

STATE OF NEW YORK: LIQUOR AUTHORITY

Application of 200 Foot Law to property
Located at 919 Third Avenue in Manhattan

DECLARATORY
RULING
2012-02211D

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 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 Robert V. Ferrari, 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. The facts upon which this ruling is based are as follows.

- The proposed licensed establishment is located at 919 Third Avenue, at the corner of Third Avenue and East 56th Street.²
- There has been an on-premises liquor license in place at 919 Third Avenue since 1995.³
- The High School of Art and Design is located at the corner of East 56th Street and Second Avenue.⁴
- The distance (as measured pursuant to the 200 Foot Law) between 919 Third Avenue and the High School of Art and Design is 233 feet.
- The building in which the High School of Art and Design is located has been expanded to create more room for the High School and to house building a grade school, Public School #59.

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 For purposes of the 200 Foot Law, the location is deemed to be on both Third Avenue and East 56th Street. See *Gorman's Restaurant Inc. v. O'Connell*, 299 NY 733 (1949).

³ The Authority's licensing records indicate that Michael's Pub, Inc. held an on-premises liquor license at this address from at least 1995 until 1998. SF 919 Third Avenue LLC held a similar license from 2002 until 2003. Outback Steakhouse of Florida is currently licensed at the site. It has been licensed since 2003. According to the Authority's files there was no license in place from 1998 until 2002.

⁴ Mr. Ferrari does not dispute that the building is exclusively occupied as a school.

- The addition is scheduled to open in September 2012.
- Given the location of the entrances to the addition, the school (as measured pursuant to the 200 Foot Law) will be 176 feet.
- The lease for the current licensee at 919 Third Avenue expires at the end of October, 2012.
- The current licensee may surrender its license when the lease expires.

Notwithstanding the general prohibition created by the 200 Foot Law, there are certain statutory exceptions that allow a retail liquor license to be issued. One of these exceptions is the "grandfather" provision, which is actually two separate exceptions. 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, and the one relevant to Mr. Ferrari's situation, 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]."⁵ 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.

This second part of the "grandfather" exception to the 200 Foot Law requires that two findings be made. First, did the licensed premises precede the school or place of worship? Second, assuming the existing license is surrendered before Mr. Ferrari's client obtains a license, is 919 Third Avenue considered "continuously" licensed? An affirmative answer to both questions is needed in order for Mr. Ferrari's client to obtain a license at this location.

Based on the facts presented by Mr. Ferrari, 919 Third Avenue was clearly licensed prior to the expansion of the school. Unlike a recent matter that came before the Members of the Authority, there is no concern here that, with knowledge of the school construction, an applicant seeks to lay claim to its site before the school opens.⁶ Therefore, the Members of the Authority find in the affirmative regarding the first question.

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. More recently, however, the Authority has reverted to the more flexible interpretation of the word.

Since that there will only be a brief lapse in the licensing of this location, the Members of the Authority find that the premises remains continuously licensed despite the anticipated

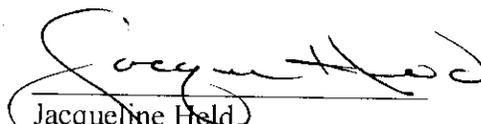
⁵ See Alcoholic Beverage Control Law §§64(7)(c), 64-a(7)(a)(iii), 64-b(5)(a)(iii), 64-c(11)(a)(iii), 64-d(8)(c) & 105(3)(a).

⁶ See, for example, Full Board items 2011-02878 & 2011-03141A.

surrender of the existing license. This finding is made upon the presumption that Mr. Ferrari's client will make timely application to the Authority for its license.

Accordingly, 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 August 29, 2012.



Jacqueline Held
Secretary to the Authority