

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF MAY 5, 2015  
REFERRED FROM: COUNSEL'S OFFICE

2015-00986

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

APPLICATION OF 200 FOOT LAW  
ON PROPERTY LOCATED AT:

33 PECK SLIP, MANHATTAN

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on MAY 5, 2015 determined:

VICTOR & BERNSTEIN, P.C.  
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NEW YORK, NEW YORK 10017

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SAUL L. VICTOR  
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ALEXANDER B. VICTOR

RECEIVED

March 20, 2015  
STATE LIQUOR AUTHORITY  
OFFICE OF COUNSEL

Jacqueline Flug, Esq.  
Counsel  
New York State Liquor Authority  
317 Lenox Avenue, 4<sup>th</sup> Floor  
New York, NY 10027

*Re: Request for Declaratory Ruling Regarding the  
Grandfather Exception to the 200 Foot Rule*

Dear Counsel Flug:

This letter shall constitute a request for a Declaratory Ruling pursuant to Rule 98.1 of the Rules of the New York State Liquor Authority to the effect that, under the facts presented herein, the proposed premises for which a hotel liquor license will be sought is deemed continually licensed for purposes of the 200 foot rule.

The premises to be licensed is a seven story building which shall include a full service restaurant and hotel at 33 Peck Slip, New York, New York (the "Premises"). The Premises is the Best Western Seaport Inn Downtown. It is next to the South Street Seaport.

The current owner of the hotel is 33 Peck Slip Acquisition LLC. It currently does not have a liquor license. We represent the purchaser of the hotel which will be an affiliate of Atlantic Pearl Investments. Atlantic Pearl's principals hold real estate investments and hotels and are also the owners and founders of First Credit Bank, a community bank in West Hollywood, California. Once purchased by Atlantic Pearl Investments, the hotel will be operated by the Mr. C hotel brand. The brand owners, Ignazio and Maggio Cipriani, are the fourth generation of a family internationally known for its restaurants and landmarked banquet spaces. The purchaser intends to file an application for a new hotel liquor license.

The Premises was previously licensed. In 2008, a new on-premises liquor license was issued to Vox U.S.A. Inc. d/b/a Vox, Serial No. 1205127 at 33 Peck Slip. That license was renewed from time to time and was, by its terms, to have expired on July 31, 2014.

Jacqueline Flug, Esq.  
New York State Liquor Authority  
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By letter to the Authority in October 2012, the president of Vox U.S.A. Inc. handwrote the following: “surrender for safe keeping due to closed and will be relocating in the near future” [sic]. The Authority’s Deposit For Safekeeping form dated October 9, 2012 shows the license as having been surrendered, although it appears unclear from the Licensee’s letter whether it intended to surrender its license or place it in safekeeping.\* (See Exhibit “A” hereto.) In any event, the Premises ceased selling alcoholic beverages as of October 2012.

I spoke with and was advised by the management company that operated the hotel in 2012 that upon Vox U.S.A. Inc. vacating the Premises in October 2012, the hotel owners intended to find a new tenant or operator who would obtain a new liquor license. Unfortunately, those plans were derailed. Two weeks after Vox left, Hurricane Sandy came. Its effects were devastating, particularly in lower Manhattan and the South Street Seaport. The area was flooded. The foundations of many of the buildings were severely damaged. The Seaport closed. Restaurants including Harbor Lights, The Paris Café, and Finn’s Fish Market Pub, among many others closed. Some never reopened to this day. Other restaurants in the Seaport area such as Suteishi, Bin No. 220, and the Bridge Café took a year or more to reopen. The hotel at 33 Peck Slip was flooded on the ground floor and was forced to close temporarily, and its plan to obtain a new licensed tenant to replace Vox was aborted.

The current owner of the hotel, 33 Peck Slip Acquisition LLC, acquired its ownership interest in early 2014. Shortly thereafter that owner engaged this firm to commence the process of filing for a hotel liquor license. During our preparation and diligence, it came to our attention however that a lot with frontage along Peck Slip one block west of the hotel which was used as a Post Office through mid-2012 had been purchased by the New York City School Construction Authority. The future Peck Slip School, to be known as P.S. 343, for students in kindergarten through fifth grade, is being constructed on that lot. The demolition and construction began in late 2013 and the school is supposed to be open for the 2015-2016 school year. For purposes of this ruling, we should assume that the entrance to the school will be within 200 feet of the hotel at 33 Peck Slip.\*\*

Under various sections of the Alcoholic Beverage Control Law, no license is to be denied as a result of the 200 foot law “to any premises at which a license under this chapter has been in

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\* If the licensee planned to relocate, as its letter to the Authority says, it likely did not intend to surrender its license and may have done so inadvertently, confusing surrender with safekeeping.

