

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF NOVEMBER 4, 2014
REFERRED FROM: COUNSEL'S OFFICE

2014-02624

REASON FOR REFERRAL
REQUEST FOR DIRECTION

APPLICATION ON 200 FOOT LAW
ON PROPERTY LOCATED AT:

67 FIRST AVENUE, MANHATTAN

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on NOVEMBER 4, 2014 determined:

STATE OF NEW YORK
LIQUOR AUTHORITY

-----X
Application of 200 Foot Law on Property
Located at 67 First Avenue, Manhattan
-----X

**REQUEST FOR
DECLARATORY
RULING**

This is a request for a declaratory ruling regarding the application of the 200 foot rule prohibiting an on-premises liquor license within 200 feet of a building occupied exclusively as a school, church, synagogue or other place of worship.

The issue presented in this matter is whether the applicant's restaurant, which should not be considered a corner storefront since a kiosk cafe structure exists as the corner storefront thereat, is deemed to be located on a corner, making it on the same street or avenue as a school that is less than 200 feet from the applicant's premises.

The applicant submits that for purposes of the 200 foot rule, the premises is not on the corner.

FACTS:

The applicant, Highseyko Corporation d/b/a Guayoyo, currently holds a restaurant wine license under serial number 1028814. The premises address is 67 First Avenue, New York, New York. The premises is situated on the corner of First Avenue and East 4th Street. The entrance to the premises is on First Avenue. There is no patron access to the premises on East 4th Street. There is a door to the kitchen on East 4th Street that is used for deliveries only.

Attached to the outer wall of the premises along East 4th Street is a kiosk housing a business that operates under the name Jennifer Cafe. This cafe operates as a take-out restaurant serving breakfast and lunch.

Jennifer Cafe's official address is 67 First Avenue. It is licensed by the NYC Department of Health as a food establishment. There is no affiliation between Jennifer Cafe and the applicant.

Further down East 4th Street (between 1st and 2nd Avenues) is the Manhattan School for Career Development, a public school operating under the auspices of the NYC Board of Education. The school's nearest entrance measures 190 feet from the applicant's premises.

ARGUMENT

With the addition of the Jennifer Cafe Structure on the East 4th Street side of the building, the applicant's premises is no longer the corner store. The applicant is now one store off the corner and is not on the same street or avenue as the school. Since it is not on the same street or avenue as the school, the 200 foot rule does not apply and will not prohibit applicant from being eligible for an on-premises liquor license.

All of the factual circumstances support the applicant's contention. The patron entrance to the applicant's restaurant is on 1st Avenue. There is no patron access on East 4th Street. The only door on East 4th Street is a service entrance for deliveries that leads directly to the kitchen. Jennifer Cafe is situated directly on the corner, abutting the outside wall along the East 4th Street side of the building.

CONCLUSION:

The applicant respectfully requests that the Liquor Authority find that the applicant's premises is not on the same street or avenue as the school.

