

STATE OF NEW YORK: LIQUOR AUTHORITY

Application of 200 Foot Law on property located
at 963 Lexington Avenue in Manhattan

DECLARATORY
RULING
2013-01032

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 200 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 from the proposed licensed premises.² In addition, guidance is provided in determining whether a building is occupied exclusively by the school or place of worship.

Notwithstanding the general prohibition created by the 200 Foot Law, there are certain statutory exceptions that allow a retail liquor license to be issued. Two of these exceptions are the “grandfather” provisions. The first provides that a license that was in effect on December 5, 1933, may continue to be renewed even if the location is subject to the 200 Foot Law.

The second grandfather provision states that “no license shall be denied [as a result of the 200 Foot Law] to any premises at which a license under this chapter has been in existence continuously from a date prior to the date when a building on the same street or avenue and within two hundred feet of said premises has been occupied exclusively as a school [or place of worship].”³ Put another way, if there was a license issued for the location before the school or place of worship came into existence, and a license has remained in effect at the location since that time, the 200 Foot Law does not apply.

The Members of the Authority are in receipt of a request from Warren B. Pesetsky, Esq., date March 22, 2013, on behalf of a prospective applicant for a declaratory ruling as to whether a location is subject to the 200 Foot Law. Specifically, Mr. Pesetsky asks whether the location can be licensed based on the second “grandfather” provision. As set forth in Mr. Pesetsky’s request, the relevant facts are as follows:

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).

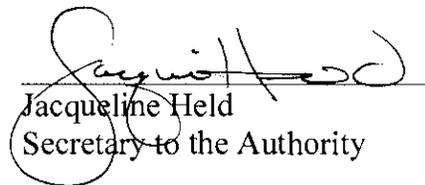
² See Alcoholic Beverage Control Law §§64(7)(c), 64-a(7)(a)(iii), 64-b(5)(a)(iii), 64-c(11)(a)(iii), 64-d(8)(c) & 105(3)(a).

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

- The proposed licensed establishment is located at 963 Lexington Avenue in Manhattan.
- There is currently an on-premises liquor license in place at 963 Lexington Avenue issued to Red Café Corp. [According to the Authority's records, that license was placed into safekeeping on March 27, 2013].
- Red Café Corp. obtained its license sometime after December 1, 1992. That statement is based on the fact that the lease for the location commenced on that date. [According to the Authority's records: the application for the license was filed in or about July 1993; the application was approved on October 28, 1993; and the license certificate was issued on February 4, 1994. There is also a letter from the applicant stating that it did not take possession of the premises until April 1, 1993.]
- The Manhattan High School for Girls is located at 154 70th Street. Mr. Pesetsky does not dispute that the school is on the same street and within 200 feet of the proposed licensed premises. According to Mr. Pesetsky, the school opened in the Fall of 1993.

It appears from the Authority's records that a determination was already made that this location could be licensed notwithstanding the presence of the school. It is noteworthy that the application for the original license was submitted before the school began operations and, arguably, the license could have also been issued before that date. Based upon the facts presented, the Members of the Authority find that 963 Lexington Avenue was licensed before the school began operations and has been continuously licensed thereafter. Accordingly, the 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 April 24, 2013.


Jacqueline Held
Secretary to the Authority