\*\* It appears as though the main entrance to the school will be on Peck Slip, and based upon measurements may be outside 200 feet from entrances to the hotel. However there is another door to the school on Water Street that does measure within 200 feet. We are unsure what that Water Street door will be used for, making this declaratory ruling request necessary.

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.”\* This is known as one of the “grandfather” provisions of that law.

The issue here is whether the Premises at 33 Peck Slip may be deemed continually licensed for “grandfather” purposes under the 200 foot rule by virtue of the Vox U.S.A. Inc. license that had been in effect at the Premises before construction of the school and which license was placed in safekeeping or surrendered in October 2012.

There are a number of Declaratory Rulings issued by the Authority that address a gap in time between a prior license and a license to be applied for in the context of the “grandfather” exception to the 200 foot rule. For example, in Declaratory Ruling 2012-00817B, the premises had been licensed until May 2011 when the license was surrendered to the Authority. On March 13, 2012, ten months later, the Authority deemed the premises to be continually licensed for 200 foot rule purposes.

In Declaratory Ruling 2013-03285A a license had been in effect until 2012. On December 3, 2013 the Authority deemed the premises as having been continually licensed. The Authority’s ruling notes that the premises had been licensed from an undetermined date until 1978, then licensed to a different licensee from 1978 until 2003, and then licensed again from 2008 until 2012. The church that created the issue had been in use since 1989. It would appear from the Authority’s recitation of the facts that there was a lapse between 2003 and 2008, and from November 2012 through the date of the ruling on December 3, 2013. The premises was deemed “grandfathered” even with those gaps.

In Declaratory Ruling 2012-02211D, the premises was found to be within the “grandfather” exception by the Authority in February 2012 even though the prior license had been surrendered in March 2011. The Authority observed the following in that ruling:

Over the last few years there has been some inconsistency in the Authority’s interpretation of the word “continuously”. Prior to 2006, the Members of the Authority, on a case by case basis, allowed applicant’s to be “grandfathered” even if there was a break of months, and sometimes years, since the last license was in effect. In or about 2006, the Members of the Authority adopted the requirement that there be no break in the licensing of the location.

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\* See ABC Law §§ 64(7)(c), 64-a(7)(a)(iii), 64-b(5)(a)(iii), 64-c(11)(a)(iii), 64-d(8)(c) and 105(3)(a).

Jacqueline Flug, Esq.  
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ATTORNEYS AT LAW

More recently, however, the Authority has reverted to the more flexible interpretation of the word. (Emphasis added.)

It is requested here that the Authority issue a ruling that upon making a timely application for a hotel license, the Premises at 33 Peck Slip be deemed to be continually licensed under the “grandfather” exception of the 200 foot rule. That conclusion is supported by and consistent with the Declaratory Rulings referred to above which have permitted a gap from a number of months to “sometimes years, since the last license was in effect” to nevertheless allow the Premises to be considered “grandfathered.”

It is noteworthy, and particularly unique here, that the over two year gap in the instant case is the result at least in part of the temporary closing of the hotel in October 2012 due to Hurricane Sandy. As described in the annexed article from the *Daily News* on October 26, 2013, been one year after the hurricane parts of downtown including the Seaport were still closed and struggling. “Padlocks, papered windows and boarded-up doors are still everywhere in Manhattan’s South Street Seaport, which became a ghost town” the article said, one year later. Slowly restaurants were beginning to reopen and there were “little signs of rebirth.” (See Exhibit “B” hereto.) But for the unusual circumstance of the severe storm, it is likely the hotel would have found a new tenant, which would have been licensed, even in 2013.

It is therefore respectfully requested that under the particular facts as presented here as they pertain to this specific location, that the Premises be deemed “grandfathered” under the 200 foot law, and that the Premises be deemed continually licensed with the understanding that a timely application will be made for the hotel license.

