

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF 07/31/2019  
REFERRED FROM: COUNSEL'S OFFICE

2019- 01592F

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

REQUEST FOR DECLARATORY  
RULING - APPLICATION OF 200' LAW  
ON PREMISES LOCATED AT 16-18  
ALLEN STREET, MANHATTAN

The Members of the Authority at their regular meeting held at the Zone 2 Albany Office on 07/31/2019 determined:

**BERNSTEIN REDO, P.C.**  
-ATTORNEYS AT LAW-

1177 AVENUE OF THE AMERICAS, 5<sup>TH</sup> FL  
NEW YORK, NEW YORK 10036  
TEL (212) 651-3100

DONALD M. BERNSTEIN  
MARTHA M. REDO

BENJAMIN S. SAVITSKY

May 31, 2019

**Sent via E-Mail: Mark.Frering@sla.ny.gov**

Mark Frering, Esq.  
Acting Counsel  
New York State Liquor Authority  
80 South Swan Street, Suite 900  
Albany, New York 12210-8002

Re: Request for Declaratory Ruling Regarding the  
Exclusive Use Exception to the 200 Foot Law

Dear Counsel Frering:

We represent a proposed applicant for an on-premises liquor license at a property on Manhattan's Lower East Side that is within 200 feet of 61 Canal Street, New York, New York 10002, a building that contains a house of worship. This letter shall constitute a request for a declaratory ruling pursuant to Rule 98.1 of the Rules of the New York State Liquor Authority that, under the facts presented below, the building at 61 Canal Street is not occupied exclusively as a school, church, synagogue or other house of worship for the purpose of the 200 Foot Law.

Alcoholic Beverage Control Law ("**ABCL**") Section 64(7) prohibits issuance of an on-premises retail license for any establishment that is on the same street or avenue and within 200 feet of a building occupied exclusively as a school, church, synagogue or other house of worship. Pursuant to the statute, the New York State Liquor Authority (the "**Authority**") can determine whether a building is "exclusively occupied" as a house of worship for the purpose of applying the 200 Foot Law.

The ground floor of the building at 61 Canal Street has long been used as commercial retail space and leased to commercial tenants, while the upper floors of the building contains the Cheng Chio Buddhist Temple and its community rooms, back-of-house offices, and parish apartments.<sup>1</sup> This request for a declaratory ruling from the Authority seeks confirmation that the identified building, 61 Canal Street, is not exclusively occupied as a house of worship inasmuch as the building was recently renovated and the ground floor retail units are currently unoccupied but built, planned, filed, and permitted for lease as commercial retail use, a use and occupancy that is identical to the historic use and occupancy of the ground floor of the property since at least the 1930s.

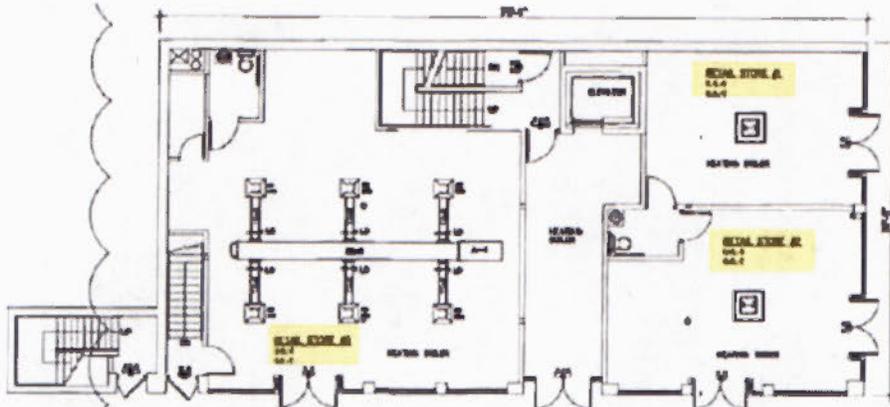
---

<sup>1</sup> 61 Canal Street has multiple addresses because the ground floor storefronts have separate entrances on both Canal Street and Allen Street. The building is alternatively known as 61-63 Canal Street and 14-18 Allen Street.

