

STATE OF NEW YORK: LIQUOR AUTHORITY

Application of 200 Foot Law to property
Located at 135-137 East 55th Street, Manhattan

DECLARATORY
RULING
2012-00687

Various statutes¹ in the Alcoholic Beverage Control Law prohibit the Authority from issuing a retail license for the sale and/or consumption of liquor 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”. The Alcoholic Beverage Control Law sets forth the procedures to be used in measuring the distance between the proposed licensed premises. In addition, guidance is provided in determining whether a building is occupied exclusively by the school or place of worship.

The Members of the Authority are in receipt of a request from Terrence Flynn, Jr. Esq., on behalf of a prospective applicant for a declaratory ruling as to whether, under the facts presented, a location is subject to the 200 Foot Law. Mr. Flynn was not disputing that the proposed licensed establishment was within two hundred feet of a synagogue. Instead, the question presented to the Members was whether the location may be licensed as a result of the “grandfather” provision of the 200 Foot Law.

When Mr. Flynn appeared before the Members of the Authority at the February 29, 2012 Full Board meeting, the request was modified to consider whether the proposed licensed premises was, in fact, within two hundred feet of the synagogue. As explained by Mr. Flynn, the establishment is located within a building. Mr. Flynn concedes that the entrance to the building is within two hundred feet of the synagogue. However, the entrance to the proposed licensed establishment is on a common hallway, approximately thirty-three feet from the building’s entrance. Mr. Flynn represents that the distance from the synagogue’s entrance to the interior entrance to the proposed licensed premises is more than two hundred feet.

As noted above, the 200 Foot Law contains provisions regarding how the distance between the proposed licensed premises and the school or place of worship is measured. The measurement is taken in a straight line from the center of the nearest entrance of the proposed licensed premises to the center of the nearest entrance of the school or place of

¹ See Alcoholic Beverage Control Law §§64(7)(a), 64-a(7)(a)(ii), 64-b(5)(a)(i), 64-c(11)(a)(i), 64-d(8)(a) & 105(3)(a).

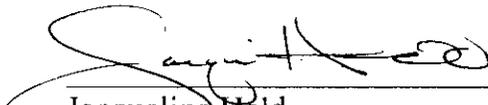
worship.² "Entrance" is defined as the door of the proposed licensed premises, school or place of worship regularly used to provide ingress into the location for: students of the school; the general public attending the place of worship; or patrons of the proposed licensed establishment.³

Of relevance to Mr. Flynn's situation is the requirement that, when the entrance of the proposed licensed premises, the school or place of worship is set back from the public thoroughfare, the walkway or stairs leading to the door is considered to be the entrance. In that case, the measurement is taken from the center of the walkway or stairs at the point where it meets the building line or public thoroughfare. Mr. Flynn argues that the common hallway should be considered a public thoroughfare and the measurement taken from the proposed establishment's interior entrance, rather than the entrance to the building.

On February 4, 1974, the Members of the Authority issued Divisional Order #661. That directive involved a proposed licensed establishment located on the second floor of a building. The door of the building was one hundred and fifty-four feet from a church. The Members of the Authority determined that, for purposes of the 200 Foot Law, the measurement should also include the vertical distance from the first floor to the second floor, as well as the distance from the stairwell along the hallway to the door of the proposed establishment.

Consistent with that Divisional Order, the distance between the front door of this building and the interior door of the proposed licensed premises should be included in the measurement under the 200 Foot Law. Accordingly, based on the representations made by Mr. Flynn, this location is not subject to the 200 Foot Law.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on February 29, 2012.


Jacqueline Held
Secretary to the Authority

² See Alcoholic Beverage Control Law §§64(7)(c), 64-a(7)(a)(iii), 64-b(5)(a)(iii), 64-c(11)(a)(iii), 64-d(8)(c) & 105(3)(a).

³ See Alcoholic Beverage Control Law §§64(7)(d), 64-a(7)(b), 64-b(5)(b), 64-c(11)(b)(iii), 64-d(8)(d) & 105(3)(b).