Respectfully,



Donald M. Bernstein

DMB:to  
Encls.

**STATE OF NEW YORK - LIQUOR AUTHORITY**  
**ATTN Refund Unit**  
 80 South Swan Street, Suite 400  
 Albany, NY 12210-8002

If the licensee desires to surrender a license or permit voluntarily for cancellation and refund, if any, before the expiration date as provided in Section 127 of the Alcoholic Beverage Control Law, it shall sign the following petition and send to the State Liquor Authority address listed above together with the license or permit certificate. Any false statements may subject the licensee or permittee to disciplinary proceedings and void any request for refund.  
**NOTE: No refund is payable unless this form is completed and the Federal Employer Identification Number (FEIN) of the licensed entity has been provided.**

**PETITION FOR SURRENDER OF LICENSE**

**TO THE STATE LIQUOR AUTHORITY**

The undersigned  individual  partnership  corporation (CHECK ONE) petitions the Liquor Authority, under provisions of Section 127 of the Alcoholic Beverage Control Law, to accept voluntary surrender of license (permit) certificate number 1205127 which was issued to VOX USA INC and in support of this petition makes the following statements and answers:

1. Has the licensee or (if a partnership) any of the partners or (if a corporation) any of the officers, directors or stockholders been arrested or indicted or served with a summons for any crime or offense (except traffic infractions or violations of the Administrative Code) in the past 12 months? YES  NO

2. Has any person other than reported in Question 1 above been arrested or indicted or served with a summons for any crime or offense committed on the licensed premises or which involved the licensed business (except violations of the Administrative Code) in the past 12 months? YES  NO

If answer to either or both above is "yes," attach an affidavit setting forth in each case a concise and brief statement of the facts of the offense and disposition of the case.

3. The undersigned petitioner further states that the said licensee will, upon the surrender of said license, cease to traffic in alcoholic beverages during the term for which said license was issued and thereafter until a new license shall be issued to said licensee.

WHEREFORE, the undersigned petitioner asks that said license be cancelled and a refund made as provided in Section 127 of the Alcoholic Beverage Control Law.

**Individual and/or Partnerships complete both Sections (A)**

**Corporations complete both Sections (B)**

(A) Individual licensee and each member of a partnership sign here and sign appropriate certification below.

(B) If a Corporation, sign here and sign appropriate certification below.

Dated \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Dated 10/9/12  
 Name of Corporation VOX USA INC  
 By [Signature]

**(A) CERTIFICATION TO BE SIGNED AND DATED BY INDIVIDUAL AND EACH MEMBER OF PARTNERSHIP**

The undersigned each for himself/herself certifies that he/she is the holder of the aforesaid license, that he/she made the foregoing petition that he/she knows the contents thereof and the statements contained therein and the same are true of his/her own knowledge.

Dated \_\_\_\_\_

(Signature) of person(s) signing petition

(Present residence address)

\_\_\_\_\_ of \_\_\_\_\_  
 \_\_\_\_\_ of \_\_\_\_\_  
 \_\_\_\_\_ of \_\_\_\_\_

**(B) CERTIFICATION TO BE SIGNED AND DATED BY A CORPORATION**

HAMLET Szykovic (Name) certifies that he/she is President (Title)

of the \_\_\_\_\_ Corporation which is holder of this license and which made and executed this petition that he/she signed his/her name thereto by order of the Board of Directors of said Corporation that he/she knows the contents thereof and the statements contained therein and the same are true of his/her own knowledge.

Date 10/9/12

of 589 peacock st, Pottsville PA 17901 (Present residence address)

Date of Surrender 10/9/12

FEIN No 113390415

License Serial No 1205127

Please specify the address where the refund, if any, is to be mailed

589 peacock st Pottsville PA 17901

STATE LIQUOR AUTHORITY

DEPOSIT FOR SAFEKEEPING

DATE: 10/9/12

SUBJECT: SERIAL # 1205127  
LICENSEE NAME VOX USA Inc  
ADDRESS 33 Peck Slip  
New York NY 10038

1 The above license has been placed on deposit for safekeeping in

the \_\_\_\_\_ Zone Office

Surrendered by [Signature]  
(Print name)

[Signature]  
(Signature)

