting. In all, CB7 heard from more than 40 neighbors and members of the community.

In addition, members of CB7 and BCI made visits to the site to the applicant's location to better understand the conditions and the numerous concerns raised by neighbors and members of the community, and to evaluate certain work being performed by the applicant in response to these concerns.

While the purpose of the meetings and site visits was to seek an agreement that properly balanced the concerns raised by the neighbors and the community with the interests of the applicant, no such agreement was reached.

RECITALS

This resolution is based on the following facts:

Service of Alcohol in the Premises since August 2011

The applicant has been serving liquor on the premises since August 2011.

The applicant has claimed the right to serve liquor on premises since August 2011 under SLA License 1172342, which CB7 understands was issued to the prior tenant in operation of the premises, doing business as "Tokyo Pop." CB7 has questioned the basis on which the applicant has conducted business on this basis.

The applicant was not an owner of the prior tenant in operation of the premises, although it appears that certain shareholders or parties with an interest in the applicant also had some form of ownership or other interest in the predecessor tenant in operation of the premises.

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The applicant has received a summons to answer for "availing" the liquor license issued to a different licensee at the premises.

The manner in which the applicant has operated the premises since August 2011 includes serving alcohol until 4 am on Friday and Saturday evenings (Saturday and Sunday mornings).

An affiliate of the applicant, owned at least in part by one or more owners of the applicant, operating under a similar name (Papasito's Mexican Grill) and business model at 223 Dyckman Street, is the subject of SLA Proceeding Case No. 77324 to cancel or revoke an alcoholic beverage license for violation of section 65 of the Alcoholic Beverage Control Law for alleged sale or giving away of alcoholic beverages to a person under the age of twenty-one years.

Music and Noise from Within the Premises

The applicant's operation of its business on the premises since August 2011 has resulted in numerous complaints from neighbors and members of the community. Among the complaints lodged by neighbors and the community are concerns relating to excessive noise within the premises, largely due to the playing of recorded or live music; noise by patrons leaving the premises; and odors emanating from kitchen exhaust.

The applicant has failed since August 2011 to operate a quiet establishment that respects the needs and concerns of neighbors and the community.

While the applicant has installed certain insulation intended to dampen the sound of music played on the premises, appears to have made adjustments to the direction of speakers within the premises and to have disabled others, has installed a protected device to regulate speaker sound levels, and has agreed to install limiters on amplifiers and isolators on speakers and provide a contact number for late-night complaints, these efforts have not succeeded in reducing the noise generated within the premises to a level consistent with the quiet enjoyment of its immediate neighbors of their homes in apartments above and adjacent to the premises.

Complaints from these neighbors and the community have continued unabated past the installation of the measures taken by the applicant, and appear not to be isolated or sporadic but continuous and material.

In addition, the applicant has refused to agree to exclude live music from its premises, seeking instead to limit live music to only two nights per week at designated hours. The applicant has not applied for a cabaret license to the best of CB7's understanding.

Noise Outside the Premises

The applicant has also failed to manage the noise outside its premises as patrons leave its establishment, especially at and around closing time on Friday and Saturday evenings. Patrons continually congregate in the area fenced for an unenclosed outdoor café, and beyond into the sidewalk and roadbed on Broadway.

These disturbances have included loud shouting and arguments, violent behavior, and noise from departing patrons, as well as noise from double-parked cars awaiting or interacting with patrons and others on the street. Neighbors report that these disturbances have occurred on Fridays and Saturdays between the hours of 3:30 to 5 am virtually without exception since the applicant began operating in August 2011. Similar occurrences have been reported at earlier hours at times on other days of operation.

During one Saturday late night/early morning disturbance in October 2011, a patron of the applicant assaulted a police officer from the 24 precinct responding to the premises.

The security personnel hired by the applicant, who until the November 2011 BCI committee meeting were routinely frisking patrons entering the premises for weapons, seem unwilling or unable to undertake crowd management to ensure that patrons depart from the premises in a quiet and orderly manner respectful of the neighbors and the community.

There are at least eight restaurant establishments with on-premises liquor licenses within two blocks of the applicant on Broadway or nearby on side streets. None has been the subject of any similar complaints to CB7 during the time period since the applicant began operating at the premises, let alone the subject of the repeated and significantly troubling complaints lodged against the applicant.

Hours of Operation -- Impasse

As an attempt to address at least some of the neighbors' and community's concerns regarding noise both within and outside the premises, CB7's BCI committee sought an agreement from the applicant, to be recorded as a stipulation incorporated into its license, to limit the hours of operation, especially on weekends, so that it would be obligated to stop serving alcohol to patrons at hours earlier than the 4 am closing time.

The applicant refused to agree to any limitations of its hours, maintaining that the type of establishment it was seeking to operate required that it serve right up to the 4 am hour on weekends.

Odors Emanating from the Premises

In addition to noise complaints, neighbors in the immediately adjacent buildings have lodged complaints with CB7 and others concerning exhaust fumes and strong and pungent odors emanating from the premises during its operation. Prior to the applicant's operation, the premises housed other restaurants, and the operation of these other predecessor establishments did not result in complaints about odors.