Respectfully submitted,

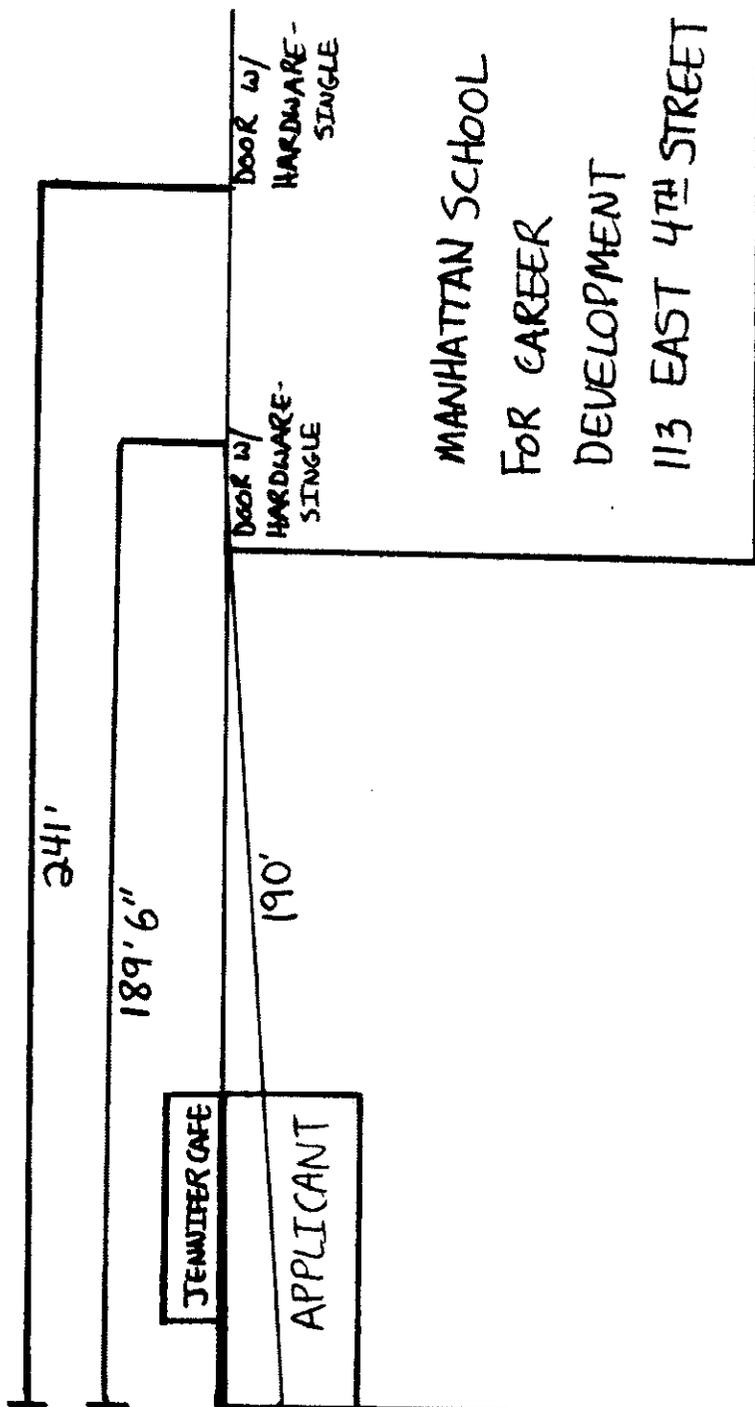
Carreras & McCallen PLLC
11 Park Place, Suite 1210
New York, NY 10007
212-732-3640

MEASUREMENT
67 1ST AVENUE
NEW YORK, N.Y.
DECEMBER 11, 2013
NOT TO SCALE

LANDESS-SIMON, INC
45 LAWLINS PARK
WYCKOFF, N.J. 07481

-E. 4TH ST.-

- 1ST AVE. -



JENNIFER CAFE
APPLICANT

MANHATTAN SCHOOL
FOR CAREER
DEVELOPMENT
113 EAST 4TH STREET

DOOR w/
HARDWARE -
SINGLE

DOOR w/
HARDWARE -
SINGLE

241'

189'6"

190'

12'







