



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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BURT LAZARIN
Chair

Jesse Bodine
District Manager

July 30, 2019

Vincent G. Bradley
Chairman
New York State Liquor Authority
80 S. Swan Street, 9th Floor
Albany, New York 12210

Re: CWABO, LLC
d/b/a Cabo Wabo
725 Eighth Avenue (45/46)

Dear Chairman Bradley:

Manhattan Community Board 4 (MCB4) recommends **denial** of a new on premise liquor license for CWABO, LLC d/b/a Cabo Wabo, 725 Eighth Avenue (45/46) because granting this license would not be in the public interest.¹ The proposed establishment is a two-floor venue in a location **that was not been previously licensed** and seeks to be open until 2:00 a.m. nightly with live music, DJs, and dancing. Cabo Wabo's planned location is sandwiched immediately between two large residential buildings (totaling more than 230 apartments) and backs onto a warren of shared rear courtyards that are abutted by multiple other residential buildings. Cabo Wabo thus would potentially disrupt the reasonable residential quality of life for hundreds of residents.

Cabo Wabo falls within the 500 foot rule as there are **52 (fifty-two)** OP liquor licenses within 500 feet of this address (per the SLA's website). An applicant of this size, with late closing hours, would add to the problems accompanying a concentration of licensed establishments in very close proximity, including increased traffic and excessive late-night noise. Cabo Wabo would be located on an exceedingly busy stretch of Eighth Avenue, where the narrow sidewalks are already densely populated with pedestrians and the avenue regularly clogged with vehicular traffic. The location is only three-and-one-half blocks from Port Authority, making this stretch of sidewalk a major artery for thousands of bus passengers arriving at and departing from the terminal. The location is also adjacent to the theatre district -- with several Broadway theatres only hundreds of yards away -- which results in a large influx of pedestrians and cars onto this block.

¹ MCB4's recommendation is based on a vote taken at its July 24, 2019 full board meeting, with 33 members voting in favor of the recommendation, 1 members opposed, 0 members abstaining and 0 present but not eligible.

Local residents are deeply concerned both about adding any licensed venue to this location and about the specific characteristics of Cabo Wabo.

With respect to the location itself, Cabo Wabo would be housed in the entirety of a two-story building located between two large apartment buildings (each with walls abutting the proposed venue). Immediately to the south is a 17-story residential building with approximately 175 apartments. Immediately to the north is a 5-story residential building with approximately 70 apartments, which we have been informed, is primarily occupied by elderly, mobility-impaired, and special needs residents. (See attached photo showing the three buildings.) In addition, the rear of the proposed premises abuts the shared rear courtyards typical of Manhattan blocks, meaning that any noise leakage or disruptions could affect hundreds of additional apartments. Per Cabo Wabo, this location had previously been a DVD store and a Halloween store -- the types of businesses that would have had a very different traffic flow and noise levels (internal and external) than a licensed eating and drinking establishment with an estimated capacity of 200. The limited street frontage of the premises and the lack of a sizeable waiting area inside would likely result in arriving and departing patrons regularly congregating, smoking, and lingering directly beneath the windows of the neighboring residential apartments, some of which are approximately only ten feet above the sidewalk.

There are equally serious concerns about the specific characteristics of Cabo Wabo's planned operation. Cabo Wabo seeks to be open from 8 a.m. to 2 a.m. daily, which means that, if successful, it will be occupied by hundreds of patrons for long stretches of time, with those same patrons regularly entering and exiting onto the crowded Eighth Avenue sidewalk and street.

An early article about the proposed venue, from Eater.com on October 9, 2018 (copy attached), was headlined "Rock Star Sammy Hagar Is Bringing His Party Hardy Mexican Restaurant to Times Square." The article noted that the Cabo Wabo "chain prides itself on being a party destination serving Mexican-American food during the day and slinging shot glasses at night"; "Hagar's restaurant Cabo Wabo Cantina will ... fill the space with tequila, tacos and if it's anything like his other venues, lots of rock 'n' roll shows, according to landlord Thor Equities."

When asked about this article by MCB4's Business Licenses and Permits (BLP) Committee, Cabo Wabo's representative stated that the building's landlord had been responsible for the article, that it had been issued without Cabo Wabo's input or approval, and that Cabo Wabo planned to operate a restaurant not a club at this location. Despite that disclaimer, certain aspects of the planned operation, as reflected in Cabo Wabo's Stipulations Application to MCB4, raise serious concerns: a stage on the second floor; live music and DJs; dancing; two bars with a total of 24 seats; and a 2 a.m. nightly close. Whatever label is put on the planned establishment, it will not be a quiet addition to the neighborhood.

Cabo Wabo appeared three times before MCB4's BLP Committee, on May 14, 2019, June 11, 2019, and July 9, 2019, and each time faced significant concerns and opposition from neighboring and nearby residents -- who addressed the committee in person and/or submitted detailed written concerns. The chief issues were anticipated noise from the venue, both

leakage from inside and from patrons on the sidewalk and street, and adding to the over-congested sidewalks and streets in the area.

