NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF SEPTEMBER 1, 2015
REFERRED FROM: COUNSEL'S OFFICE

2015-01999

REASON FOR REFERRAL
REQUEST FOR DIRECTION

APPLICATION OF 500 FOOT LAW
ON PROPERTY LOCATED AT:

307 WEST 47TH STREET, MANATTAN

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on SEPTEMBER 1, 2015 determined:

RUDNER & PALEUDIS, LLC
ATTORNEYS AND COUNSELORS AT LAW

BRIAN M. RUDNER, MEMBER +**
MICHAEL J. PALEUDIS, MEMBER +*▲
ROBIN E. SOSNOW, OF COUNSEL +*

ADMITTED TO PRACTICE
+NY, *CT, ★PA, ▲NJ, *MA

July 9, 2014

Jacqueline Flug, Esq.
General Counsel
New York State Liquor Authority
80 South Swan Street
Albany, NY 12210

Re: Request for Declaratory Ruling - Application of 500 Foot Law at 307 W 47th St, New York, NY

Dear Ms. Flug:

My firm represents Dutch Freds Inc., an entity formed by Michael McNamee and Patrick McNamee for the purpose of operating a bar and restaurant on the ground floor and basement of 307 West 47th Street in Manhattan (Premises). The Applicant expects to submit an application for a full on-premises liquor license shortly. The Applicant seeks a determination from the New York State Liquor Authority (Authority) with respect to the application of the "500 Foot Law" at the Premises.

Various statutes[1] in the Alcoholic Beverage Control Law prohibit the Authority from issuing a retail license for the sale and/or consumption of liquor (an "on-premises" license) for any premises that is within five hundred feet of three establishments that are currently operating with on-premises licenses. This licensing restriction is commonly referred to as the "500 Foot Law". The Alcoholic Beverage Control Law sets forth the procedures to be used in measuring the distance between the proposed licensed premises.[2]

Notwithstanding the general prohibition created by the 500 Foot Law, there are certain statutory exceptions that allow a retail liquor license to be issued even after the 500 Foot Law has been triggered. One of said exceptions exempts from the Rule establishments which are within five hundred feet of three or more existing premises and which have also been licensed continuously since on or before November 1, 1993.[3] Premises protected by this exception are commonly said to enjoy "grandfathered" status.

The Applicant hereby requests that the Authority determine whether the ground floor and basement of 307 West 47th Street have been "continuously licensed" since on or before November 1, 1993, and further requests the Authority to consider whether the Premises would be "grandfathered" under the circumstances set forth herein and, assuming an otherwise acceptable application, be approved without the restrictions commonly encountered as a result of the 500 Foot Law.

---

[1] See Alcoholic Beverage Control Law §§64(7)(b), 64-a(7)(a)(ii), 64-b(5(a)(ii), 64-c(II)(a)(ii) & 64-d(8)(b).
[2] See Alcoholic Beverage Control Law §§64(7)(c), 64-a(7)(a)(iii), 64-b(5)(a)(iii), 64-c(II)(a)(iii), 64 d(8)(c)& 105(3)(a).
[3] See Alcoholic Beverage Control Law §64(7)(c).

445 HAMILTON AVENUE, SUITE 1102
WHITE PLAINS, NEW YORK 10601
TELEPHONE (914) 220-8270
FACSIMILE (914) 220-8271
ALL CORRESPONDENCE TO WHITE PLAINS OFFICE

225 WEST 34TH STREET, 9TH FLOOR
NEW YORK, NEW YORK 10122
TELEPHONE (212) 949-0138
FACSIMILE (914) 220-8271

243 TRESSER BOULEVARD, 17TH FLOOR
STAMFORD, CONNECTICUT 06901
TELEPHONE (203) 355-3635
FACSIMILE (914) 220-8271
WWW.RUDNERPALEUDIS.COM

As detailed in the enclosed affidavit of Harry Molfetas, the Premises was licensed as early as 1955, when his father, Spiro Molfetas, operated a Greek night club. As Mr. Molfetas points out in his affidavit, the Premises was subsequently licensed to various entities that operated, respectively, as Trixie's and Coyote Kate's. On December 30, 1992, nearly a year before the implementation of the "500 Foot Law", the Authority issued an on-premises liquor license to Irajeneric II Corp. (Serial No. 1027824). Said licensee operated at the Premises until July 17, 2002, when Irajeneric II Corp. surrendered its license to the Authority. Less than five months later, on December 6, 2002, the present licensee, BMJ Corp., filed an application to the Authority for an on-premises liquor license. On January 27, 2003, and approximately six months after Irajeneric II Corp. surrendered its license, the Authority issued an on-premises liquor license to BMJ Corp., an entity that is presently licensed and doing business as the Blarney Stone.

