

STATE OF NEW YORK: LIQUOR AUTHORITY

Application of 500 Foot Law to property
Located at 79 05 Roosevelt Avenue in
Jackson Heights, Queens

DECLARATORY
RULING
2012-00817D

Various statutes¹ in the Alcoholic Beverage Control Law prohibit the Authority from issuing a retail license for the sale and/or consumption of liquor (an “on-premises” license) for any premises which is within five hundred feet of three establishments that are currently operating with on-premises licenses. This licensing restriction is commonly referred to as the “500 Foot Law”. The Alcoholic Beverage Control Law sets forth the procedures to be used in measuring the distance between the proposed licensed premises.²

The Members of the Authority are in receipt of a request from Stacy L. Weiss, Esq., on behalf of a prospective applicant for a declaratory ruling as to whether, under the facts presented, a location is subject to the 500 Foot Law.³ For purposes of the request, Ms. Weiss does not dispute that the location is within five hundred feet of at least three existing establishments with on-premises licenses. Instead, she seeks a ruling as to whether the location may be licensed as a result of the “grandfather” provision of the 500 Foot Law.⁴

Notwithstanding the general prohibition created by the 500 Foot Law, there are certain statutory exceptions that allow a retail liquor license to be issued. The “grandfather” provision referred to by Ms. Weiss allows the Authority to continue to renew a license, or issue a new license, for a location that has been continuously licensed since before November 1, 1993, even if the location is subject to the 500 Foot Law.

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

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).

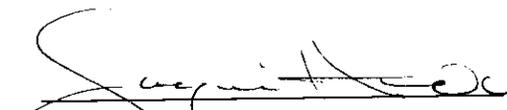
³ Ms. Weiss’ client, Pounds & Ounces LLC, has filed an application for an on-premises liquor license for the location. The serial number for the application, filed on February 8, 2012, is New York OP 1260953.

⁴ The Members of the Authority have already determined that, for purposes of the “200 Foot Law” this location is grandfathered’ and is not subject to that licensing prohibition.

The proposed licensed establishment is located at 79 05 Roosevelt Avenue in the Jackson Heights section of Queens. According to the Authority's records, Chibcha Restaurant, Inc. held a license at this site until October 19, 2011, when the license was surrendered. Those records also indicate that Chibcha Restaurant, Inc. obtained its license prior to 1988. The issue presented to the Members of the Authority is whether the location has been continuously licensed notwithstanding the surrendered of the license in October.

The question that must be resolved by the Members of the Authority is whether the location, notwithstanding the fact that the location has not been licensed since October 2011, has been continuously licensed. Since this location was licensed at least five years before the enactment of the 500 Foot Law and has been without a license for only a few months, the Members of the Authority find that, notwithstanding the surrender of the license, the location will be deemed to be continuously licensed upon the timely filing of an application by Ms. Weiss's client. Assuming that the application is filed timely, the Members of the Authority declare that the location is not subject to the 500 Foot Law.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on March 13, 2012.


Jacqueline Held
Secretary to the Authority