



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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CHRISTINE BERTHET
Chair

JESSE R. BODINE
District Manager

July 31, 2015

Ana Reyneso
Assistant Director of Licensing
Department of Consumer Affairs
42 Broadway
New York, NY 10004

**Re: PBQ LLC
d/b/a BarBacon
Sidewalk Café License/Application # 7602-2015-ASWC
836 9th Avenue (54/55)**

Dear Ms. Reyneso:

Manhattan Community Board 4 (MCB4) regretfully recommends denial of an unenclosed sidewalk café permit for PBQ LLC because the applicant has reneged on an agreement made by its representatives to withdraw and defer this application until the applicant could demonstrate a record of compliance with its liquor license stipulations to which the applicant has failed to adhere.

The applicant presented its sidewalk café application at the July 14, 2014 meeting of MCB4's Business Licenses and Permits (BLP) Committee. At that meeting, several members of the community spoke about aspects of the applicant's operations that were in violation of the applicant's liquor license stipulations and that were having a detrimental impact on the community. These stipulations were agreed to in writing by the applicant and MCB4 and submitted to the NYS Liquor Authority to be included as terms of the applicant's liquor license.

As reported by these community members, the applicant has been in steady violation of its stipulation requiring that all doors and windows be closed whenever amplified music is played inside the establishment and, in any event, no later than 11:00 p.m. on Fridays and Saturdays and 10:00 p.m. on all other nights (regardless of amplified sound). MCB4 has found that this stipulation is essential to a reasonable residential quality of life for community members --

particularly in areas like the busy stretch of Ninth Avenue where this applicant is located, which contains numerous bars and restaurants with open doors and windows coexisting with thousands of residential units above and near those establishments. The community members reported that they had attempted to discuss this issue with staff at the establishment, but that the staff had shown no knowledge of the stipulation and refused to correct the conditions.

The community members also submitted the enclosed photos, showing the open windows as well as multiple, unauthorized sidewalk obstructions such as planters and free-standing signage -- in violation of city regulations.

At the July 14 BLP meeting, the BLP Committee discussed these issues with the applicant and explained that the applicant's failure to adhere to its existing agreements with the community made it difficult for MCB4 to support the expansion of the applicant's operations to include a sidewalk café. MCB4 suggested that the applicant withdraw its sidewalk café application from the DCA, demonstrate to MCB4 and the community that it would comply with its existing stipulations, and re-file with the DCA in several months -- after it had demonstrated a record of complying with its stipulations and respecting the community's interests. The applicant, which was represented by three individuals at the July 14 BLP meeting, verbally agreed to withdraw its sidewalk café application. In light of that agreement, MCB4 did not deem it necessary to submit any recommendations on this application to the DCA by the July 15 deadline.

On the morning of July 16, 2015 -- the day after the deadline for recommendations -- the applicant's owner, who did not attend the BLP meeting, wrote by email to MCB4 stating that "[o]ur submission will not be withdrawn as to not slow the speed of progress." The email made no mention of the agreement to the contrary by the applicant's representatives, but did state that "BarBacon fully intends to correct all suggestion [*sic*] given by CB4 and seek CB4's approval before seating anyone in the outdoor café." Unfortunately, the applicant's willingness to renege on the agreement made by its representatives with MCB4 contributes to the lack of trust and concern whether the applicant will operate with the community's interests in mind.

MCB4 recognizes that this is a very small sidewalk café (1 table, 2 seats) and appreciates that the applicant has made the design changes suggested by MCB4. As MCB4 told the applicant at the BLP meeting, however, MCB4 does not believe it is appropriate for the applicant to expand its operations with a sidewalk café permit at time when it has no record of compliance with its

liquor license stipulations and the city regulations regarding sidewalk obstructions.

Although MCB4 urges that this application be denied for the reasons stated above, in the event any permit is granted, MCB4 requests that the café be closed and vacated at the hours that MCB4 requests from all sidewalk café applicants: 11:00 p.m. on Friday and Saturday nights and 10:00 p.m. on all other nights. MCB4 has found that these closing hours are necessary to protect reasonable residential quality of life for community members living above and adjacent to sidewalk cafes.

Sincerely,



Christine Berthet
Chair

[signed 7/31/15]

Burt Lazarin
Co-Chair
Business License &
Permits Committee



Frank Holozubiec
Co-Chair
Business License & Permits
Committee