

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF AUGUST 29, 2012  
REFERRED FROM: COUNSEL'S OFFICE

2012-02116

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

DURATION OF WINE LICENSES

(ADVISORY)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on AUGUST 29, 2012 determined:

STATE OF NEW YORK  
LIQUOR AUTHORITY

To: All wine licensees and agency staff

Subject: Duration of wine licenses

Unlike beer<sup>1</sup> and liquor<sup>2</sup> licenses, the Alcoholic Beverage Control Law ("ABCL") contains no specific provision regarding the duration of licenses for the manufacture or sale of wine. Since ABCL §83 sets forth the "annual" fees for wine licenses, the Authority has issued such licenses on an annual basis. Other than brewery licenses, all beer licenses are issued for three years, and all liquor licenses are issued for two years. As a result, wine licensees are required to renew their licenses more often than other licensees.

Although there is no specific provision regarding the duration of wine licenses, ABCL §84 states that the provisions of ABCL §67 shall apply to all wine licenses. Pursuant to ABCL §67, distiller, wholesale liquor and package store licenses are issued for three years, and all on-premises liquor licenses are issued for two years. In order to lessen the burden on wine licensees associated with the renewal of their licenses, the Authority hereby finds that the provisions in ABCL §67 regarding the duration of liquor licenses should be applied to wine licenses. Accordingly, commencing on January 1, 2013:

- Winery and farm winery licenses, as well as special winery and special farm winery licenses shall be issued for three years, at three times the annual fee;
- Wine Wholesale licenses shall be issued for three years, at three times the annual fee;
- Wine Store and Satellite Store licenses shall be issued for three years at three times the annual fee;
- Direct Interstate Wine Shipping licenses shall be issued for three years at three times the annual fee;
- Licenses to sell wine at retail for consumption on the premises shall be issued for two years at two times the annual fee.

The filing fee for renewal applications, as ABCL §56-a, shall remain the same for all wine licenses.

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<sup>1</sup> See ABCL §§57 & 57-a.

<sup>2</sup> See ABCL §67.

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NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF AUGUST 7, 2012  
REFERRED FROM: COUNSEL'S OFFICE

2012-02077A (OVER)  
2012-02138

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

CONTAINERS, PACKAGING AND  
RELATED UP-CHARGES

(ADVISORY)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on AUGUST 7, 2012 determined:

Item carried over to 08/29/12

The Members of the Authority at their regular meeting held at the Zone I New York City Office on AUGUST 29, 2012 determined:

STATE OF NEW YORK  
LIQUOR AUTHORITY

To: All suppliers<sup>1</sup> and distributors<sup>2</sup> of liquor and wine  
Subject: Containers and packaging

Section 101-b of the Alcoholic Beverage Control Law ("ABCL") provides that there may be only one price listed for an item in the price schedule filed with the Liquor Authority, unless permission is first obtained from the Authority for good cause shown when not inconsistent with the purposes of the statute. It has come to the Authority's attention that under current marketing practices, suppliers seek to create "ornamental," "enhanced," or "special" containers to address consumers' desire for special gift products. In addition, suppliers and distributors have requested direction with respect to how they may package containers of liquor and wine for delivery to retailers. The Authority has, from time to time, issued bulletins addressing the conditions under which such products may be distributed. In light of the passage of time since the issuance of those directives, and after recent discussions with industry members, the Authority has determined that it is appropriate to revisit the guidance set forth in those directives and states the following:

Prior Bulletins

Bulletin No. 343 (issued on August 11, 1961), Bulletin No. 440 (issued on February 3, 1969), Bulletin 440-a (issued on July 16, 1971) and Bulletin 440-b (issued on August 11, 1971) are hereby rescinded.

Containers of liquor or wine

1. The term "container" as used herein is intended to mean the bottle or other vessel containing the liquor or wine as well as any container into which the individual bottle or vessel is placed. No such container shall be permitted which has any secondary value or after-use, except of an ornamental or decorative nature.
2. The terms "ornamental," "enhanced," or "special" containers, as used herein, are intended to mean: containers of crockery, ceramic material, crystal, tin or other metal, plastic or wood;

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<sup>1</sup> For purposes of this advisory, "supplier" means entities licensed in this state to manufacture alcoholic beverages, as well as: other domestic and foreign manufacturers of alcoholic beverages, importers, and other entities that sell alcoholic beverages, directly or indirectly, to licensed wholesalers for distribution in this state.

<sup>2</sup> For purposes of this advisory, "distributor" means a licensed wholesaler.

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and decanters of any type. The Authority retains the sole discretion to determine which containers are properly considered "standard" versus "ornamental," "enhanced," or "special."

3. Brand owners or brand agents may offer items in the "standard" container and/or "ornamental," "enhanced," or "special" containers.
4. Items in "ornamental," "enhanced," or "special" containers must be price scheduled separately from items in "standard" containers. The "ornamental," "enhanced," or "special" containers may be price scheduled at the same price, or a higher price than the "standard" container.
5. The brand owner or brand agent must file separate brand label registration applications for each "ornamental," "enhanced," or "special" container. Requests for such approval (including photographs of the containers together with a statement of cost) should be submitted to the Authority's Brand Label Registration Unit. The Members of the Authority hereby delegate to the Brand Label Registration Unit the power to act on such requests.
6. Where any "ornamental," "enhanced," or "special" types of containers are distributed as limited availability items, the brand owner or brand agent must develop a method of allocation that is nondiscriminatory in nature and same must be submitted via electronic mail prior to commencing sales in this state at: [limited.availability@sla.ny.gov](mailto:limited.availability@sla.ny.gov). Where any "standard" container is distributed as a limited availability item, any and all "ornamental," "enhanced," or "special" containers bearing the same brand or trade name must also be sold as limited availability items and all corresponding allocations must be properly filed via electronic mail prior to commencing sales in this state.
7. Brand owners or brand agents wishing to sell items featuring the same brand or trade name at a different price for a reason other than an "ornamental," "enhanced," or "special" container (such as a different label, for example) must obtain prior permission from the Authority to do so. All such requests should be addressed to the Wholesale Bureau in writing or via electronic mail at: [wholesale@sla.ny.gov](mailto:wholesale@sla.ny.gov). In all such instances the Authority retains the sole discretion to determine which items featuring the same brand or trade name may properly be sold at a different price.

Packaging of liquor or wine

1. Suppliers and distributors may pack their containers of alcoholic beverages in cardboard, paper or wooden boxes.
2. Baskets, boxes or other packages having a value to the retailer or consumer distinct from their value as packages for alcoholic beverages may not be used to pack containers of alcoholic beverages and may not be furnished, given or sold to retailers by suppliers and distributors.