(a) Date 10/9/12

(b) Reason for temporary discontinuance of business

This license is placed in safekeeping pending a transfer of this license and in order for a temporary retail license to be issued

Other Please explain Relocation

(c)  Premises will reopen; Date \_\_\_\_\_

2 Return of License

(a) Certificate returned to licensee, \_\_\_\_\_

Date \_\_\_\_\_

(b)

\_\_\_\_\_  
(Print Name of Person Picking Up License)

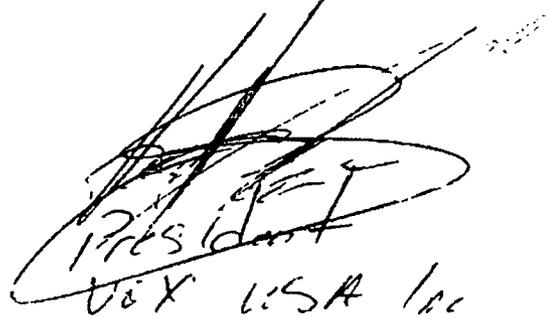
\_\_\_\_\_  
(Signature of Person Picking Up License)

11/10/12

VOX USA Inc  
33 West 41st St NY  
NY 100 38

Reference: Hotel liquor license Serial# 1205127

Sender for safe keeping due to closed and  
will be relocating in the near future

  
President  
VOX USA Inc

2021 . . . 1. 9:00

1140 am

HOTEL LIQUOR LICENSE  
SERIAL #: 1205127  
COUNTY: NEW YORK



EFFECTIVE DATE 06/28/2012  
EXPIRATION DATE 07/31/2014  
CERTIFICATE #: 813755

# NEW YORK STATE LIQUOR AUTHORITY

THE LICENSEE DESIGNATED BELOW IS HEREBY GRANTED PERMISSION UNDER THE ALCOHOLIC BEVERAGE CONTROL LAW TO TRAFFIC IN ALCOHOLIC BEVERAGE PURSUANT TO THE TYPE OF LICENSE INDICATED IN THE UPPER LEFT HAND CORNER OF THIS CERTIFICATE AND ACCORDING TO THE STATUTES AND REGULATIONS PERTAINING THERETO

THIS LICENSE SHALL NOT BE TRANSFERABLE TO ANY OTHER PERSON OR TO ANY OTHER PREMISES OR TO ANY OTHER PART OF THE BUILDING CONTAINING SUCH LICENSED PREMISES IT SHALL NOT BE DEEMED A PROPERTY OR VESTED RIGHT AND MAY BE REVOKED AT ANY TIME PURSUANT TO LAW

### METHOD OF OPERATION

HOTEL RESTAURANT LIQUOR WINE BEER

Recorded Music, No Dancing, Food Served

VOX USA INC  
VOX NY  
33 PECK SLIP  
NEW YORK NY 10038

3,778<sup>00</sup>

FILING FEE \$90.00  
LICENSE FEE \$4,352.00

*Dennis Rosen*  
Dennis Rosen  
Chairman

Certificate No. B813755



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# Hurricane Sandy, one year later: Floods recede from Lower Manhattan, people trickle back in