The applicant has been cited for violations concerning its cooking exhaust system, requiring the installation of an electronic precipitator. While the applicant has agreed to install such a device, and has begun certain other exhaust-related work, it continued to operate in the interim, and the violation was outstanding as of the date of this resolution.

Other Violations

The applicant has also been cited for the following violations:

- NYPD Midtown Task Force issued ECB violation no. 34924178Z on November 10, 2011, for "operation of a place of assembly without a current certificate of operation. Noted: one floor equipped and arranged for approximately 120 person. Hearing date December 29, 2011.
- NYPD Midtown Task Force issued an ECB violation no. 34924177RR on November 10, 2011, for "occupancy contrary to that allowed by Buildings Department records. Illegal occupancy noted: one floor occupied as an eating and drinking establishment for approximately 120 persons. Hearing date December 29, 2011.

Interim License

As of the date of this resolution, CB7 understands that the applicant has been granted an interim license to operate until on or about February 29, 2012.

[Note: After CB7's December 6, 2011 full Board meeting, CB7 learned that the applicant's interim license has been rescinded and denied. To the best of CB7's knowledge, the applicant is continuing to operate the premises and serve alcohol.]

THEREFORE, BE IT RESOLVED THAT Community Board 7/Manhattan:

1. **Disapproves** the application to the State Liquor Authority by Papisito Midtown Corp., Inc. d/b/a Papisito Mexican Grill and Agave Bar for an on-premises license to serve alcoholic beverages.
2. Requires that, in advance of any subsequent application made during or after the term of its interim license, but in no event later than January 31, 2012, as a condition of any such future application, the applicant satisfactorily demonstrate that it has actually and completely addressed the substantial and on-going complaints of the neighbors and the community identified above, including without limitation taking the form of the applicant's binding agreement to perform, and actually successfully having performed, the following stipulations as a condition of and material element incorporated into any license:
 - a. applicant to cease serving alcohol at or before 1:00 am on Sunday-Thursday evenings (i.e. Monday-Friday mornings), and at or before 2:00 am Friday and Saturday evenings (i.e. Saturday and Sunday mornings);
 - b. applicant to completely and adequately address the complaints and concerns about music and noise from within the premises on a consistent and on-going basis, including without limitation (1) installing limiters on all amplifiers, (2) installing isolators on all speakers, (3) installing sufficient and appropriate sound insulation on or within its ceiling and elsewhere as needed, (4) removing or redirecting speakers in the restaurant so as not to direct sound or music in the direction of the door or the street, and (5) taking all other measures needed to ensure the quiet enjoyment of homes and residences by neighbors and the community;
 - c. applicant shall not allow live music more frequently than twice per week, and any live music must cease before 10 pm, provided that applicant abide in all other respects conforms with other applicable regulations, and that applicant obtain and remain in good standing with all other relevant licenses;
 - d. applicant must provide the neighbors in adjacent and neighboring buildings the cell phone or other contact numbers for immediate access to the management on duty in the premises during all hours of operation, and update such contact numbers promptly with all changes in staffing;
 - e. applicant must take all necessary and appropriate action to prevent employees from congregating or making noise in the rear yard of the premises after 9 pm, and discourage such activity at any other times;
 - f. applicant will not apply for a cabaret license, or permit any activity that would require such a license (including allowing dancing or performances of live music by more than three musicians);
 - g. applicant to ensure that its unenclosed outdoor café is used solely for serving patrons, and not to store tables, chairs or other furniture or items, and to strictly observe the permitted perimeters of the café, including keeping sandwich boards, menu displays within the permitted café footprint;
 - h. applicant to provide to CB7, and to keep in good standing, its Department of Consumer Affairs letter of assignment, filed under the applicant's name, concerning its unenclosed outdoor café;

- i. applicant to replace and maintain an awning over the front of the premises that does not block emergency access/egress via the fire escape, angled to further reduce the possibility that music and noise can escape from the premises;
- j. applicant to instruct its security, management and staff not to block or reserve parking spaces proximate to the premises, including with cones, other cars or otherwise;
- k. applicant will not permit valet parking at or in connection with the premises;
- l. applicant to instruct and continuously require that its security, management and staff take all actions necessary to cause departing patrons to leave the premises quietly and in a manner respectful of neighbors and the community at all hours but especially after 11 pm, to prevent and disperse crowds congregating in front of the premises (regardless of whether the crowd includes patrons), to ensure that no fewer than two (2) security staff are outside the premises and responsible for crowd control and dispersal at all times after 10 pm, and to seek early police assistance as needed to accomplish these requirements;
- m. applicant to install electronic precipitators and any other device required by any City or State Agency, and to take all other actions necessary to address on-going or new complaints about cooking odors or other smells received from neighbors at any adjoining or adjacent building in the bordering the premises in the same rear yard area, including venting the exhaust properly above the ambit of the neighbors' windows;
- n. applicant to install and maintain in good repair all condensers, fans and other HVAC equipment on the roof and elsewhere to ensure that it exceeds current standards for quiet operation.