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3. Nothing hereinabove set forth shall be construed as excluding the use of paper, canvas, cloth, straw, simulated leather and plastics as wrapping material for packaging, provided that such wrapping material has no secondary value or use aside from its use as a wrapping for alcoholic beverages.
4. Cardboard or paper boxes for use in packing containers of alcoholic beverages may be furnished, given or sold to retailers by suppliers and distributors apart from the cases in which containers of alcoholic beverages were originally packed in a quantity not to exceed an amount required for the number of containers of such brands that the retailer has in inventory.

All suppliers and distributors are hereby cautioned that any violation of the directives contained in the above Advisory may subject them to disciplinary action by the Authority pursuant to ABCL §119 and/or an action for injunctive relief pursuant to ABCL §123.

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STATE OF NEW YORK  
LIQUOR AUTHORITY

TO: MANUFACTURERS AND WHOLESALERS OF LIQUOR AND WINE

SUBJECT: CONTAINERS AND PACKAGING  
(Supersedes Bulletin No. 329 dated August 18, 1960, which is hereby rescinded.)

During the past year the Authority has held a number of conferences with the industry relative to containers and packaging and attendant problems. As a result, the conditions set forth in Bulletin No. 329, dated August 18, 1960, are amended as follows: (New matter is capitalized.)

A. CONTAINERS OF LIQUOR AND WINE

1. No container shall be permitted which includes any item having any after-use or secondary value except for a proper closure or stopper.

2. No object, item or thing having any after-use or secondary value shall be attached to the container, or to the stopper of the container, or incorporated in or used as part of the stopper or container except that the use of an ordinary jigger cap shall be permissible.

3. Ordinary glass stoppers accompanying decanter type containers which are used to replace corks are not prohibited if in conformity with Paragraph 2 above.

4. No container shall be included in any case of liquor or wine sold at a case price unless such container is available to and sold to retailers in case lots at the same price as the case containing one or more of such containers.

CONTAINERS OR ATTACHMENTS WHICH DO NOT FALL SQUARELY WITHIN THE ABOVE-MENTIONED PROVISIONS OR WHERE THE CONTAINER ITSELF HAS ANY AFTER-USE OR SECONDARY VALUE MUST BE SUBMITTED TO THE AUTHORITY FOR APPROVAL BEFORE BEING DISTRIBUTED IN THE STATE OF NEW YORK. A STATEMENT OF THE COST OF THE CONTAINER SHOULD ACCOMPANY SUCH SUBMISSION.

WHOLESALERS MAY NOT SELL ANY LIQUOR OR WINE IN NEW YORK STATE IN CONTAINERS WHICH DO NOT CONFORM IN FULL WITH PARAGRAPHS 1 TO 4 ABOVE, INCLUSIVE, OR WHICH HAVE AN AFTER-USE OR SECONDARY VALUE UNLESS THEY ARE IN RECEIPT OF PROOF FROM EITHER THE OWNER OF THE BRAND OR THE PRIME DISTRIBUTOR OF SUCH BRAND THAT WRITTEN PERMISSION HAS BEEN OBTAINED FROM THE AUTHORITY SUBSEQUENT TO AUGUST 18, 1960 TO DISTRIBUTE SUCH ITEMS IN THIS STATE.

B. PACKAGING

1. Manufacturers and Wholesalers may pack their containers of alcoholic beverages in cardboard, paper or wooden boxes.

2. Baskets, boxes or packages having a value to the consumer distinct from their value as packages for alcoholic beverages may not be used to pack containers of alcoholic beverages and may not be furnished, given or sold to retailers by manufacturers or wholesalers.

(over)

# 343

3. Nothing hereinabove set forth shall be construed as excluding the use of paper, canvas, cloth, straw, simulated leather and plastics as wrapping material for the container, provided that such wrapping material complies with Rule 4 in relation to labels and further provided that such wrapping material has no secondary value or use aside from its use as a wrapping for alcoholic beverages.

4. Cardboard or paper boxes for use in packing containers of alcoholic beverages may be furnished, given or sold to retailers by manufacturers and wholesalers apart from the cases in which containers of alcoholic beverages were originally packed subject to the following conditions:

Manufacturers and wholesalers may purchase cardboard or paper containers and furnish them to the retailer at the time of sale and may furnish empty cardboard or paper containers to retailers in a quantity not to exceed an amount required for the number of bottles of such brands that the retailer has in inventory, provided:

- a. The cost of the cardboard and paper containers is limited to not more than 20¢ per container, if one bottle and 30¢ for containers of more than one bottle.
- b. The cardboard or paper containers will be submitted to the Industrial Services Section at the New York Office of the State Liquor Authority for prior approval.

All manufacturers and wholesalers of alcoholic beverages in this State are hereby cautioned that any violation of the directives contained in the above bulletin will subject their licenses to action by the Authority.

STATE LIQUOR AUTHORITY

*D. S. Hostetter*  
D. S. HOSTETTER  
CHAIRMAN

STATE OF NEW YORK  
LIQUOR AUTHORITY

TO: MANUFACTURERS AND WHOLESALEERS OF LIQUOR AND WINE

SUBJECT: CONTAINERS AND PACKAGING

(Supersedes Bulletin No. 343 issued August 11, 1961  
and reissued October 17, 1963.)

Sections 61, 63, 77 and 104 of the Alcoholic Beverage Control Law prohibit licensees from engaging in any other business on the licensed premises. Section 101 of the Alcoholic Beverage Control Law and Rule 11 of the Rules of the State Liquor Authority relate to the gifts and services and advertising specialties which manufacturers and wholesalers may give to retailers. To effectuate the foregoing provisions, and the price scheduling portions of Section 101-b as well as to prevent circumvention of the affirmation law where applicable, the following shall take effect March 1, 1969:

A. CONTAINERS OF LIQUOR AND WINE

1. No container shall be permitted which has any secondary value or after-use, except of an ornamental or decorative nature.
2. No object, item or thing having any secondary value or after-use shall be attached to the container, or to the stopper of the container or incorporated in or used as part of the stopper of the container except that a jigger cap or other similar closure shall be permissible. Clocks, music boxes, cigarette lighters, or similar contrivances may not be utilized as part of or as a complement to containers.
3. A stopper accompanying a decanter type container which is used to replace the original closure is not prohibited if in conformance with paragraph 2 above.
4. Photographs of ornamental containers together with a statement of cost must be submitted by the brand owner or brand agent to the Authority for approval before distribution in New York State.
5. Rule 16 provides that only one price may be listed for an item in the price schedule. With respect to liquor items, (including brandies, cocktails and specialties, as apart from cordials, liqueurs and wines), there may be no price differential for the same item in different styles of containers; and in addition to an ordinary non-decorative container, no more than one style of ornamental container may be scheduled under the same registration. However, the brand owner or brand agent may file separate brand label registration applications for the same item in different ornamental containers, in which event each separately registered item may be price scheduled at a different price. Bulletin No. 434 is applicable to such registrations.
6. If an item, other than a wine, which bears the same or a similar brand label, is sold in non-ornamental bottles in any other State or the

3381  
District of Columbia, no registration application relating to use of an ornamental bottle will be approved unless the item is also offered in New York in a non-ornamental bottle. The terms "same or a similar brand label" shall cover any labels which, because of the name or the design of the label, may be regarded by the general public as the same brand, even though the proof, formula or age may be different.

