

STATE OF NEW YORK: LIQUOR AUTHORITY

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Application of 200 Foot Law to properties  
located at 65 East Main Street and 118 East  
Main Street in Riverhead

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DECLARATORY  
RULING  
2012-01219

Various statutes<sup>1</sup> 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 John Springer for a declaratory ruling as to whether, under the facts presented, two locations in Riverhead are subject to the 200 Foot Law.

Mr. Springer represents Cody's BBQ and Grill LLC ("Cody's") as well as Pike Realty LLC ("Pike"). Cody's current holds an on-premises liquor license for an establishment at 65 East Main Street. Pike owns a live performance theater at 118 East Main Street. Pike would like to obtain an on-premises liquor license for that business. For purposes of the request, Mr. Springer does not dispute that these location is on the same street as the First Congregational Church of Riverhead. The church's address is 103 First Street.

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 worship.<sup>2</sup> "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.<sup>3</sup>

As appears from an aerial photograph, the front of the church building faces, but is set back from, East Main Street. Behind the church, as well as the other buildings on that side of the street, is a very large parking lot that is accessed from First Street. Cody's and Pike's locations are diagonally across the street from the church. As shown on the photograph, there is an entrance to the church on the East Main street side of the building. Mr. Springer refers to this as a "ceremonial" entrance. There is another entrance on the side of the building abutting the parking lot. Mr. Springer identifies that as the "primary public entrance".

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<sup>1</sup> 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).

<sup>2</sup> 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).

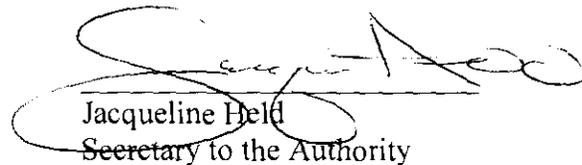
<sup>3</sup> See Alcoholic Beverage Control Law §§64(7)(d), 64-a(7)(b), 64-b(5)(b), 64-c(11)(b)(iii), 64-d(8)(d) & 105(3)(b).

For purposes of the 200 Foot Law, "entrance" is defined as a door "regularly used to give ingress to students of the school, to the general public attending the place of worship, and to patrons or guests of [the establishment to be licensed], except that where a school or house of worship or [the establishment to be licensed] is set back from a public thoroughfare, the walkway or stairs leading to any such door shall be deemed an entrance; and the measurement shall be taken to the center of the walkway or stairs at the point where it meets the building line or public thoroughfare. A door which has no exterior hardware, or which is used solely as an emergency or fire exit, or for maintenance purposes, or which leads directly to a part of a building not regularly used by the general public or patrons, is not deemed an "entrance".<sup>4</sup>

Mr. Springer concedes that the "ceremonial" entrance is within 200 feet of the entrance of Pike's proposed licensed premises. He also explains that Cody's entrance is currently set back from the sidewalk specifically to increase the distance between the church and the licensed premises.<sup>5</sup> Cody's plans to expand its establishment would, as conceded by Mr. Springer, move its entrance within 200 feet of the "ceremonial" entrance. As more fully set forth in Mr. Springer's letter, he argues that since the "ceremonial" entrance to the church is not regularly used by those attending the church, it should not be considered for purposes of the 200 Foot Law.

Based upon the information submitted by Mr. Springer, the Members of the Authority find that the "ceremonial" entrance is not an entrance to the church for purposes of measuring the distance between the church and a licensed establishment or proposed licensed establishment. Accordingly these locations are 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 April 24, 2012.

  
Jacqueline Held  
Secretary to the Authority

<sup>4</sup> See Alcoholic Beverage Control Law §§64(7)(d), 64-a(7)(b), 64-b(5)(b), 64-c(11)(a)(iii), 64-d(8)(b) & 105(3)(b).

<sup>5</sup> In reviewing the licensing file, Mr. Springer's statement appears to contradict the representations made when the original application was filed. At that time, Cody's disclosed the church's front entrance but argued that it was not regularly used by those attending the church.