STATE OF NEW YORK: LIQUOR AUTHORITY

Application of 200 Foot Law for property located
At 1479 York Avenue in Manhattan

DECLARATORY
RULING
2015-01655B

Section 98.1 of the Rules of the State Liquor Authority, (9 NYCRR subtitle B) provides that any person may request the Authority to issue a declaratory ruling on the application of the Alcoholic Beverage Control Law ("ABCL"), or the Rules of the Authority, on any person, property or state of facts. The Authority is in receipt of an emailed request for a declaratory ruling from Terrence Flynn, Esq. regarding the application of certain provisions of the ABCL on a premises located at 1479 York Avenue in Manhattan. Specifically, Mr. Flynn seeks a ruling as to whether the "200 Foot Law" would prevent the issuance of an on-premises liquor license for the premises. The 200 Foot Law prohibits the Authority from issuing an on-premises liquor license 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.

As set forth in Mr. Flynn's June 4, 2015 request for the declaratory ruling, PS 158 Bayard Taylor School ("PS 158) is located at 1458 York Avenue. For purposes of this request, Mr. Flynn does not dispute that PS 158 is a "school" within the meaning of the 200 Foot Law, nor does he dispute that PS 158 is within 200 feet of the subject location, as that distance is measured for purposes of the 200 Foot Law. Mr. Flynn further states that the subject location was a licensed establishment from 1966 until March 2015. Mr. Flynn seeks a ruling from the Members of the Authority as to whether the subject location is exempt from the 200 Foot Law because it is "grandfathered."

More specifically, Mr. Flynn seeks a ruling that will allow the subject location to be licensed if an application is filed within one year of the "vacancy" date. Mr. Flynn is referring to two provisions of the ABCL that exempt locations from the 200 Foot Law if certain conditions are met. The first provision exempts the renewal of a license for a location that was operated as a restaurant, hotel or catering establishment prior to December 5, 1933. The second provision exempts original license applications for locations that have been licensed continuously since a date prior to the time the second location became a school or place of worship. Mr. Flynn does not indicate which provision he claims is applicable to this matter.

The Authority's records provide the following information about the use and licensing of 1479 York Avenue:

- The subject location has been used a restaurant since 1918.
- From in or about 1933 until 1966 the location was licensed to Louis Dresner, Inc.
- In 1966 the business was sold and the license transferred to GWN Restaurant, Inc.
- Pry Restaurant Corp ("Pry") purchased the business and obtained a license in January 2009.
- In February 2015 Pry surrendered its license. At the time of the surrender, disciplinary charges were pending against the licensee.

- At a Full Board meeting in April 2015, the Members of the Authority cancelled Pry's license retroactive to the date of the surrender.
- PS 158 has been in existence at its current location since the mid 1890's.

Based upon these facts, we find that the subject location has been continuously operated and licensed as a restaurant since 1933, notwithstanding the brief period of time since the surrender of the last license in February 2015. Accordingly, the issuance of a new on-premises liquor license at this location is not prohibited by the 200 Foot Law.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on July 15, 2015.

Jacqueline Held
Secretary to the Authority