7. In regard to cordials, liqueurs and wines, different types of the same brand, as well as different styles of containers, may be scheduled under the same registration as in the past. However, where a registration for a brand of cordials or liqueurs has been approved, there may be no sale of a new type nor use of a new ornamental container, until a supplementary application has been submitted and approved. The wholesaler must comply with the provisions of Bulletin #434 except that no additional fee will be required.
8. The word "ornamental" as used herein, is intended to cover containers of crockery, ceramic material, crystal, and decanters of any type. Any container of tin or other metal is prohibited.

**B. PACKAGING**

1. Manufacturers and Wholesalers may pack their containers of alcoholic beverages in cardboard, paper or wooden boxes.
2. Baskets, boxes or packages having a value to the consumer distinct from their value as packages for alcoholic beverages may not be used to pack containers of alcoholic beverages and may not be furnished, given or sold to retailers by manufacturers or wholesalers.
3. Nothing hereinabove set forth shall be construed as excluding the use of paper, canvas, cloth, straw, simulated leather and plastics as wrapping material for the container, provided that such wrapping material complies with Rule 11 and has no secondary value or use aside from its use as a wrapping for alcoholic beverages.
4. Cardboard or paper boxes for use in packing containers of alcoholic beverages may be furnished, given or sold to retailers by manufacturers and wholesalers apart from the cases in which containers of alcoholic beverages were originally packed subject to the following conditions:

Manufacturers and wholesalers may purchase cardboard or paper containers and furnish them to the retailer at the time of sale and may furnish empty cardboard or paper containers to retailers in a quantity not to exceed an amount required for the number of bottles of such brands that the retailer has in inventory, provided;

- a. The cost of the cardboard and paper containers of one quart or less is limited to not more than 30¢ per single container and 60¢ for containers of more than one. For containers larger than one quart the cost is limited to not more than 60¢.

- b. The cardboard or paper containers will be submitted to the Industrial Services Section at the New York Office of the State Liquor Authority for prior approval.

All Manufacturers and Wholesalers of alcoholic beverages in this State are hereby cautioned that any violation of the directives contained in the above bulletin will subject their licenses to action by the Authority.

STATE LIQUOR AUTHORITY



D. S. Hostetter  
Chairman

(Series 1971)  
Bulletin #440-a  
July 16, 1971

STATE OF NEW YORK  
LIQUOR AUTHORITY

TO: Manufacturers & Wholesalers of Liquor and Wine

SUBJECT: CONTAINERS AND PACKAGING  
(Amends Bulletin #440 issued February 3, 1969)

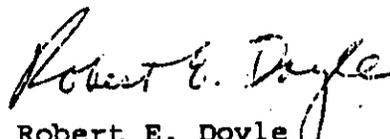
The Members of the Authority on July 14, 1971 lifted a restriction on the sales and distribution in this state of alcoholic beverages packaged in metal containers.

For purposes of administration and control, the Authority shall require a separate Brand Label Registration be submitted for any alcoholic beverages that are to be offered for sale packaged in metal containers. Under such circumstances, the items shall be separately listed on price schedules, with appropriate notation to indicate the metal container.

The Members of the Authority also have under consideration the use of plastic for the packaging of alcoholic beverages. No determination has been reached.

Bulletin #440 is being revised and will be reissued in the near future.

STATE LIQUOR AUTHORITY

  
Robert E. Doyle  
Acting Chairman

(Series 1971)  
Bulletin #440-b  
August 11, 1971

STATE OF NEW YORK  
LIQUOR AUTHORITY

TO: Manufacturers & Wholesalers of Liquor and Wine

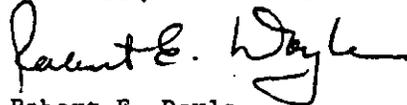
SUBJECT: CONTAINERS AND PACKAGING  
(Amends Bulletin #440 issued February 3, 1969)  
(See also Bulletin #440-a issued July 16, 1971)

The Members of the Authority on July 28, 1971 lifted the restriction on the sale and distribution in this state of alcoholic beverages packaged in containers with built-in music boxes.

At the same time they also approved the sale and distribution in this state of alcoholic beverages packaged in plastic containers.

Application for the use of the above items must be submitted by the brand owner or brand agent to the Authority for approval before distribution in this State.

STATE LIQUOR AUTHORITY



Robert E. Doyle  
Acting Chairman

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF AUGUST 29, 2012  
REFERRED FROM: COUNSEL'S OFFICE

2012-02211D

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

APPLICATION OF 200 FOOT LAW ON  
PROPERTY LOCATED AT:

919 THIRD AVENUE, MANHATTAN

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City Office on AUGUST 29, 2012 determined:

STATE OF NEW YORK: LIQUOR AUTHORITY

IN THE MATTER OF THE APPLICATION OF  
AN ENTITY TO BE FORMED BY ALAN ROSEN  
D/B/A ENDURO KITCHEN

PETITION

Petitioner

FOR DECLARATORY RULING UNDER  
STATE LIQUOR AUTHORITY RULE §98.2

Pursuant to State Liquor Authority Rule §98.2, an entity to be formed by Alan Rosen d/b/a Enduro Kitchen (hereinafter referred to as “Petitioner” or “Enduro Kitchen”), seeks a declaratory ruling on the following issue:

1. Petitioner is a prospective tenant of the first floor space (the “Premises”) at 919 Third Avenue, New York, New York 10022 (“919 Third”) which is presently occupied by Outback Steakhouse of Florida LLC (“Outback”)
2. Outback possesses an on premises liquor license (Serial # 1141404) which was originally issued in 2003 and renewed to date wherein the current expiration is August 31, 2013. The Authority’s records show that there has been an on premises license at the Premises from at least 1995.
3. 919 Third is a 47 story office building and the Premises is located on the East 56<sup>th</sup> Street side of the building between 2<sup>nd</sup> and 3<sup>rd</sup> avenues.
4. *Alcohol Beverage Control Law* (“ABC”) §64(7)(a), provides that “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.” ABC §§ 64-a(7)(a)(i), 64-b(5)(i), 64-c(11)(a)(i), and 64-d(8)(a) all have identical language with regard to the prohibition of

each type of on-premises liquor license within 200 feet of these entities. These statutes are collectively known as the “200’ rule”.

5. *ABC Law* §64(7)(c)<sup>1</sup> provides, however, that notwithstanding the 200’ rule, “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]. This is considered the “grandfather” exception associated with this rule.
  