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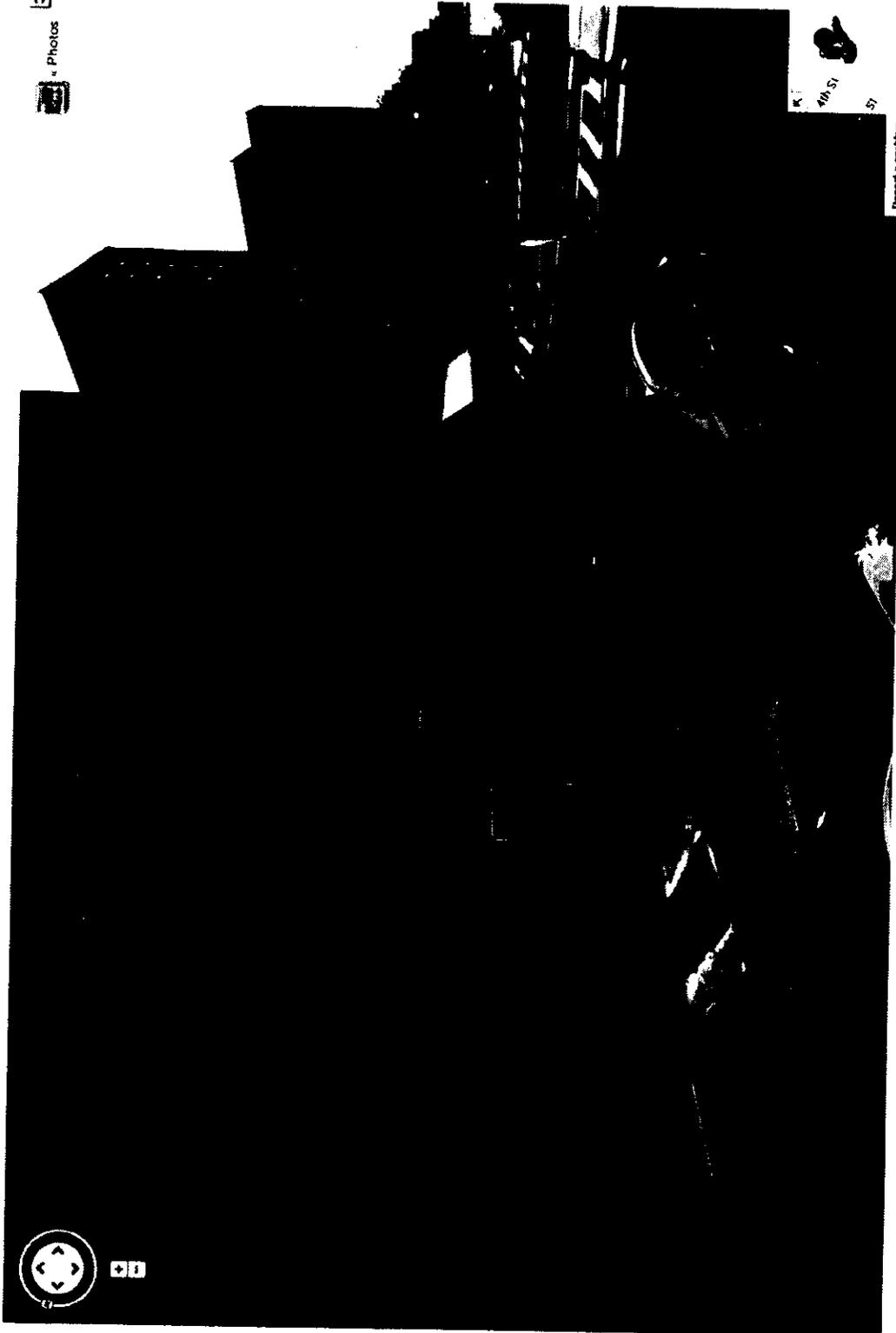
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Thomas McCallen



Photos



K
4th St
57

Report a problem

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF NOVEMBER 4, 2014
REFERRED FROM: COUNSEL'S OFFICE

2014-02682

REASON FOR REFERRAL
REQUEST FOR DIRECTION

APPLICATION OF 200 FOOT LAW
ON PROPERTY LOCATED AT:

289 NORTH 7TH STREET, BROOKLYN

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on NOVEMBER 4, 2014 determined:

ELKE A. HOFMANN LAW, PLLC

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July 29, 2014

Ms. Jacqueline Flug, Esq.
General Counsel
New York State Liquor Authority
80 South Swan Street, 9th Floor
Albany, NY 12210

*Re: Request for Declaratory Ruling
Application of 200 Foot Rule at 289 North 7th Street, Brooklyn, NY*

Dear Ms. Flug:

I represent Alan Zapolsky and Rebecka Mamer, the principals of 289 Lemon Squeeze, LLC (the "Applicant"). The Applicant seeks a determination from the New York State Liquor Authority with respect to the application of the 200 foot rule at 289 North 7th Street, Brooklyn, NY (the "Premises").

The Applicant proposes to construct a restaurant and bar at 289 North 7th Street, in the Williamsburg section of Brooklyn. A new charter school, the Lower School operated by Northside Williamsburg Schools, is currently under construction at 299 North 7th Street. The Applicant does not contest that upon completion, the proposed school would be located within 200 feet of the Applicant's proposed restaurant and bar. As the Applicant does not want to incur significant expenses to renovate the premises without assurance that a license would be issuable, the Applicant hereby requests the Authority to determine that the 200 foot rule would not prohibit issuance of a license to the Applicant in this instance.

