

STATE OF NEW YORK: LIQUOR AUTHORITY

Application of 200 Foot Law on Property
Located at 15 W. 55th Street, Manhattan

DECLARATORY
RULING
2016-01137E

The Alcoholic Beverage Control Law [ABCL] prohibits the Authority from issuing a retail license for the sale or consumption of liquor for any premises which is on the same street and within 200 feet of a "building occupied exclusively as" a school or place of worship. This licensing restriction is commonly referred to as the "200 Foot Law."

The Members of the Authority are in receipt of a request from Terrence R. Flynn, Jr., Esq. on behalf of a prospective applicant for a declaratory ruling as to whether, under the facts presented, the location is subject to the 200 Foot Law. For the purposes of this request, Mr. Flynn does not dispute that the location is on the same street as and within 200 feet of the Fifth Avenue Presbyterian Church (FAPC), a seven story building located at 7 W. 55th Street. He seeks a ruling that the building is not occupied exclusively as a church. A liquor license has never been issued at 15 West 55th Street. There are active liquor licenses at 2 West 55th Street (HL 1023379), 2 East 55th Street (HL 1236862) and 1 East 55th Street (OP 1280544).

Notwithstanding the general prohibition created by the 200 Foot Law, the building housing the church must be occupied exclusively as a church, ABCL §64(7)(a). The applicant presents three uses that occur at the church which, it is argued, cause the building to not be "occupied exclusively as a church." The first is that the church rents the 7th floor to a design firm, a commercial tenant not affiliated with FAPC. The second is that the church rents out rooms to third parties for commercial purposes. The third is that a catering function takes place within FAPC, which may or may not be tied to the second use.

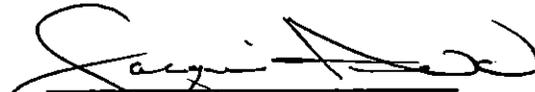
In defining the term "exclusively" occupied as a place of worship the ABCL §§ 64 et seq. sets forth a myriad of activities which are considered to be incidental to and not detracting from the predominant character of a building used as a place of worship.

In 2007, the Legislature amended the ABC Law, including adding ABCL §64(7)(d-1) to provide that a place of worship does not cease to be so when it hosts: bingo or other games of chance as a means of raising funds for the not-for-profit religious organization; yoga classes, exercise classes or other activities intended to promote the health of the congregants or other persons; and use of the building by non-congregant members of the community for private social functions. The building does not cease to be "exclusively" occupied where the payment of funds is accepted to defray costs related to another party's use of the building.

The rental of portions of the church to third parties for private social functions is within the Legislature's 2007 amendment permitting use of the building by non-congregant members of the community for private social functions, even for remuneration. However, the lease of the 7th floor by Pure Partner By Design LLC, a commercial marketing/design company is of a nature above and beyond the types of illustrative activities set forth in the amendment that would be consistent with incidental uses. This effectively renders the use and occupation of the building by FAPC as nonexclusive.

Accordingly, the applicant is not barred by the 200 foot law from applying for a full liquor license at 15 West 55th Street in Manhattan.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on May 10, 2016.



Jacqueline Held
Acting Secretary to the Authority