Although MCB4 and the community appreciates Cabo Wabo's meeting with neighboring residents and conducting recent acoustic tests, the facts remain that Cabo Wabo had to be prodded to take these actions at each step of the way and that neighboring residents continue to be staunchly opposed to a liquor-serving music venue at this location. At the time of its first appearance before the BLP Committee on May 14, 2019, for example, Cabo Wabo had done no acoustic testing and no meaningful community outreach. Although by the time of its third appearance before the BLP Committee on July 9, 2019, Cabo Wabo had submitted an acoustic report, the community and MCB4 harbor serious concerns, given Cabo Wabo's planned method of operation, whether the building could ever be adequately soundproofed to protect the quality of life of residents, some of whom live only feet away from the premises. Loud music (especially live), throbbing bass, and sound vibrations would likely infiltrate numerous nearby apartments.

Cabo Wabo's acoustical report makes clear that there are numerous design and construction elements that must be precisely implemented, as well multiple operational steps followed, to attempt to adequately sound-proof the premises -- which is not unusual for a building that was not built to house, and has never housed, a licensed eating and drinking establishment, let alone one with live music. The risks that these acoustic improvements are ultimately insufficient, that all aspects of the complex structural recommendations are not carefully implemented, and that the nightly operational limitations are not adhered to will fall on the neighboring residents, whose quality of life will be disrupted on a daily and nightly base if any aspect of the complex acoustic work proves inadequate. Even Cabo Wabo's acoustic report itself notes several areas of uncertainty. For example, to prevent leakage from the rear of the building, the report recommends that the rear windows be closed up "where possible" and that the portion of the exterior façade made up of windows should be "kept to a minimum in order to minimize the amount of sound that transmits through" -- hardly a precise, definitive solution to a noise issue potentially affecting hundreds of residents abutting the shared rear courtyard. Similarly, the report notes that "HVAC systems should be reviewed to ensure sound due to live music within Cabo Wabo does not transmit through the HVAC Systems and create a disturbance to Adjacent Apartments and neighboring residences" -- another sign that the acoustic analysis is not complete and fool-proof.

Residents noted that the structure of the surrounding buildings heightens noise concerns, with the walls of the two taller adjacent residential buildings acting as "the cone in a loudspeaker" to amplify noise from the Cabo Wabo premises. A neighbor also observed that "the back of the proposed nightclub building faces a warren of courtyards; these courtyards are brick-and-glass echo chambers that amplify sound." The neighbors abutting the courtyards include a church that runs a day school. (Attached is photo of the back of the premises at issue, taken from a nearby residential building, showing a portion of the courtyards and the nearness of the residential buildings.)

Neighboring residents have also stressed that this is not a situation that could be remedied by obtaining stipulations from Cabo Wabo as to its method of operation. First, Cabo Wabo's proposed method of operation already raises multiple red flags highlighting that it is the type of establishment that should not be located among residential buildings. Second, concerns such as street and sidewalk overcrowding are structural and cannot be remedied with stipulations. Third, residents note that, if the stipulations were disregarded or violated, they

would immediately be living with the consequences in their day-to-day lives, and they would be the ones forced to devote time and resources to getting the stipulations enforced -- simply to enjoy their reasonable residential quality of life.

In this 500-foot rule case, it is difficult to see any public interest accompanying the opening of Cabo Wabo. Numerous community members have presented serious concerns about Cabo Wabo's likely impact on their reasonable quality of life. Other than Cabo Wabo's representative, no one spoke in favor of Cabo Wabo or submitted support in writing to MCB4. Cabo Wabo's one-page "Statement of Public Convenience and Advantage and Public Interest" (copy attached) simply makes the general points that Cabo Wabo will abide by the law, will not cause further problems in the neighborhood, will employ 75 people, and will contribute to charity. Cabo Wabo plans to serve Mexican food, and there are already multiple Mexican restaurants in close vicinity. There is nothing in the statement about what this particular business will specifically add to the public interest and this community.

In sum, Cabo Wabo will not advance -- and in fact will be contrary to -- the public interest. It is simply the wrong type of establishment for this location.

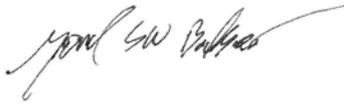
For the reasons stated above, MCB4 requests that the present application be **denied**.

Thank you for your attention and cooperation with this application.

Sincerely,



Burt Lazarin
Chair



Yoni Bokser
Co-Chair
Business Licenses & Permits
Committee



Frank Holozubiec
Co-Chair
Business Licenses & Permits
Committee

Enclosures

CC: Hon. Brad Hoylman, New York State Senate
Hon. Richard Gottfried, New York State Assembly
Hon. Corey Johnson, Speaker, New York City Council
Tim Tompkins, President, Times Square Alliance BID

Google Maps 725 8th Ave

Applicant's premises / 725 8th Ave



Image capture: Oct 2018 © 2019 Google

New York

Google

Street View - Oct 2018



Photo
of
rear
of
applicant
premises,
taken
from
residential
building
at
305
W. 45th St.