The Authority has, under similar circumstances, concluded that premises that were initially licensed prior to November 1, 1993 were "continuously licensed" notwithstanding a modest surrender-period. In those cases, the Authority ruled that despite surrender-periods continuing for months, and even up to nearly a year, premises nevertheless qualified as "continuously licensed" for purposes of the 500 Foot Law.[4] For example, in Declaratory Ruling 2012-00817D, the Authority ruled that the subject premises had been "continuously licensed" despite the fact that the previous licensee had surrendered its license approximately six months earlier. Furthermore, in Declaratory Ruling 2012-01220, the Authority similarly ruled that the premises in question had been "continuously licensed" despite an approximately eleven-month surrender-period.

In this case, the modest surrender-period between July 7, 2002 and December 6, 2002 should not trigger the "500 Foot Law." This is especially true in light of the historical character of the premises and the lineage of bars that have operated at the location. Accordingly, the Applicant respectfully requests the Authority to rule that upon the Applicant's timely filing of an application for a full on-premises liquor license said application shall not be subject to the 500 Foot Law.

Respectfully submitted,

Michael J. Paleudis, Esq.

Enc.

cc: Michael McNamee, *via e-mail*
Patrick McNamee, *via e-mail*

---

[4] See New York State Declaratory Ruling 2012-00817D (March 13, 2012); New York State Declaratory Ruling 2012-01220 (April 24, 2012).

AFFIDAVIT IN SUPPORT OF DUTCH FRED INC.'S APPLICATION TO THE NEW YORK STATE LIQUOR AUTHORITY
RE: 307 WEST 47 STREET, NEW YORK, NEW YORK

STATE OF NEW JERSEY)
)ss.:
COUNTY OF BERGEN)

I, HARRY MOLFETAS, being duly sworn, depose and say:

1. I am the manager of 307 W 47th Street, L.L.C., the owner of the land and improvements located at 307 West 47th Street in Manhattan (Property).

2. The Property has been owned and/or controlled by members of my immediate family since before the year 1955.

3. I was born in 1961 and have been involved in the management of the Premises for the entirety of my adult life.

4. For as long as I can remember the ground floor and basement of the building located at 307 West 47th Street (Premises) have been leased to tenants operating food service establishments and each of these entities have been licensed by the New York State Liquor Authority.

5. From in or about 1955 to 1980 the Premises was operated as Molfetas Bar.

6. From in or about 1980 to 1991 the Premises was operated as Trixie's.

7. From in or about 1991 to 2002 the Premises was operated as Coyote Kate's.

8. From in or about 2002 to Present the Premises has been operated as the Blarney Stone.

9. At no time during my lifetime has the Premises been leased, occupied, or utilized by any business other than a bar and/or food service business licensed by the New York State Liquor Authority.

HARRY MOLFETAS

Sworn to before me on
July 9th, 2015

Notary Public

KATHERINE PERCA
Notary Public
State of New Jersey
My Commission Expires Jul 30, 2019

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF SEPTEMBER 1, 2015
REFERRED FROM: COUNSEL'S OFFICE

2015-02013

REASON FOR REFERRAL
REQUEST FOR DIRECTION

APPLICATION OF 200 FOOT LAW
ON PROPERTY LOCATED AT:

472 FRANKLIN AVENUE, MOUNT VERNON

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on SEPTEMBER 1, 2015 determined:

The MP Law Group, PLLC

Attorneys at Law
240 North Avenue, Suite 212
New Rochelle, NY 10801

Maureen M. Pritchard

Of Counsel
Laurie E. Dallos
Law Offices of Nichelle A. Johnson, PLLC
Nichelle A. Johnson
Vivian Lee

