

STATE OF NEW YORK: LIQUOR AUTHORITY

Application of 200 Foot Law on Property
Located at 136 Dekalb Avenue, Brooklyn

DECLARATORY
RULING
2016-00093

Preliminary Statement

The Alcoholic Beverage Control Law [ABCL] prohibits the Authority from issuing a retail license for the sale or consumption of liquor (OP) 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 Members of the Authority are in receipt of a request from Anthony Caraballo on behalf of Band A Part LLC doing business as Café Paulette (Kings TW #1271750) for a declaratory ruling as to whether, under the facts presented, the location is subject to the 200 Foot Law. For the purposes of this request, Mr. Caraballo concedes that the Brooklyn Technical High School has an "auxiliary" entrance on South Elliot Place which is 150' away from the licensed establishment. However, he claims that the school and the licensee are not on the same street and that the measurement should be to the school's main entrance which is more than 200' away. If either or both are true, the licensee would be eligible to change its license class from TW to OP.

The predecessor in licensing to the applicant at this address was Mauzac LLC (Kings TW #1236985) whose license application indicated that it was within an estimated 150' of Brooklyn Technical High School. The applicant's statement of area plan denied it was within 200' of a school.

Alcoholic Beverage Control Law [ABCL] §64-a(7)(a)(1) provides that no retail license for on-premises consumption (OP liquor license) shall be granted for any premises which shall be on the same street or avenue and within two hundred feet of a building occupied exclusively as a school, church, synagogue or other place of worship. The applicant does not challenge the exclusive use of the building as a school, merely whether the school and the establishment are on the same street, and whether the distance should be measured to the main entrance or to the auxiliary entrance of the school.

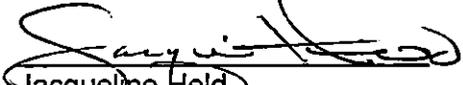
The applicant submits a diagram showing that it occupies the second building in from South Elliot Place on DeKalb Avenue, with the high school located on the corner of DeKalb Avenue and South Elliot Place. A building located on a corner is deemed to be located on both streets for the purposes of the 200' law, Gorman's Restaurant, Inc. v. O'Connell, 275 AD 166 (1st Dept. 1949, affd. 299 NY 733). "Street" is commonly understood to encompass multiple blocks, rather than a single block ending at an intersecting street, Tastè Me Concepts Ltd. v. City of New York and NYSLA, 307 AD2d 237 (1st Dept. 2003). Therefore, the Brooklyn Tech High School and applicant Café Paulette are both located on DeKalb Avenue.

This brings us to the remaining issue of the measurement. ABCL §64-a(7)(a)(iii) provides that the measurement shall be taken in straight lines from the center of the nearest entrance of the premises to be licensed to the center of the nearest entrance of such school.

The applicant states that the high school's door on South Elliot Place is not the main entrance, but rather an auxiliary entrance. However, the statute uses the term "nearest entrance" and the plain meaning of that would include the door in question. The applicant concedes that it is an entrance door and that it is "150 feet away." The diagram submitted by the applicant shows two straight line measurements of 150' and 78' to the nearest school entrance. Even using the applicant's own measurements, that would make the actual straight line door-to-door distance to be 170', still well within 200' from the school.

Accordingly, the Members of the Authority find that the licensed establishment is on the same street as Brooklyn Tech High School and within 200' of the nearest entrance to the school, and as such, the Authority is prohibited by the 200' law from issuing a full liquor license to the applicant at this location. ,

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on January 5, 2016.


Jacqueline Held
Acting Secretary to the Authority