Homes restored but many businesses needed months for building rehab and repair

BY ERICA PEARSON

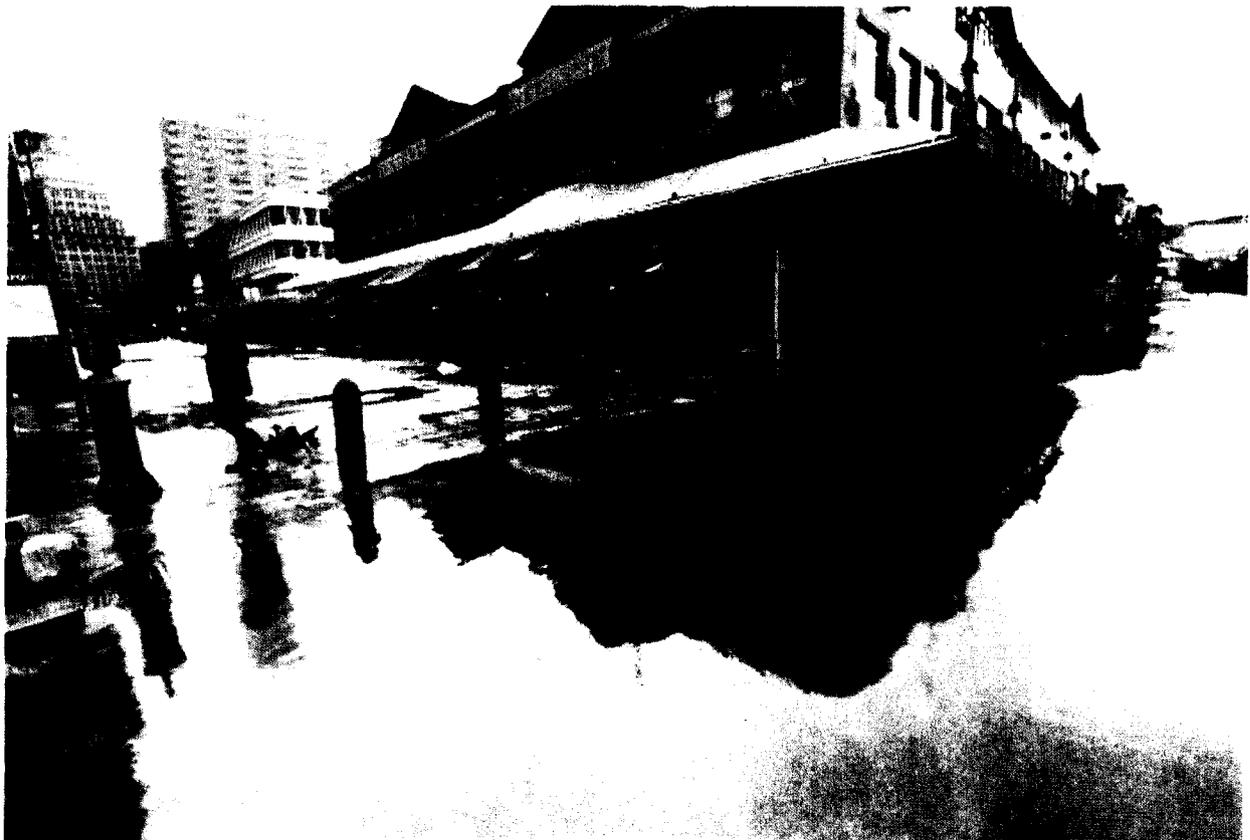
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TIMOTHY A. CLARY/AFP/GETTY IMAG

**Standing water left by Hurricane Sandy at South Street Seaport on Oct. 30, 2012, one day after the storm.**

RELATED GALLERY:



Hurricane Sandy crushes Big Apple

Padlocks, papered windows and boarded-up doors are still everywhere in Manhattan's South Street Seaport, which became a ghost town after Hurricane Sandy — but little signs of rebirth are now scattered along the cobblestone streets.

Blue and white balloons tied to a railing mark a “soft re-opening” at wine bar Bii No. 220 on Front. St. A few major chain stores — including Abercrombie & Fitch and, rather ironically, clothing shop Superdry — reopened during the summer along the seaport's once tourist-clogged, wide pedestrian walkway.

In front of The Salty Paw, a groomer and shop on Peck Slip, “We are back open post Sandy” is scrawled in blue chalk on the sidewalk.

“It feels good to be home again,” said Salty Paw owner Amanda Zink. “It's beer like running a marathon. It's one obstacle after another.”

Things are finally looking up in lower Manhattan . One by one, restaurants and shops are slowly reopening.

Last October, the storm overwhelmed Manhattan's tip and drowned two people downtown — Staten Islander Frank Suber, 55, who was swept by floodwaters into a commercial building at 90 Broad St., and Empire Parking Garage worker Anthony Narh, 58, a Ghanaian immigrant from the Bronx .

Sandy also stranded public housing dwellers without water and heat and displaced residents from 5,950 apartments — but 12 months later, 100% of the living spaces are back open, according to neighborhood association Downtow Alliance.

Sandy left historic Fraunces Tavern with more than \$200,000 in damages, but the 250-year-old institution is still pulling pints — as is the beloved Paris Cafe, which just reopened on Oct. 17.