6. The High School of Art and Design is a public school which for many years has been located on 2<sup>nd</sup> avenue with a portion of the school on East 56<sup>th</sup> Street but not within the 200’ zone of the Premises. The school has built an extension in the middle of the block of East 56<sup>th</sup> Street which is within the 200’ zone and is scheduled to open in September 2012. (See Diagram annexed hereto as Exhibit A).
  
7. Enduro Kitchen appeared before the liquor license committee of Manhattan Community Board No. 6 (“CB6”) on July 26, 2012 where it was unanimously approved (See copy of liquor license questionnaire to CB6 annexed hereto as exhibit B). The certificate of occupancy for 919 Third (part of Exhibit B) lists the Premises as “Eating and Drinking Establishment Use Group 12”.
  
8. The Outback lease to the Premises ends on October 31, 2012, and we understand that its lease will not be extended. 919 Third is therefore negotiating with Enduro Kitchen for a

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<sup>1</sup> See also §§64-(a)(iii), 64-c(11)(a)(iii), 64-d(8)(c) & 105(3)(a) which have identical language.

new long term lease to the Premises. The owner of 919 Third will not make the issuance of an on-premises liquor license to the Premises a contingency to the lease.

9. Should Outback surrender its on premises liquor license when its lease ends on October 31, 2012 prior to the license being granted to Enduro Kitchen it may be considered a break in continuity. Enduro Kitchen will sign the lease without a contingency if the issue of the 200' rule is resolved favorably by a Declaratory Ruling of the Full Board.
  
10. Petitioner seeks a ruling that should Outback surrender its license before a new license is issued to Enduro Kitchen it will not be considered a break in continuity under the 200' rule as it should be considered under the grandfather exception. As a precedent for this ruling Petitioner cites Declaratory Ruling 2012-00551E for premises located at 136 West 31<sup>st</sup> Street, Manhattan wherein the Authority ruled that even though there was a break in continuity the location was deemed to be continually licensed, upon a filing of an application by the Petitioner therein.

Conclusion: It is respectfully requested that the Authority issue the Declaratory Ruling as requested by Petitioner.

Dated: New York, New York  
August 9, 2012

Respectfully submitted  
Robert V. Ferrari  
Attorney for Petitioner  
630 Third Avenue, 16th Floor  
New York, New York 10017

- 3<sup>RD</sup> AVE. -

MEASUREMENT  
919 3<sup>RD</sup> AVENUE  
NEW YORK, N.Y.  
JUNE 20, 2012  
NOT TO SCALE

P.S. 59  
ENTRANCE

P.S. 59  
HIGH SCHOOL  
OF  
ART & DESIGN

HIGH SCHOOL  
ENTRANCE

- 2<sup>ND</sup> AVE. -

99'

219'

178'

196'

62'

- 56<sup>TH</sup> ST. -

45'

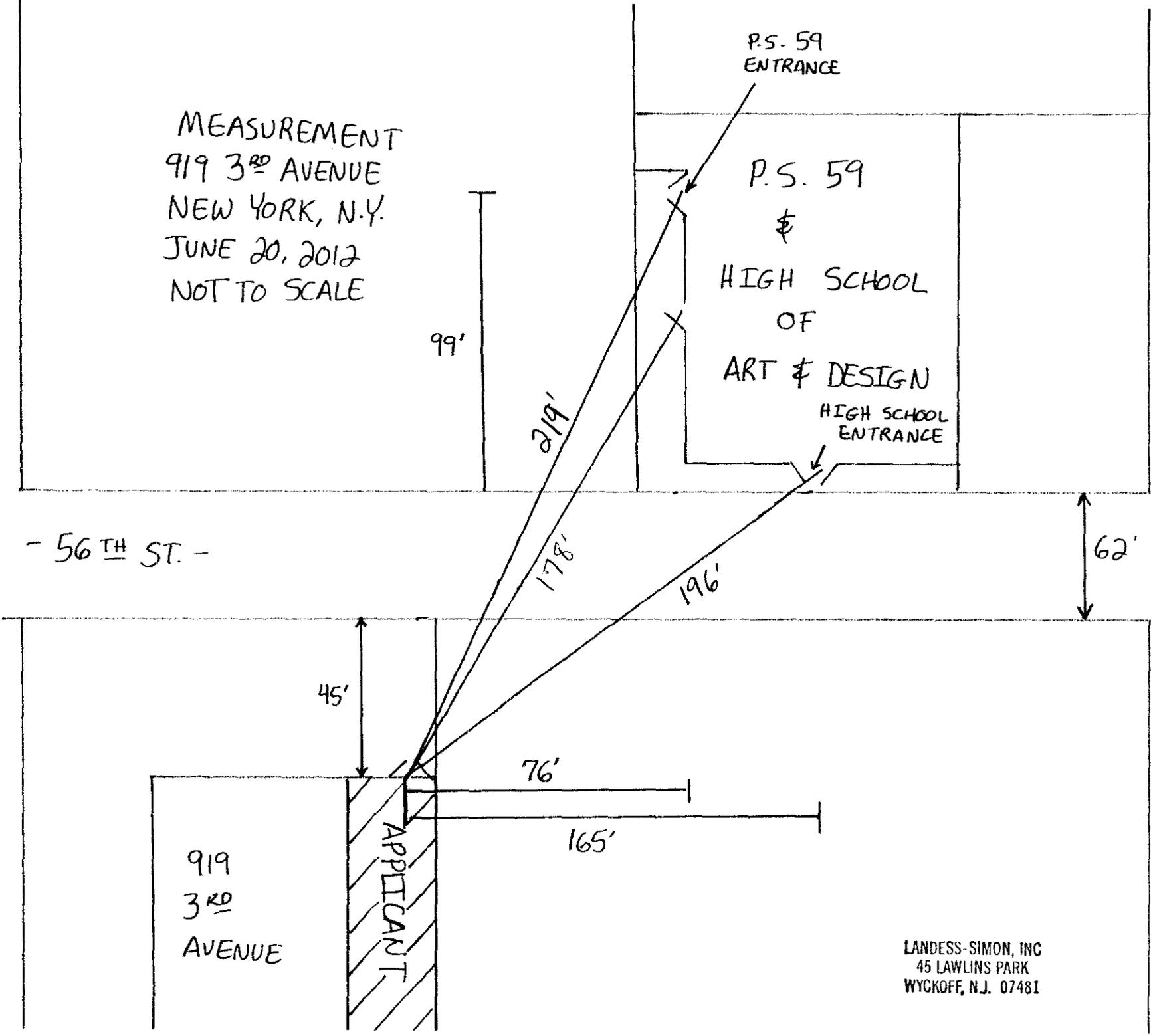
76'

165'

