

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF JUNE 21, 2016
REFERRED FROM: COUNSEL'S OFFICE

2016-01398

REASON FOR REFERRAL
REQUEST FOR DIRECTION

200' LAW FOR PROPERTY
LOCATED AT:

489 COLUMBUS AVENUE, MANHATTAN

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on JUNE 21, 2016 determined:

**LAW OFFICE OF GENE T. ANTON
ATTORNEY AT LAW**

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May 19, 2016

Ms. Jacqueline Flug
Counsel to the Authority
New York State Liquor Authority
80 S. Swan St.
Albany, NY 12210-8002

VIA PRIORITY MAIL

Re: Declaratory Ruling under 200 Foot Rule
Premises: 489 Columbus Ave, New York, NY 10024
Shree Laxmi Indian Cuisine Inc. dba Savoury Indian Cuisine

Dear Ms. Flug:

This is a request for a declaratory ruling on whether §64-7(a) of the Alcohol and Beverage Control Law or what is commonly referred to as the "200 Foot Rule" applies to the premises located at 489 Columbus Ave, New York, NY 10024 (hereinafter referred to as "489 Columbus Ave").

Preliminary History

On or about March 4, 2014, the operators of Shree Laxmi Indian Cuisine Inc. dba Savoury Indian Cuisine (hereinafter referred to as "Shree Laxmi") applied for an "OP" license in which they would be able to sell liquor for on premises consumption at their restaurant located at 489 Columbus Ave, New York, NY 10024. Upon an investigation by investigator Barry Sender, he determined that a school was located less than 200 feet from the entrance of the restaurant. Annexed hereto as Exhibit A is a copy of Mr. Sender's report. It was recommended at the time that the operators of the restaurant amend their application for a Restaurant Beer/Wine license so that they could begin operations immediately and they were issued a Restaurant Beer/Wine license under number 1276846.

Since the issuance of license to the above referenced restaurant, however, two (2) new On Premises licenses were issued that both appear to be closer or as close to entrances of the school as investigated by Mr. Sender. License # 1292580 was issued to LVSS Inc. dba Bellini on April 8, 2016, which is located at 483 Columbus Ave, New York, NY and License # 1280269 was issued to Blossom West Inc. dba Blossom on Columbus, which is located at 507 Columbus Ave, New York, NY. Furthermore, there are several On

Premises Liquor licenses that were issued prior to the application of Shree Laxmi, all of which appear to contradict the report of Mr. Sender. Copies of the license abstracts are annexed hereto as Exhibit B.

Declaratory Ruling Request

According to §67-7(a), "No retail license for on-premises consumption shall be granted for any premises which shall be (a) 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." (Emphasis added). It is undisputed that the entrance of 489 Columbus Ave is physically situated on Columbus Ave. It is further undisputed that the entrance to the school is located on W. 84th St. and means of egress/ingress are on both W. 84th and W. 83rd Streets respectively. There are no entrances, exits or doors on Columbus Ave. According to the NYC Department of Education, the schools - P.S. 9 and M.S. 243 (aka C.S. 243) - are not located on Columbus Ave. Indeed, they list 100 West 84 St., New York, NY as the address for both schools. Annexed hereto as Exhibit C is a copy of the NYC Department of Education listing. Consequently, the premises falls outside the definition of the statute and thus the "200 foot rule" does not apply in this instance.

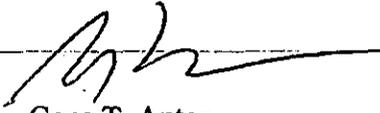
Furthermore, it appears that the same standard of review has not been applied to the aforementioned establishments as it did to 489 Columbus Ave – namely – the application of Shree Laxmi. Either there was gross error in the approval of the OP license for the other establishments or gross error in the "disallowance" of the OP license for 489 Columbus Ave. To the latter, it appears that the report by Mr. Sender is filled with inconsistencies. A field map was annexed to Mr. Sender's report showing that the measurements from 489 Columbus Ave to the doors located on W. 84th Street. The field map indicates that it is 88' feet plus 120 feet, totaling 208 feet to the closest door and 88 feet plus 202 feet totaling 290 feet to the main entrance. The exit/entrance on W. 83rd Street was measured at 114 feet plus 121 feet, totaling 235 feet. (See, page 2 of Exhibit A). In Mr. Sender's report, however, he notes that the entrances/exits on W. 84th street were 149 feet and 220 feet respectively. He notes the door on W. 83rd street to be 166 feet. Notwithstanding that the entrance/exits are not even located on Columbus Ave, his report is wildly inconsistent with his measurements. Consequently, his report should have never recommended that the establishment falls within the 200 foot rule.