THE SALTY PAW

**Amanda Zink's South Street Seaport store, The Salty Paw, was destroyed when Sandy hit.**

Eleven feet of water flooded the cafe — which first opened in 1873 — and destroying windows, pipes and flooring.

“One year later, but we got there,” said the South St. cafe's owner Peter O’Connell, 65. “It’s wonderful. We had a long night to welcome it back.”

Residents returned to their Historic Front Street apartments this summer and most office workers who spent months working from home or in satellite space: uptown are back .

Almost all of the companies — except for the New York Daily News and JPMorgan Chase, which are both set to return to 4 New York Plaza later this fa — forced to temporarily relocate after floodwaters caused mechanical failure in buildings along Water St. and adjacent blocks are now back in their skyscraper according to the Downtown Alliance.

Office tower 110 Wall St. was so badly damaged that it was closed, and one corporation — Citibank, at 111 Wall St. — decided not to return.

Just nine lower Manhattan buildings were structurally damaged by the storm, according to the city Buildings Department, but the floodwaters were corrosive. In August, the Metropolitan Transportation Authority — which initially patched and reopened R train service after Sandy — closed the tunnel between lower Manhattan and Brooklyn. Salt water flooding the tunnel 20 feet deep caused sc

much damage to equipment that initial fixes didn't last — and the MTA decided to shut it down for a major overhaul, slated to take more than a year.

Decreased foot traffic and construction delays created a very difficult year for area mom-and-pop shops. This year, the Downtown Alliance allocated \$1,588,913 in grants to struggling lower Manhattan businesses — setting aside funds for 10 stores that are still shuttered.



ENID ALVAREZ/NEW YORK DAILY NEWS

**Amanda Zink, owner of The Salty Paw at 38 Peck Slip, is happy to finally have her business "home again."**

Zink reopened The Salty Paw on Sept. 28 — 11 months after Sandy sent salt water surging from the East River to swamp her store. "It feels like it was so long ago," said Zink, who lives down the block.

Her family was displaced from their apartment for more than three months. She wanted to start rebuilding her business as soon as possible — but, like many area business owners, waited for months as developer The Durst Organization which owns most of the Front St. buildings — worked to repair destroyed geothermal heating and cooling systems and move them to the roof.

Desperate to keep her business going and keep her three groomers employed, Zink set up in a sink at a nearby veterinarian's office. During the summer, she

operated — with the blessing of mall developers The Howard Hughes Corporation — out of an empty bar inside the Pier 17 shopping mall, which is closed for a long-planned renovation.

At first, the only disaster relief Zink qualified for was a federal loan carrying an interest rate of 4%, which she found too expensive. She applied anyway, at the urging of local officials, who, she said, told her she needed to apply for federal aid in order to be considered for any future funding. She turned it down.

In May, city officials announced they would use \$72 million in federal aid to fund business loans and grants, offering small businesses loans of up to \$150,000 with just 1% interest and a matching grant of up to \$60,000.

However, Zink's financial adviser told her that any loan — and matching grant - she gets from the city will subtract what the feds awarded her, even though she didn't accept it.

A spokesperson for the city's Department of Small Business Services said the office of Management and Budget is reviewing this policy. The city has given out \$20 million citywide in Sandy-related loans and grants to small businesses so far.



ENID ALVAREZ/NEW YORK DAILY NEWS

**Marco Pasanella, owner of Pasanella & Son Vintners, inside of his wine shop at 115 South St.**

Around the corner on South St., Pasanella & Son Vintners owner Marco Pasanella, who managed to reopen last November, said he's just hoping that foot traffic — deadly quiet for months — keeps picking up.

"What's really helpful is getting people back," said Pasanella, 51, who lives above his wine store. "What a long year," he said.

Many downtown residents and business owners say they aren't going to let the hurricane's anniversary pass by unmarked.

At Meade's pub on Peck Slip, owner Lee Holin, 37, is going to re-enact the night four days after Sandy hit and knocked out the electrical grid, when he opened his mucked-out bar, serving beer by candlelight and grilling free food — trucked in from Queens — on the street.

"I think we were a little beacon for the neighborhood," Holin said. "People told us that."

This Oct. 29, he's turning off the lights, lighting some candles, shutting down the cash register and setting up grills outside again.

There will just be one difference — this year he plans to keep the refrigerators running.

epearson@nydailynews.com

TAGS: SANDY

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