919  
3<sup>RD</sup>  
AVENUE

APPLICANT

LANDESS-SIMON, INC  
45 LAWLINS PARK  
WYCKOFF, N.J. 07481





# MANHATTAN COMMUNITY BOARD SIX

866 United Nations Plaza - Ste. 308, New York, NY 10017

Phone: (212) 319-3750 - Fax: (212) 319-3772

e-mail [mm06@cb.nyc.gov](mailto:mm06@cb.nyc.gov)

Web site [www.cbsix.org](http://www.cbsix.org)

Mark Thompson  
Chair

Toni Carlina  
District Manager

## LIQUOR LICENSE QUESTIONNAIRE

Corporate Name: An entity to be formed by Alan Rosen

D/B/A: Enduro Kitchen Liquor License Serial # Not Applicable

Principal/s Name: Alan Rosen Contact# (917) 207-6258

Address: 919 Third Avenue (Entrance on E. 56th St) Cross streets: 2nd and 3rd Avenues

License type:  On-premises  Hotel liquor  Additional Bar  Restaurant Wine  
 Other \_\_\_\_\_

Type of business (check all that apply):  Restaurant  Bar  Hotel  Deli  Other  
\_\_\_\_\_

Hrs. of operation: Weekdays: 7:00AM to 12 Midnight Weekends: 7:00AM to 1:00AM

Capacity: 310\*\* Does establishment comply with Certificate of Occupancy?  / N

Public Assembly permit:  N Wheelchair Accessible:  / N

Music:  / N if yes: DJ \_\_\_\_\_ Recorded  Live \_\_\_\_\_ Sound control  / N

Dancing: Y  Staging area (waiting lounge): Y / N Not applicable

During the warmer months, will windows and/or doors be opened or removed?  / N

Patron Use of Outdoor Areas: Backyard \_\_\_\_\_ Deck/terrace  Roof \_\_\_\_\_

What other establishments in the past, or are currently owned (included name and address)? See annexed list.

SLA Application: Filed: Y  If Yes: Is a copy attached? Y  If not please send to CB6

Please attach Public Interest Statement. Is a 500'/200' hearing required?  / N If yes for 200' hearing, please attach drawings of entrance in relation to school or place of worship.

See public interest statement for 500' hearing. A public school is being built on East 56th Street across the street from the premises but the 200' rule is not triggered because the premises is grandfathered by an existing license.

### FOR ALTERATIONS ONLY

Please describe alterations (attach separate sheet if necessary): \_\_\_\_\_

\*If there are plans/drawings, please bring a set to the committee meeting.

Signature: Robert V. Ferrari Contact #: (212) 972-7040

\*\* The certificate of occupancy allows for 310 persons to occupy the premises however, capacity for customers will be 214 persons including terrace space.

Rider to Manhattan Community Board 6 Liquor License Questionnaire  
of  
An entity to be formed by Alan Rosen  
d/b/a Enduro Kitchen  
919 Third Avenue  
New York, New York 10022

-What other establishments in the past, or are currently owned

1. Junior's Restaurant  
386 Flatbush Avenue EXT  
Brooklyn, New York 11201
2. Junior's Restaurant  
1515 Broadway  
New York, New York 10036
3. Junior's Restaurant  
LC-17 Grand Central Station  
New York, New York 10017
4. Junior's Restaurant  
MGM Grand at Foxwoods  
39 Norwich Westerly Rd  
Mashantucket, Connecticut 06338

## PUBLIC INTEREST STATEMENT

The building has had a restaurant with a full liquor license at the space for more than 20 years. The restaurant space is located in a 47 story office building with the lobby entrance on Third Avenue and the entrance to the restaurant in the outside plaza area on East 56<sup>th</sup> Street. The restaurant will also have a to-go area including food for consumption off of the premises to be located on East 55<sup>th</sup> street (currently exists). Additionally, the space is zoned for restaurant purposes and the certificate of occupancy for the building specifically includes restaurant use for the space.

The principal of Applicant who is an experienced restaurateur and an owner of four Junior's Restaurants is of the opinion that the annual gross revenues at this location will be greater than \$7,500,000 with a potential of \$9,000,000 or more after 5 years. The collection of sales taxes by New York State, New York City and the MTA at a rate of 8.875% will be in excess of \$650,000 per year initially.

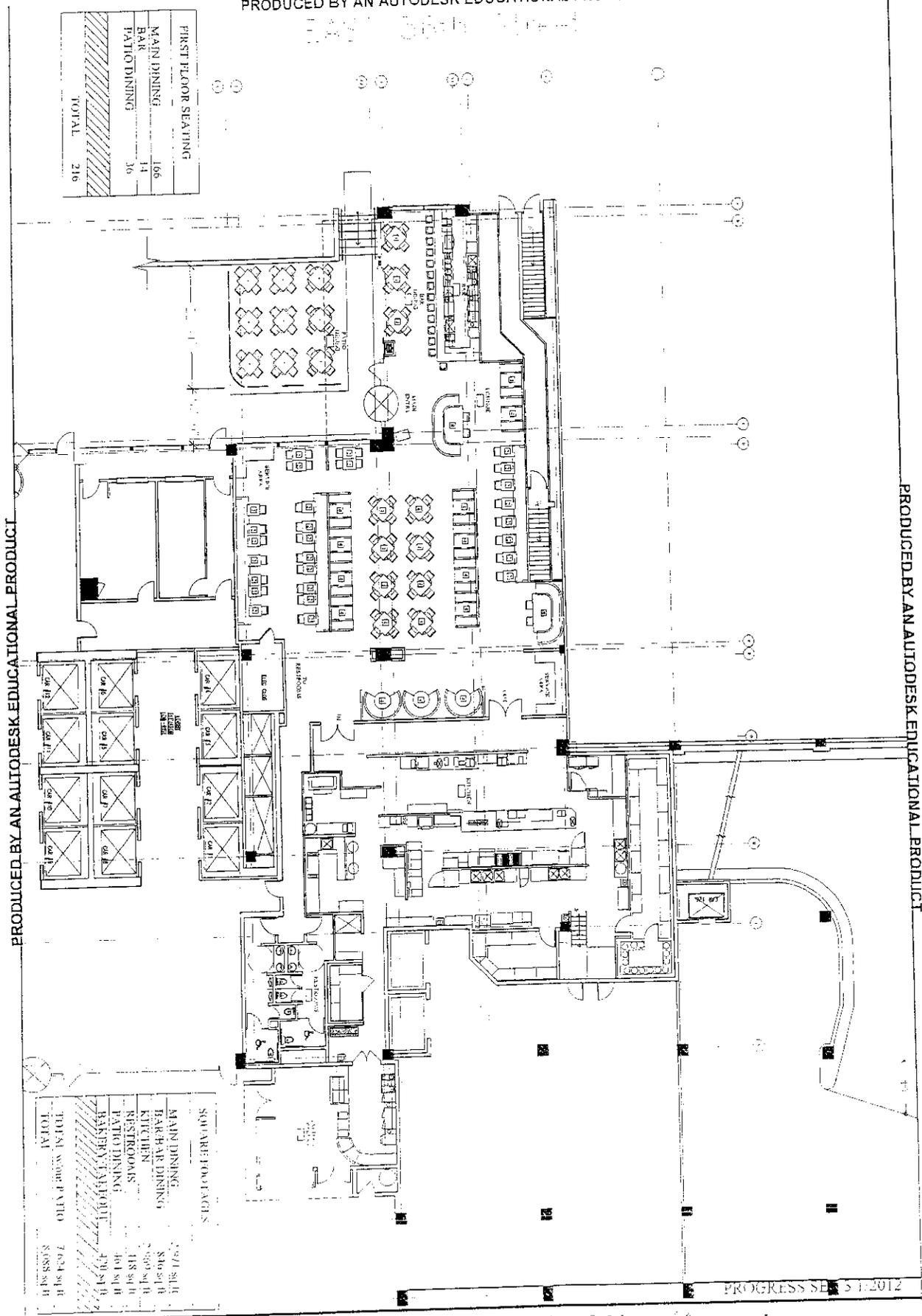
Additionally, the renovation and establishment of this project is budgeted at \$2.5 million. The jobs created in the construction industry alone will be substantial. In addition the size of the restaurant requires the hiring of at least 100 restaurant employees, many of whom will come from the neighborhood.