Applicant's
premises/
725 Eighth
Ave
(rear of
building)

NEW YORK

COMING ATTRACTIONS

Rock Star Sammy Hagar Is Bringing His Party Hardy Mexican Restaurant to Times Square

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Cabo Wabo Cantina will open in the space previously slated for a Wahlburger that never opened

by [Carla Vianna](#) | Oct 9, 2018, 12:25pm EDT



Cabo Wabo Cantina in Cabo San Lucas, Mexico | [Cabo Wabo Cantina/Facebook](#)

It's out with actor Mark Wahlberg and in with rocker **Sammy Hagar** at a five-story building near Times Square that was previously planned for an outpost of **Wahlburger**.

Hagar's restaurant **Cabo Wabo Cantina** will instead fill the space with tequila, tacos, and if it's anything like his other venues, lots of rock 'n' roll shows, according to landlord Thor Equities.

This will be the first East Coast location for Cabo Wabo, a restaurant and club founded by the former Van Halen frontman in Mexico's Cabo San Lucas in 1990. It has since expanded to the West Coast with locations in Las Vegas, Lake Tahoe, and Hollywood. The chain prides itself on being a **party destination** serving Mexican-American food during the day and slinging shot glasses at night.

The atmosphere at the original Cabo location is reminiscent of Señor Frog's, whose **short-lived** stint in NYC ended in 2016. Despite being open for only a year, the over-the-top party restaurant snagged a humorous yet **positive review** from *Times'* critic Pete Wells, who apparently had more fun there than any other new restaurant across town.

Cabo Wabo will set up shop in a 8,300-square-foot space at 725 Eighth Ave., between West 45th and 46th Streets. A 10-year lease was inked for the space and plans point to a 2019 debut, according to Thor.

The menus at its other locations feature typical Mexican-American fare like quesadillas, tacos, and tortilla soup, as well as seafood options like coconut shrimp, ceviche, and the catch of the day. But Cabo Wabo is probably more well-known for its namesake tequila, happy hour deals, and live shows — including occasional performances from Hagar himself. The NYC outpost will most likely come with a stage, as is the case in their other venues, a Thor spokesperson says.

As for this spot's previous tenant, the doors never officially swung open. The Wahlburger, a **poorly reviewed** burger chain owned by Wahlberg and his siblings, reportedly struggled to pay rent and never finished building out its Times Square outpost, although its been in the space **since 2015**. Last year its owners found themselves **locked out** of the building for not **keeping up with rent**. The burger chain also closed its Coney Island location in 2017 but has since **reopened** it. Two other spots on the **UES** and Port Jefferson Station still exist.

The Wahlburger saga is yet another example that celebrity-backed restaurants have

recently struggled to stay afloat in NYC. Nearly a dozen celebrity chefs including [Cat Cora](#), [Guy Fieri](#), and [Anne Burrell](#) have closed restaurants in the last year alone.

But Hagar apparently is not deterred. The NYC location is slated to open in spring 2019.

- [All coverage of Wahlburger](#) [ENY]

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Cabo Wabo Cantina

725 Eighth Ave, New York, NY 10036

**STATEMENT OF PUBLIC CONVENIENCE AND
ADVANTAGE AND PUBLIC INTEREST**

CWABO, LLC dba CABO WABO CANTINA (the "Applicant")

Granting an On-Premise liquor license to the Applicant would be to the public convenience and advantage and in the public interest for the following reasons:

1. There are presently 46 On-Premise licenses within 500 feet of the Applicant's location.

2. All licenses required for the operation of the Applicant's business will be obtained by the appropriate government agencies prior to the Applicant opening it business to the public.

3. The Applicant has not retained a traffic expert but the Applicant believes that the granting of the license would not have any adverse effect on vehicular traffic as the majority of the patrons will be tourists and will arrive via mass transit. Other patrons will arrive by taxi which will simply pick up and drop off patrons without having to hold up traffic looking for parking spots.

4. The existing noise level at the location is presently unknown but assumed to be moderate to high given the fact that the premises is located in Times Square NYC. However, we believe the issuance of the Applicants license will not have an adverse effect on the existing noise levels because the premises is fully enclosed.

5. There is no history of liquor license violations at the proposed premises, nor is there any criminal activity that has been reported to have occurred there that the Applicant is aware of.

6. Other facts to be considered are: (a) The Applicant's business will be generating money which will be donated to charity. Specifically, the Cabo Wabo group and the Applicant are very much involved in the Wounded Warrior project and St. Jude Hospital (b) The premises is located in predominantly commercial non-residential area; (c) The Applicant's principal owns another NYSLA OP licensed Wahlburgers restaurant in Coney Island which they have been operating since the summer of 2015 without any incident whatsoever; (d) Applicant will be employing about 75 people to work at the premises and will generating a substantial amount of tax revenue for the city, state and federal governments; (e) The Premises was formerly occupied by a pop-up Halloween shop and DVD store which had unflattering store fronts and less than appealing signage. The Applicant's build out of the premises will be very high-end and will cost about \$1.9 million dollars to complete. Once it's completed, the premises will serve to enhance the look and value of the block that it's located on.

Dated: APRIL 19, 2019

CWABO LLC dba CABO WABO CANTINA

By: 

Robert Azinian LLC Member