

STATE OF NEW YORK: LIQUOR AUTHORITY

Application of 500 Foot Law to property
Located at 160 8th Avenue in Manhattan

DECLARATORY
RULING
2012-01220

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).

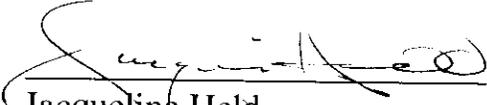
³ Ms. Weiss’ client, Pounds & Ounces LLC, has filed an application for an on-premises liquor license for the location. The serial number for the application, filed on February 8, 2012, is New York OP 1260953.

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 at 160 8th Avenue Street in Manhattan. According to the Authority's records, Dish Restaurant, Inc. held an on-premises liquor license at the location from 1994 until April 2003. The business was then sold to Viceroy Café, Inc., which operated until May 2011 when it surrendered its license. There are no other records available regarding the licensing of the location. Ms. Weiss has submitted an affidavit from the property owner who states that he purchased the building in 1980 and the only tenants of the space have been restaurants with liquor licenses.

There are two questions that must be resolved by the Members of the Authority. First, there must be a determination as to whether the location was a licensed establishment before November 1, 1993. Second, the Members of the Authority must decide whether the location, notwithstanding the fact that the location has not been licensed since May 2011, has been continuously licensed. Based upon the evidence presented, the Members of the Authority find that the location has been licensed since at least 1980. Furthermore, 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 April 24, 2012.


Jacqueline Held
Secretary to the Authority