With the New York State and City budget deficits approaching looming proportions any additional tax revenue that does not come from individual taxpayers is certainly welcome.

With the unemployment rate greater than 8%, every increase in employment is helpful especially adding 100 new jobs to this economy without even including the construction jobs that will be created.

New York City has been and will continue to be a cultural leader among the great cities of the world. In addition to the substantial financial benefits Applicant will establish a fine restaurant that will help sustain New York's position at the forefront of modern cuisine.

FIRST FLOOR SEATING	
MAIN DINING	166
BAR	14
PATIO DINING	36
<b>TOTAL</b>	<b>216</b>



PRODUCED BY AN AUTODESK EDUCATIONAL PRODUCT

PRODUCED BY AN AUTODESK EDUCATIONAL PRODUCT

SQUARE FOOTAGES	
MAIN DINING	2,751 SQ FT
BAR/BAR DINING	810 SQ FT
KITCHEN	2,500 SQ FT
RESTROOMS	118 SQ FT
PATIO DINING	161 SQ FT
BAR/RY PATIO	420 SQ FT
<b>TOTAL</b>	<b>7,624 SQ FT</b>

TITLE	RESTAURANT LAYOUT
DRAWING NUMBER	101
DATE	11/11/11
BY	...
CHECKED BY	...

A - 1.01



PROGRESS SET 5/1/2012


  
 H&A ARCHITECTS
   
 11700 W. ALPINE
   
 SUITE 100
   
 DENVER, CO 80231
   
 TEL: 303.733.1111
   
 FAX: 303.733.1112
   
 WWW.HANDARCHITECTS.COM

*Certificate of Occupancy*

CO Number: 120283406F

This certifies that the premises described herein conforms substantially to the approved plans and specifications and to the requirements of all applicable laws, rules and regulations for the uses and occupancies specified. No change of use or occupancy shall be made unless a new Certificate of Occupancy is issued. *This document or a copy shall be available for inspection at the building at all reasonable times.*

A.	Borough: Manhattan	Block Number: 01329	Certificate Type: Final
	Address: 919 THIRD AVE	Lot Number(s): 1	Effective Date: 10/14/2011
	Building Identification Number (BIN): 1038577		
		Building Type: Altered	

This building is subject to this Building Code: 1968 Code

For zoning lot metes & bounds, please see BISWeb.

B.	Construction classification: 1	(Prior to 1968 Code designation)
	Building Occupancy Group classification: B	(2008 Code)
	Multiple Dwelling Law Classification: None	
No. of stories: 47	Height in feet: 578	No. of dwelling units: 0

C. Fire Protection Equipment:  
Fire alarm system

D. Type and number of open spaces:  
None associated with this filing.

E. This Certificate is issued with the following legal limitations:  
None

Borough Comments: None



Borough Commissioner



Commissioner

*Certificate of Occupancy*

CO Number:

120283406F

**Permissible Use and Occupancy**

All Building Code occupancy group designations below are 2008 designations.

Floor From To	Maximum persons permitted	Live load lbs per sq. ft.	Building Code occupancy group	Dwelling or Rooming Units	Zoning use group	Description of use
CEL	120	75	B S-2			BANK, ACCESSORY PARKING FOR ONE HUNDRED TEN (110) CARS
CEL		100	F-2			MECHANICAL EQUIPMENT
CEL	60	100	A-1			THEATRE WAITING AREA
SUB	25	OG	S-2			ACCESSORY PARKING FOR ONE HUNDRED EIGHTY-SIX (186) CARS, MECHANICAL EQUIPMENT
001	450	100	A-1			THEATRE-WITHOUT RESTRICTION ON USE OR PLACEMENT OF SCENERY ON OR ABOVE STAGE, USE GROUP 8
001	30	100	B S-2 M			LOBBY, LOADING BERTH, BANK, STORES
001		300	S-2			ACCESSORY PARKING FOR FOUR (4) CARS, RESERVOIR-SIXTEEN (16) CARS
001	310	100	A-2	12		EATING AND DRINKING ESTABLISHMENT, USE GROUP 12
001	10	100	M			SHOWROOMS
002	006 360	75	B M			OFFICES AND SHOWROOMS ON EACH FLOOR
007	011 240	75	B M			OFFICES AND SHOWROOMS ON EACH FLOOR
012	25	150	F-2			MECHANICAL EQUIPMENT
013	240	50	B M			OFFICES AND SHOWROOMS



Borough Commissioner



Commissioner

*Certificate of Occupancy*

CO Number: 120283406F

**Permissible Use and Occupancy**

All Building Code occupancy group designations below are 2008 designations.

