

STATE OF NEW YORK: LIQUOR AUTHORITY

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Application of 200 Foot Law on property  
Located at 347 Bowery Street, Manhattan

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DECLARATORY  
RULING  
2011-02878

Preliminary Statement

Section 98.1 of the Rules of the State Liquor Authority, (9 NYCRR subtitle B) provides that any person may request the Authority to issue a declaratory ruling on the applicability of the Alcoholic Beverage Control Law (“ABCL”), or the Rules of the Authority, to any person, property or state of facts. Kevin B. McGrath, Esq. on behalf of a prospective applicant client seeks a declaratory ruling as to whether, under the facts presented, a location in Manhattan is subject to the 200 Foot Law.

Applicable law

Section 64(7)(a) of the Alcoholic Beverage Control Law prohibits the Authority from issuing an on-premises liquor license for any premises which is on the same street and within two hundred 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. While the statute uses the phrase “building occupied exclusively”, the courts have adopted a test that looks to whether the building is used primarily as a school or place of worship. The building will still be considered a school or place of worship within the meaning of the 200 Foot Law as long as any use is incidental to, and not inconsistent with or detracting from the predominant character of the building as a school or place of worship. *Fayez v. State Liquor Authority*, 66 NY2d 978 (1985).

Applying that test, the Second Department held that a building was still “occupied exclusively” as a place of worship when guest quarters were used by visiting church members and there was an apartment for the church’s pastor. *AJ & J Restaurant Corp. v. State Liquor Authority*, 205 AD2d 530 (1994). The First Department found that the use of the fifth floor of a location five nights a week (rent-free) by a chapter of Alcoholics Anonymous was not inconsistent with the building being “occupied exclusively” as a church. *Multi Millions Miles Corp. v. State Liquor Authority*, 55 AD2d 866 (1977) aff’d 43 NY2d 774. The Fourth Department came to a similar conclusion with respect to a place of worship where bridal showers and birthday parties were conducted. *Capizzi v. State Liquor Authority*, 231 AD2d 881 (1996).

In contrast, the First Department held that a church that is renting out its auditorium for baseball card shows, jewelry shows, oriental rug sales as well as renting out another portion of the building as an embassy was not “occupied exclusively” as a place of worship. *Brasero v. State Liquor Authority*, 176 AD2d 462 (1<sup>st</sup> Dept., 1991). The Second Department found that the use of the building on a regular basis for a number of nonreligious activities that the church had no control over, including a commercial theatre group, private teaching program and concerts, did not meet the “occupied exclusively” standard. *Le Parc Gourmet Inc. v. State Liquor Authority*, 95 AD2d 855 (1983). The Third Department made the same determination with respect to a church that rented out a wing of its building on a yearly basis to a rehabilitation program. *Taft v. State Liquor Authority*, 84 AD2d 623 (3<sup>rd</sup> Dept., 1981).

On June 10, 1952, the Authority issued Divisional Order 319, which recited a policy adopted by the Members of the Authority on May 13, 1952, with respect to the agency’s interpretation of the 200 Foot Law. As set forth in the Divisional Order, the policy stated that, in all cases involving the application of the 200 Foot Law:

...the discretion of the Authority shall be exercised in such a manner as to give the fullest scope of protection of the law to such educational institutions, churches and other places of worship, and that every reasonable doubt be resolved in favor of the religious or educational institution involved.

In the exercise of its discretion under the law, the requirement that the building be “occupied exclusively” as a school, church, synagogue or other place of worship shall be interpreted to afford the fullest protection of the law to those institutions in which activities of a non-educational or religious nature are present so long as those activities bear a logical relationship to the educational or religious purpose of the institution, and are fairly to be considered subsidiary to its main purpose.

In order to give guidance as to what types of activities could be conducted at a school or place of worship, and still have the building be considered to be “occupied exclusively” as such, the 200 Foot Law was amended in 2007 to state that

... a building occupied as a place of worship does not cease to be "exclusively" occupied as a place of worship by incidental uses that are not of a nature to detract from the predominant character of the building as a place of worship, such uses which include, but which are not limited to: the conduct of legally authorized games of bingo or other games of chance held as a means of raising funds for the not-for-profit religious organization which conducts services at the place of worship or for other not-for-profit

organizations or groups; use of the building for fund-raising performances by or benefitting the not-for-profit religious organization which conducts services at the place of worship or other not-for-profit organizations or groups; the use of the building by other religious organizations or groups for religious services or other purposes; the conduct of social activities by or for the benefit of the congregants; the use of the building for meetings held by organizations or groups providing bereavement counseling to persons having suffered the loss of a loved one, or providing advice or support for conditions or diseases including, but not limited to, alcoholism, drug addiction, cancer, cerebral palsy, Parkinson's disease, or Alzheimer's disease; the use of the building for blood drives, health screenings, health information meetings, 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 occupied as a place of worship does not cease to be "exclusively" occupied as a place of worship where the not-for-profit religious organization occupying the place of worship accepts the payment of funds to defray costs related to another party's use of the building.

Statement of facts

The following is a summary of the pertinent facts as presented by Mr. McGrath in his request:

- The prospective applicant owns the property at 347 Bowery Street in Manhattan. The property is located between East 3<sup>rd</sup> Street and East 4<sup>th</sup> Street.
- The prospective applicant intends to operate a hotel at this location, either by renovating and expanding the existing structure or constructing a new building. An on-premises liquor license would be sought for the hotel.
- Adjacent to the prospective applicant's property is 353 Bowery Street. Mr. McGrath does not dispute that, using the measurement system set forth in the statute, the proposed licensed hotel is within 200 feet of 353 Bowery Street.
- 353 Bowery Street is a 15 story mixed use (residential and commercial). As of the dates of Mr. McGrath's letters, an application was pending with the New York City Buildings Department to approve a change of use for the 2<sup>nd</sup> and 3<sup>rd</sup> floors of the building. The space is currently approved for use as

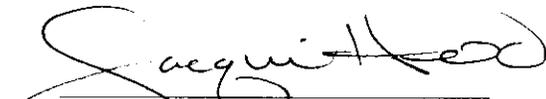
retail stores. The application seeks to allow for use as a synagogue, library and offices.

The Members of the Authority have also been provided with photographs and diagrams of the two properties. As appears from these items, the prospective applicant's property consists of two 3 story buildings. Adjacent to that property is a building which Mr. McGrath identified as 353 Bowery Street. The front section of 353 Bowery Street consists of 3 stories and the rear section approximately 15 stories.

Determination of the Authority

Based on the representations made by Mr. McGrath, together with the photographs, diagrams, and other documents submitted for the Full Board's consideration, it does not appear that 353 Bowery is occupied exclusively as a place of worship. The synagogue (together with the library and offices) is but one of many current and/or anticipated uses for this building. Therefore, the Authority concludes that, with respect to 353 Bowery, the 200 Foot Law does not preclude an on-premises license being issued for the prospective applicant's location at 347 Bowery Street.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on September 21, 2011.

  
Jacqueline Held  
Secretary to the Authority