

STATE OF NEW YORK: LIQUOR AUTHORITY

Application of 200 Foot Law on property
Located at 92 Madison Ave., Manhattan

DECLARATORY
RULING
2011-03310

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. Donald Bernstein, Esq., on behalf of a prospective applicant client, seeks a declaratory ruling as to whether, under the facts presented, an alteration to a currently licensed premises would be prohibited under 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 (1st 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 (3rd 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. Bernstein:

- The licensee operates a restaurant at the corner of Madison Avenue and 29th Street.
- The restaurant has entrances on both the Madison Avenue and the 29th Street sides of the building. However, the 29th Street entrance is closed and not used by the public.
- The 29th Street entrance is 199 feet from the entrance to a building at 1 East 29th Street. That building is used as a place of worship by the Episcopal Church of the Transfiguration (“Church”).
- The licensee does not dispute that, within the meaning of the 200 Foot Law, the licensed premises is on the same street and, using the 29th Street entrance, within 200 feet of the building occupied by the Church.
- The building occupied as a place of worship is adjacent to, and there is interior access between, a building which contains the Church’s parish house, residential condominium units as well as a commercial business. This building is identified as 11-13 East 29th Street.

Request to be considered

Based upon the facts presented, there would appear to be no dispute that the structure at 1 East 29th Street, for purposes of the 200 Foot Law, is exclusively occupied as a place of worship. However, Mr. Bernstein argues that, because of the interior access between 1 East 29th Street and 11-13 East 29th Street, the two structures should be considered as one building. If the two structures are considered as one building, Mr. Bernstein further argues that the mixed use of 11-13 East 29th Street leads to the conclusion that the building is not exclusively occupied as a place of worship.

Determination of the Authority

The question of whether two adjoining structures with interior access most recently came before the Members of the Authority in 2006. In that case the interior access consisted of two locked wooden doors. On one side was the structure used as the church’s place of worship. On the other side was a structure

used by the church for other activities. Although it ultimately determined that the other activities fell within the meaning of a building used exclusively as a church, the Members of the Authority held that, given the nature of the interior access, the two structures were separate buildings.

Unlike that matter, in this case the interior passageway provides ready access from one structure to another. Based on the material supplied by Mr. Bernstein, it is clear that the church has always considered the place of worship and the parish house to be part of the same "building." The construction of a new parish hall, although within a larger structure housing condominiums and commercial businesses, does not appear to have altered the church's perception. Accordingly, the Authority also finds that, for purposes of the 200 Foot Law, the structures at 1 East 29th Street and 11-13 East 29th Street should be considered as one building.

Given the use of 11-13 East 29th Street for residential and commercial purposes unrelated to church activities, that structure cannot be considered to be exclusively occupied by the parish house. Having made the determination that the structures at 1 East 29th Street and 11-13 East 29th are one building, it follows that this building is not exclusively occupied by a place of worship.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on November 16, 2011.


Jacqueline Held
Secretary to the Authority