Floor From To	Maximum persons permitted	Live load lbs per sq. ft.	Building Code occupancy group	Dwelling or Rooming Units	Zoning use group	Description of use
014 018	240	75	B M			OFFICES AND SHOWROOMS ON EACH FLOOR
019 031	240	50	B M			OFFICES ON EACH FLOOR
032	84	50	B			OFFICES
032	241	50	A-2			CAFETERIA
032	7	50	F-2			KITCHEN
033	150	50	B	6		OFFICES
033	0	50	F-2			MECHANICAL EQUIPMENT
033	0	50	S-2			STORAGE
034	172	50	B			OFFICES
034	180	50	A-3			CONFERENCE ROOM
035 035	150	25	F-2			MECHANICAL EQUIPMENT
036 046	240	50	B			OFFICES ON EACH FLOOR
ROF		40	F-2			MECHANICAL EQUIPMENT (ADDITIONAL LIVE LOAD = 150)



Borough Commissioner



Commissioner

# Certificate of Occupancy

CO Number:

120283406F

NOTE: INCOMBUSTIBLE APPROVED "DRYWALL" CONSTRUCTION OF STEEL STUDS AND SHEETROCK TO BE USED THROUGHOUT BUILDING FOR ALL PARTITIONS, INCLUDING ONE-HOUR FOR PUBLIC HALLS SEPARATE TENANTS DRAWING TO BE FILED SHOWING THIS TYPE OF PARTITION CONSTRUCTION. NOTE: THIS BUILDING COMPLIES WITH THE BUILDING CODE ADOPTED NOVEMBER 6, 1968, IN THE FOLLOWING ONLY: 1. THE FIRE RESISTIVE RATINGS OF ALL CONSTRUCTION ELEMENTS INCLUDING FIRE DIVISIONS AND FIRE SEPARATIONS 2. THE PROVISIONS RELATING TO MEANS OF EGRESS IN THEIR ENTIRETY. 3. THE PROVISIONS RELATING TO THE SPRINKLERS IN THEIR ENTIRETY. IN ALL OTHER RESPECTS THE BUILDING COMPLIES WITH THE BUILDING CODE IN EFFECT PRIOR TO DECEMBER 6, 1968. SEE MEMORANDUM OF ACTING NEW COMMISSIONER PERRO DATED JANUARY 15, 1969.

END OF SECTION



Borough Commissioner



Commissioner

END OF DOCUMENT

# Enduro

## Kitchen & Bar

### Snacks

Deviled Eggs  
Fried Pickles  
House Roasted Almonds  
Cracklings  
Hand Made Potato Chips  
Shiseido Peppers

### Sandwiches

Rotisserie Chicken  
Lobster BLT  
Reuben  
Fried Oyster & Bacon  
BLT  
Mahi Mahi Fish Tacos  
Enduro Burger

### Sides

Roasted Brussels Sprouts  
Egg Wonton Creamed  
Spinach  
Thick Cut Bacon  
Truffle Fries  
Adult Mac & Cheese  
Quinoa & Faro

### Appetizers

Matzoh Ball Soup  
Roman Artichokes Hearts  
Fried Oysters  
Ahi Tuna Tartar  
Warm House Ricotta  
Meatballs  
"Fried Chicken" Chicken Wings  
Cured Meats and Cheeses

### Salad

Rotisserie Chicken Salad  
Mediterranean Salad  
Asian Salad  
Chopped Salad  
Beet & Goat Cheese Salad  
Grains & Greens

### Dessert

New York Cheesecake  
Double Chocolate Cake  
World's Smallest Hot Fudge  
Sundae  
Housemade Doughnuts

### Raw Bar

Cherrystone Clams  
½ Doz. / Doz.  
Oysters  
½ Doz. / Doz.  
Peel & Eat Shrimp  
Half / Full  
Alaskan King Crab Legs  
Half / Full  
Lobster Cocktail \$

### Main Dishes

Whole Fish Preparation  
of the Day  
Spicy Lobster Pappardelle  
Roasted Salmon  
Rotisserie Chicken  
Prime Sirloin  
Marinated Skirt Steak  
Beef Short Ribs  
BBQ Ribs

STATE OF NEW YORK: LIQUOR AUTHORITY

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Application of 200 Foot Law on property  
Located at 136 West 31<sup>st</sup> Street, Manhattan

DECLARATORY  
RULING  
2012-00551E

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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 to the proposed licensed premises.<sup>2</sup> 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 Terrence Flynn Jr. 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. For purposes of the request, Mr. Flynn does not dispute that the location is on the same street and within two hundred feet of a building occupied exclusively as a church. Instead, he 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.

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

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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> 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).

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 premises is at 136 West 31<sup>st</sup> Street in Manhattan.
- The Church of Saint Francis of Assisi is located at 135 West 31<sup>st</sup> in Manhattan. The church appears to be across the street from the proposed licensed premises.
- The church has been at this location for well over one hundred years.
- The most recent licensee at the location was Il Campanello Ristorante, Inc. According to the Authority’s files, that license was issued in or about 1995. The license expired on September 30, 2011.
- The records for any licenses issued prior to 1995 are not available to the Authority.

There is no evidence that the license issued to Il Campanello Ristorante, Inc. or any prior licensees, was issued in error or based on misrepresentations of fact regarding the presence of the Church. Therefore, the Members of the Authority will presume that a prior determination was made that the location was subject to one of the “grandfather” exceptions to the 200 Foot Law. The only question remaining is whether the location has been continuously licensed. The Members of the Authority find that, notwithstanding the expiration of the most recent license on September 30, 2011, the location will be deemed to be continuously licensed upon the timely filing of an application by Mr. Flynn’s client.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on February 15, 2012.

  
Jacqueline Held  
Secretary to the Authority

<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).

## **Donohue, Thomas (SLA)**

---

**From:** Robert Ferrari <rvf@rvferrari.com>  
**Sent:** Friday, August 17, 2012 12:15 PM  
**To:** Donohue, Thomas (SLA)  
**Cc:** Michael Ferrari  
**Subject:** 919 3rd avenue New York, N.Y.  
**Attachments:** 919 3rd Avenue New York, N.Y..pdf; 919 3rd Avenue New York, N.Y....diagram # 2.pdf

Mr. Donohue:

I am forwarding the email I received this morning from Landess Simon, the surveying company we have used for many of our applications with the Authority. They conducted a survey of the distances between the proposed premises at 919 Third Avenue and the School of Art and Design which has been on the corner of Second Avenue and 56<sup>th</sup> Street for many years. They also surveyed the distances between the proposed premises and the extension of the High School which is now being constructed (the extension will also house a portion of the elementary school P.S. 59).

If you look at the first above attachment, you will see one box (school building) on the northwest corner of 56<sup>th</sup> Street and 2<sup>nd</sup> Avenue which is labeled "Original School Building". This is the High school of Art and Design as it has been for many years. You can see that the distance between the western most (closest) door ("Side door") on 56<sup>th</sup> street of this school from the entrance to the proposed applicant as defined by the ABC law, is 233 feet. The more easterly door is 291 feet from the applicant. This indicates that the High school is greater than 200 feet from the current licensee at 919 Third Avenue.

The box to the west or left of the box labeled "Original School Building", is labeled "P.S. 59 & High School of Art & Design (Under construction)". This box is the extension of the High School, with space for P.S. 59 which has not existed to date. The construction of this entire building which will house the extension and P.S. 59, is intended for completion in the coming school year. So while the distances to the new school building are within 200 feet of the current licensee at 919 Third, this new school building did not exist at the time of the current licensee's original application in 2003.