The 200 foot rule prohibits the Authority from issuing a retail license for the sale and/or consumption of liquor at premises located on the same street and within 200 feet of any "building occupied exclusively" as a school or place of worship. In Declaratory Ruling 2011-03141A, the Authority expressly declined to identify "whether it is the filing of an application; the issuance of the license; or some other point in time; that must be used in deciding if a school or place of worship is occupying a building," but rather stated that the Authority would consider the definition of whether, and when, a building is "occupied" by a school or place of worship on a case-by-case basis (*see Declaratory Ruling 2011-03141A*).

In the circumstances presented in Declaratory Ruling 2011-0314A, the Authority ultimately concluded that the location at issue was subject to the 200 foot rule since the plan to open the school was common knowledge, no application for a license to sell alcoholic beverages had been filed, and, in fact, no potential applicant for a license to sell alcoholic beverages had even been identified (the request for a declaratory ruling had been submitted on behalf of the landlord of the premises).

By contrast, in the present case, by the time Mr. Zapolsky's father learned through neighborhood gossip in late May, 2014, that the new construction at 299 North 7th Street would be occupied by a school, the Applicant's plans for development of a bar and restaurant at 289 North 7th Street were well under way. (No signage other than the required Department of Buildings permits had been posted on the scaffolding identifying the construction as a future school.)

Alan Zapolsky, whose family owns the building at 289 North 7th Street, started taking steps towards creating a bar and restaurant at that location nearly three years ago. When Mr. Zapolsky and Rebecka Mamer first discussed the restaurant and bar in 2011, the retail premises at 289 North 7th Street were still leased to a local artist as studio space; that lease did not expire until October 31, 2013. Mr. Zapolsky and his family came to a verbal agreement and entered into a ten (10) year lease on November 1, 2013. (The Zapolsky family allowed the artist to remain in the premises on a month-to-month basis until she found a replacement studio; in February, 2014, the tenant gave notice that she would be vacating the premises, and the lease for the Applicant accordingly commenced on May 1, 2014.)

Mr. Zapolsky and Ms. Mamer met at the Premises around late October 2013 with a general contractor and several subcontractors, to evaluate the premises for use as an eating and drinking establishment; they determined that a change of use would be feasible, and began the search for an architect in November, 2013.

The Applicant continued to take substantial steps towards construction of a bar and restaurant at 289 North 7th Street since that time. The Applicant engaged Field Lines, Ltd., to prepare construction diagrams, and plans, and Municipal Building Consultants, Inc., to expedite all filings with the New York City Department of Buildings. The New York City Department of Buildings has issued Alteration Type 2 permits for the initial basic renovations and repairs to prepare the premises for use as an eating and drinking establishment, including for pouring a new concrete yard, repointing the walls, and renovating bathroom fixtures. The Applicant and its architect have finalized construction diagrams and, on July 25, 2014, sent an Alteration Type 1 permit application to the expeditor for immediate filing; the application includes, among other things, a change of occupancy, change of use (to eating and drinking), and the construction of a kitchen and bar and legal use of outdoor space. Within six (6) weeks, the Applicant will be prepared to submit a Place of Assembly permit application. The Applicant has, to date, incurred expenses of over \$15,000 in connection with the foregoing filings.

The Applicant also began the process to obtain a liquor license application; notice was delivered to Brooklyn Community Board 1 in June, 2014, and a license application is expected to be submitted in early August, well before construction of the new Lower School has been completed. Assuming a timely review by the New York State Liquor Authority, the Applicant may even be able to obtain a conditional approval before the Lower School "actually occupies" the building and commences operations pursuant to a Certificate of Occupancy. However, as the renovations of the premises at 289 North 7th Street could take upwards of six (6) months given the scale of the demolition and renovations, a license could not be issued to the Applicant until after the new school commences operations. (The scope of the renovations is the reason that the license application process was not initiated sooner.)

The Applicant respectfully requests that the Authority determine that in light of the circumstances in this instance, provided that a license application is filed with the New York State Liquor Authority prior to the date on which the new Lower School legally occupies the building at 299 North 7th Street and commences operations as a school, the 200 foot rule will not prohibit issuance of a license to the Applicant.

Please do not hesitate to contact me if you have any questions with regard to this request for a declaratory ruling, or if you require any further information.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Elke Hofmann', with a long horizontal line extending to the right.

Elke Hofmann