Legal Application of the 200 Foot Rule

It is well settled that the 200 Foot Rule applies to establishments and schools or churches that are situated within 200 feet of each other and are on the **same** street (emphasis added). Accordingly, the premises located at 489 Columbus is not located within 200 feet of the schools located at 100 W. 84th St. since neither of the alleged entrances are on the same street. The Court of Appeals has held that the Authority may not deny a license on such basis. See In the Matter of Circus Disco Ltd. v. New York State Liquor Authority, 51 NY2s 24 (1980). See also In the Matter of Waverly Restaurant Corp. v. State Liquor Authority, 24 A.D.2d 985 (2nd Dept., 1965) where the Authority misapplied a "rear entrance" within 200 feet of an areaway which leads to a rear entrance of a school. Copies of both cases are annexed hereto as Exhibit D.

It is respectfully submitted that the Authority declare that the premises located at 489 Columbus is not within 200 feet of the aforementioned schools. It is undisputed that the entrances/exits of the both schools are not on the same street. Therefore, the 200 foot rule shall not apply to the premises located at 489 Columbus Ave, New York, NY.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gene T. Anton", is written over a horizontal line that spans the width of the page.

Gene T. Anton

Encl.

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF JUNE 21, 2016
REFERRED FROM: COUNSEL'S OFFICE

2016-01399

REASON FOR REFERRAL
REQUEST FOR DIRECTION

200' LAW FOR PROPERTY
LOCATED AT:

67-32 METROPOLITAN AVENUE, MIDDLE VILLAGE

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on JUNE 21, 2016 determined:

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Of Counsel

NADIA CANTAVE
THOMAS E. BURKE
Legal Assistants

May 17, 2016

New York State Liquor Authority
80 S. Swan Street
Albany, NY 12210
Att: Counsel's Office

REQUEST FOR DECLARATORY RULING

Application of 200 Foot Law on Property Located at
67-32 Metropolitan Ave, Middle Village, NY 11379

Re: Quick Stop Metro LLC
Ser#: 1293492

Dear Ms. Flug:

I am seeking a ruling from the SLA as to whether the "200 Foot Law" would prevent the issuance of an on-premises liquor license for the premises located at 67-32 Metropolitan Ave, Middle Village, NY. The premises is a single story building that has since 1939, and probably prior to that time, been a licensed tavern. There is a school located at 68-02 Metropolitan Ave, Middle Village, NY 11379, approximately 100 feet away which opened in 1962. The above applicant is applying for an On Premises Liquor License for this location that has been licensed "continuously" as a tavern for almost 80 years from 1939 to 2015 and almost 23 years prior to the opening of Christ the King High School. I am requesting that the license be granted under the grandfather clause.

The Grandfather provision 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]. There is no question that this location has been licensed as a tavern since at least 1939. *See*, copies of liquor licenses (1939-2015) attached as **Exhibit "A"**.

There is, however, a question as to whether the premises was licensed between 1999 and 2011. That question is answered in Exhibit "B". I have attached documents from FOIL showing that the premises was granted an on-premises liquor license in 1999 (1040529) with Middle Village Tavern Inc., as the Applicant, and shows that license remained active until 2013. See, FOIL documents attached as Exhibit "B". Also see, Exhibit "C" attached which are all of the renewal applications and/or corporate changes from 2001 until 2013 for Middle Village Tavern Inc. I have also submitted an Affidavit from Nuala Donaghy, one the principal owners of Middle Village Tavern Inc., stating that she was the president of Middle Village Tavern Inc. from 1999 to 2013, when the premises was sold to my former client, 67-32 Metro Corp. In 2013, the SLA determined that 67-32 Metro Corp., met the requirements to be grandfathered in. See, Exhibit "D". I have also submitted the assignment of a lease from Middle Village Tavern Inc to 67-32 Metro Corp dated 2008. This is further evidence of the continuity of license # 1040529. See, Exhibit "E".

My current client, Quick Stop Metro LLC, owned by Edward Fenwick, purchased the premises from 67-32 Metro Corp. Some issues arose with a corporate change application, and Mr. Fenwick enlisted the assistance of an attorney to submit a new license application since 67-32 Metro Corp's license was due to expire in May, 2015. In February 2016, Mr. Fenwick came to my office and explained that he had not received a serial number or a receipt for his application which had been filed by the other attorney 6 months earlier. The SLA was unable to locate the application and had no record of Mr. Fenwick's check. I prepared a new application and filed it as soon as possible.

I am seeking a ruling from the SLA as to whether the "200 Foot Law" would prevent the issuance of an on-premises liquor license for the premises located at 67-32 Metropolitan Ave, Middle Village, NY. The premises is a single story building that since 1939 has continually been licensed as a tavern. The owners of the property and Mr. Fenwick are anxiously waiting a decision on this matter.

The premises was licensed before the school opened in 1962 and has been licensed ever since at least 1939. Furthermore, there has been no other type of business at that location other than a bar or tavern since 1939. Based on these facts, I respectfully request that the Board finds the location continuously licensed and not subject to the 200 foot law.

Sincerely Yours,
Stacy L. Weiss
Stacy L. Weiss, Esq.

cc:/ Dep Comm Jacqueline Held
CEO Kerri O'Brien