I believe this addresses your concerns about the previous licensee's operation within 200 feet of a school building. The building that you see labeled P.S. 59 & High School of Art & Design did not exist at the time that the current licensee originally sought its license in 2003, as it is just being constructed now.

The second attachment above shows the distances to the entrances on 2<sup>nd</sup> Avenue. This is less relevant to our discussion but I included them just the same.

I am out of the office today, but I can respond to emails. Also, you may contact my associate Michael Ferrari at the same telephone number as he is as familiar with this application as I am.

I look forward to your response and I hope you have a nice weekend.

Robert V. Ferrari  
630 Third Ave., 16th Floor  
New York, NY 10017  
P: 212-972-7040  
F: 212-922-1939  
E: [rvf@rvferrari.com](mailto:rvf@rvferrari.com)

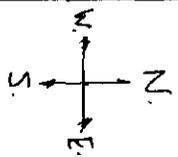
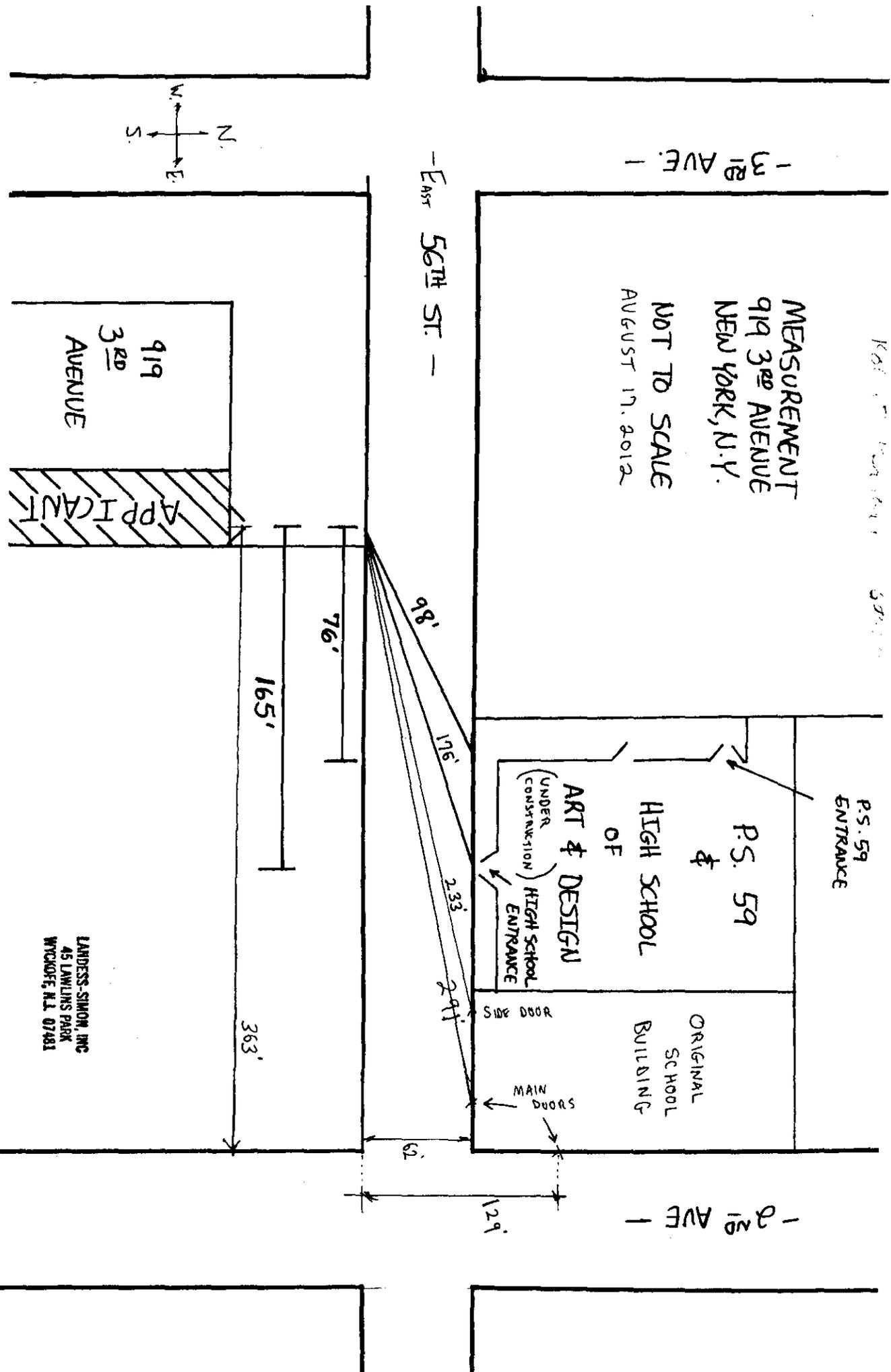
**From:** [dwmk@optonline.net](mailto:dwmk@optonline.net) [<mailto:dwmk@optonline.net>]  
**Sent:** Friday, August 17, 2012 11:26 AM

Ref: [unclear] 5/11/12

MEASUREMENT  
919 3<sup>RD</sup> AVENUE  
NEW YORK, N.Y.  
NOT TO SCALE  
AUGUST 17, 2012

2<sup>ND</sup> AVE

56<sup>TH</sup> ST



919  
3<sup>RD</sup>  
AVENUE

APPLICANT

P.S. 59  
ENTRANCE

P.S. 59  
&

HIGH SCHOOL  
OF  
ART & DESIGN

(UNDER  
CONSTRUCTION)  
HIGH SCHOOL  
ENTRANCE

ORIGINAL  
SCHOOL  
BUILDING

SIDE DOOR

MAIN  
DOORS

76'

165'

363'

62'

129'

98'

176'

233'

291'

LANDISS-SIMON, INC  
45 LAWLINS PARK  
WYCKOFF, N.J. 07481

Robert ... 69660

- 3<sup>RD</sup> AVE. -

MEASUREMENT  
919 3<sup>RD</sup> AVENUE  
NEW YORK, N.Y.

NOT TO SCALE  
AUGUST 17, 2012

P.S. 59  
ENTRANCE

P.S. 59  
&

HIGH SCHOOL  
OF

ART & DESIGN

(UNDER  
CONSTRUCTION)

HIGH SCHOOL  
ENTRANCE

ORIGINAL  
SCHOOL  
BUILDING

SIDE DOOR

385'

MAIN  
DOORS

- 2<sup>ND</sup> AVE -

129'

- EAST 56<sup>TH</sup> ST. -

98'

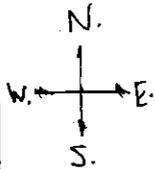
176'

62'

76'

165'

363'



919  
3<sup>RD</sup>  
AVENUE

APPLICANT

LANDESS-SIMON, INC  
45 LAWLINS PARK  
WYCKOFF, N.J. 07481