

STATE OF NEW YORK: LIQUOR AUTHORITY

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Application of 200 Foot Law to property  
located at 6 Olmstedville Road, Pottersville

DECLARATORY  
RULING  
2013-03285A

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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 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 between the proposed licensed premises.<sup>2</sup> 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 would otherwise be 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].”<sup>3</sup> 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 Authority is in receipt of a request from Smith & Simon, Esqs. (Daniel T. Smith, Esq., of counsel), dated September 11, 2013, on behalf of a

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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)(c), 64-a(7)(a)(iii), 64-b(5)(a)(iii), 64-c(11)(a)(iii), 64-d(8)(c) & 105(3)(a).

prospective applicant for a declaratory ruling as to whether a location is subject to the 200 Foot Law. It appears from Mr. Smith's letter that he is asking whether the location can be licensed based on the second "grandfather" provision.

As set forth in Mr. Smith's request, the proposed licensed establishment is located at 6 Olmstedville Road in the hamlet of Pottersville in the Town of Chester. He describes the premises as a "restaurant, bar type hotel." He claims that the location has been licensed to sell alcoholic beverages "as long as [he] can remember." He provides a summary of the history of the premises along with a letter from the Supervisor of the Town of Chester, maps, property tax information, photographs, and a letter from the Champlain National Bank, which is the current owner of the property.

Mr. Smith also acknowledges that there is a church (the Lighthouse Baptist Church) on the property immediately adjacent to the proposed licensed premises. Mr. Smith does not appear to dispute that the church is on the same street, and within 200 feet, of the proposed licensed premises. Accordingly to the material submitted by Mr. Smith, the building has been used a church since 1989. Prior to 1989 the building was used as a Masonic Temple/Lodge.

As noted in Mr. Smith's request, the most recent licensee at 6 Olmstedville Road was Rserenity Props LLC ("Rserenity"). Champlain National Bank took the property over in 2012 as the result of a mortgage foreclosure. The Authority has reviewed the licensing records for the location and determined that Rserenity obtained a "Hotel Wine" license for 6 Olmstedville Road in October 2007. When applying for that license, Rserenity disclosed the existence of the church, stating that the church was approximately 150 feet away from the proposed licensed premises.

In 2008 Rserenity applied for a "class change" application to obtain a "Hotel Liquor" license. In that application, Rserenity represented that there was no church within 200 feet of its establishment. It appears that the discrepancy between the information in Rserenity's two applications was not addressed. According to Mr. Smith, the church may have temporarily suspended its operations in order for Rserenity to claim there was no 200 Foot Law issue with the Hotel Liquor application. In any event, Rserenity was issued the Hotel Liquor license in December 2008. It was renewed in 2010 and expired in November 2012.

A review of the Authority's records disclosed that no other licenses have ever been issued for 6 Olmstedville Road in Pottersville. However, a search under

the trade name "Wells Hotel" indicated that a Hotel Liquor license was issued to Piscean Discovery, Inc. ("Piscean") for a premises located at "Route 9 and Minerva Road" in Pottersville. As appears from a map of the area, from the east Olmstedville Road starts at the intersection of Route and heads northeast to the hamlet of Olmstedville. In Olmstedville the road intersects with Morse Memorial Highway, which heads northwest to the hamlet of Minerva.

Piscean held its Hotel Liquor license from 1978 until 2003. There is no record of any license being issued thereafter for a premises at "Route 9 and Minerva Road." It does appear from the Authority's records that, prior to Piscean, Arcangelo Barletta ("Barletta") held a Hotel Liquor license for a premises located at "Route 9 and Minerva Road." Photographs of the establishment in the Piscean file closely resemble the photographs submitted by Mr. Smith. He also submitted a letter in which represents that, over the years, County Route 19 (also now known as Olmstedville Road) has been known or referred to by a variety of names including "Pottersville-Olmstedville Road," "Olmstedville-Pottersville Road" and Pottersville-Minerva Road."

Based upon the above, it is the opinion of the Members of the Authority that the establishment in question at 6 Olmstedville Road is the same premises licensed to: Rserenity from 2008 until 2012; Piscean from 1978 until 2003; and Barletta from an undetermined date until 1978. It is also the opinion of the Members of the Authority that this location has been continuously licensed since a date before the establishment of the church next door. Accordingly, the Members of the Authority find that the 200 Foot Law does not prohibit the issuance of an on-premises liquor license at 6 Olmstedville Road in Pottersville.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on December 3, 2013.



Jacqueline Held  
Secretary to the Authority