

STATE OF NEW YORK: LIQUOR AUTHORITY

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Application of 200 Foot Law to property  
Located at 160 8<sup>th</sup> Avenue in Manhattan

DECLARATORY  
RULING  
2012-00817B

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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 two hundred 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. In addition, guidance is provided in determining whether a building is occupied exclusively by the school or place of worship.

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 200 Foot Law.<sup>2</sup> For purposes of the request, Ms. Weiss does not dispute that the location is on the same street and within two hundred feet of a building occupied as a school. Instead, she seeks a ruling as to whether the location may be licensed as a result of the “grandfather” provision of the 200 Foot Law.

Notwithstanding the general prohibition created by the 200 Foot Law, there are certain statutory exceptions that allow a retail liquor license to be issued. Of relevance to this ruling is what is commonly referred to as the “grandfather” exception. In fact the “grandfather” exception is two separate provisions that allow a location to be licensed, or continue to be licensed, based on when the location was first licensed.

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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> 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.

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 exception 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 facts upon which this ruling is based are as follows.

- The proposed licensed establishment is at 160 8<sup>th</sup> Avenue 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. Viceroy Café, Inc. did not disclose the existence of the school when it filed its application.
- The Liberty High School Academy is located at 250 West 18<sup>th</sup> Street. As appears from an aerial photograph, the school is on the corner of 8<sup>th</sup> Avenue and West 18<sup>th</sup> Street. Ms. Weiss does not provide specific measurements between the two locations. Using the aerial photograph as a reference, the proposed licensed establishment is a few buildings east of the intersection of 8<sup>th</sup> Avenue and West 18<sup>th</sup> Street.
- As represented by Ms. Weiss, the school is located in a former warehouse. She states that it was a “technical school” dating back to

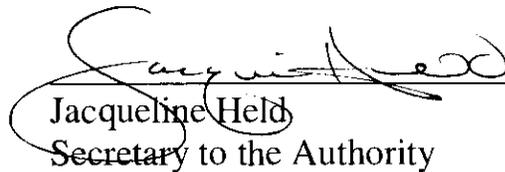
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<sup>3</sup> See Alcoholic Beverage Control Law §§64(7)(c), 64-a(7)(a)(iii), 64-b(5)(a)(iii), 64-c(11)(a)(iii), 64-d(8)(c) & 105(3)(a).

the 1950s and underwent renovations starting in 1997 to convert it to a high school. The school obtained its final Certificate of Occupancy in 2006. The Authority obtained additional information about the location from an internet guide to schools in the City of New York. According to that source, the school was opened in 1986 as a one-year program for immigrant students (ages 14-20) before the students transitioned into "regular" high schools. In 2003, the school became a full four-year high school program for immigrant students. The school is operated by the City's Department of Education.

There is no evidence that the license issued to Dish Restaurant, Inc. or Viceroy Café, Inc. was issued in error. Therefore, the Members of the Authority will presume that this location was properly licensed in the past. The questions to be resolved by the Authority are: (1) was the location licensed before the other site became a school; and (2) whether, by virtue of the surrender of the most recent license in May 2011, the location 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 and that the other site was not used as a school until 1986. 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 200 Foot Law.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on March 13, 2012.

  
Jacqueline Held  
Secretary to the Authority