Tel: (917) 842-1163
Fax: (914) 633-4110
info@mplawgrpllc.com

July 27, 2015

Via Overnight Mail

Ms. Jacqueline P. Flug, Esq.
General Counsel
New York State Liquor Authority
317 Lenox Avenue
New York, NY 10027

Re: Request for Declaratory Ruling
Application of 200 Foot Rule at 472 Franklin Avenue, Mt. Vernon, New York

Dear Ms. Flug:

This office represents Gairy Blake and Jenice Ruperto, the Members of BLVD Bar & Lounge, LLC (hereinafter, the "Applicants"). The Applicants are seeking a determination from the New York State Liquor Authority (hereinafter, the "Authority") with respect to the application of the 200 foot rule at the premises located at 472 Franklin Avenue, Mt. Vernon, New York 10553 (hereinafter, the "Premises).

On or about May 21, 2015, the Applicants entered into a ten (10) year lease agreement with C&S Franklin Realty Corp., for the purpose of opening and operating a bar and lounge at the Premises. The Premises is situated at the corner of Franklin Avenue and E. Sanford Boulevard and the entrance to the Bar and Lounge will be located on E. Sanford Boulevard. Subsequent to the leasing of the Premises, the Applicants became aware that there is a place of worship "around the corner" and within 200 feet of the Premises. The church, Kingdom Hall-Jehovah's Witnesses, is located at 460 Franklin Avenue, Mt. Vernon, New York, 10553. As the Applicants do not want to incur additional significant expenses to renovate the premises without an assurance that an on-premises liquor permit can be obtained, the Applicants are seeking a ruling as to whether the Premises may be licensed as a result of one of the two "grandfather" provisions of the 200 Foot Law – that the premises has been continuously licensed prior to the church's exclusive use of its location as a place of worship.

RECEIVED
JUL 29 2015
STATE LIQUOR AUTHORITY
OFFICE OF COUNSEL

The 200 foot rule prohibits 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 200 feet of any "building occupied exclusively" as a school or place of worship. In Declaratory Ruling 2012-00551(D), the Authority held that 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 such exception is commonly referred to as the "grandfather" exception. The Authority stated that 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 worship.] Put another way, if there was a license issued for the location before the school or place of worship came into existence, and the license has remained in effect at the location since that time, the 200 Foot Law does not apply."

In the case presented in Declaratory Ruling 2012-00551(D), the location in question had been licensed to various entities as a restaurant, bar and cabaret since 1935: the last entity held a liquor license from in or about 1995 until it was surrendered in March 2011; and, St. Joseph's church, one of the oldest church in the City, was located within 200 feet of the location. In it's ruling, the Authority determined that the location appeared to have been licensed before case law developed regarding the application of the 200 Foot Law on corner locations and deemed the location to be continuously licensed notwithstanding the surrender of the license by the previous entity that occupied the premises.

In the present case, the Premises was previously licensed from on or about January 12, 1987, until April 30, 2015, when Robert Doughty, the owner and operator of the Star Bar & Grill surrendered the license. With the exception of a late renewal of the liquor license in 2009, Star Bar & Grill has been in good standing with the State Liquor Authority. As stated above, located "around the corner" and within two hundred feet of the Premises is a place of worship, Kingdom Hall-Jehovah Witnesses. Public information about the church indicates that it was established in or about 1996.

The Applicants have taken significant steps towards renovation of the Premises for its use as a bar and lounge. To date, the Applicants and their architect have finalized renovation drawings for the construction and renovation of the premises, and has begin the process of filing and obtaining the necessary building permits from the Department of Buildings. The Applicants have also started the process of obtaining a liquor license permit. On or about May 27, 2015, notice was sent to Mount Vernon City Clerk, the local community board, notifying them of BLVD Bar & Lounge's intention to apply for an on-

premises liquor license. An application for an on-premises liquor license is expected to be submitted by the Applicants in August 2015.

In considering the short period of time between the surrender of the liquor license by Robert Doughty and the time the Applicants leased the Premises (April 30, 2015 and May 21, 2015), and their expectation of timely filing an application with the State Liquor Authority, the Applicants respectfully request that the Authority render a ruling in the Applicants favor by determining that the Premises has been continuously licensed since 1987.

Respectfully submitted,

Maureen M. Pritchard, Esq.

Enclosures