The Building at 61 Canal Street

61 Canal Street is a three-story mixed-use building at the corner of Canal Street and Allen Street. According to New York City Department of Building and other property records, the building has been occupied since at least the 1930s with commercial retail stores on the ground floor and other uses above. In 2015, the property owner filed an application with the New York City Department of Buildings to renovate the entire building (an Alt 1 application) that, among other things, applied for a slight change of use of the ground floor from “STORES” to “RETAIL STORES”. Thereafter the property owner commenced, and has since completed, construction and rehabilitation. The newly renovated property partially opened in 2017, with the Cheng Chio Buddhist Temple congregation occupying only the upper two floors and the basement of the building.

As renovated, the 61 Canal Street building has a main entrance on Allen Street that provides access to a lobby/corridor with an elevator bank and a staircase. Both the elevator and staircase provide access to the cellar and floors two and three. The ground floor plan for 61 Canal Street, the floor plan of which is below and is also included as part of the complete floor plans annexed hereto as Attachment 1, shows the entrance to the main lobby/corridor that provides access to the elevator and staircase:



**61 Canal Street Floor Plan:** Lobby/corridor to elevator and separate retail stores on perimeter of the property.

As visualized above and shown in Photograph 1 below, the lobby/corridor physically bisects the building on the ground floor and creates walls for three retail spaces on the perimeter of the building for storefronts on Allen Street and Canal Street:



**Photograph 1:** Entrance to the lobby (red square) in center of building with two of three retail entrances (green squares). Retail Space One (18 Allen Street) on left, Main Entrance (16 Allen Street) in center, Retail Space Two (14 Allen Street) on right, and Retail Space Three (61 Canal Street) not picture.

None of the three retail spaces have access into the lobby/corridor or the elevator that services the basement and upper floors, including the Cheng Chio Buddhist Temple. Each ground floor retail space has a separate address and entrance on either Allen Street or Canal Street, as shown in Photographs 2-4 below:



**Photographs 2-4:** Separate ground floor entrances to dedicated commercial retail spaces at 61 Canal Street.

According to the floorplans, pictures and observations during a recent site visit, *Retail Space One* (18 Allen Street) has its own entrance and restroom and does not have internal access to the main lobby or the Cheng Chio Buddhist Temple space on floors two and three. *Retail Space Two* (14 Allen Street) and *Retail Space Three* (61 Canal Street), both currently vacant, each have their own street entrances and share a restroom through a connecting doorway between the two retail spaces. Like *Retail Space One*, neither *Retail Space Two* nor *Retail Space Three* connect internally to the main lobby of the building or the Cheng Chio Buddhist Temple on floors two and three. All three retail units on the ground floor are separately constructed commercial spaces.

**The 200 Foot Rule Does Not Apply: 61 Canal Street  
is Not Used Exclusively as a Place of Worship**

The statutory prohibition should not apply to proposed on-premises liquor license within 200 feet of 61 Canal Street, because the building is not exclusively occupied as a school, church, synagogue or other house of worship inasmuch as it contains three ground floor retail spaces. As mentioned previously and described more fully below, the separately constructed commercial storefronts of 61 Canal Street do not have access to the lobby/corridor that leads upstairs and have always been commercial retail spaces.

### *A. Historic & Proposed Use of 61 Canal Street*

Historically, the ground floor of 61 Canal Street has been used for commercial retail purposes and all filings recorded with the New York City Department of Buildings, including a recently completed renovation of the entire building, evidence that the property owner intends to continue this use of the property as a mixed-use building.

According to records available from the New York City Department of Buildings, the oldest Certificate of Occupancy (issued in 1932) identified use of the ground floor for “stores” and the second floor for “offices.” In 1988, as a result of a building alteration, a new Certificate of Occupancy similarly classified the ground-floor use as Zoning Use Group 6 for use as “stores” and the second and third floors as Zoning Use Group 4 for offices and a “church.” Copies of the Certificates of Occupancy are annexed hereto as Attachment 2. Photographs 5 and 6 (below) from 2007 through 2012 confirm the building’s conformance to the information contained in the most recent Certificate of Occupancy issued in 1988 and show that the ground floor of the building is used for commercial purposes:



Photograph 5: 61 Canal Street (September 2007).

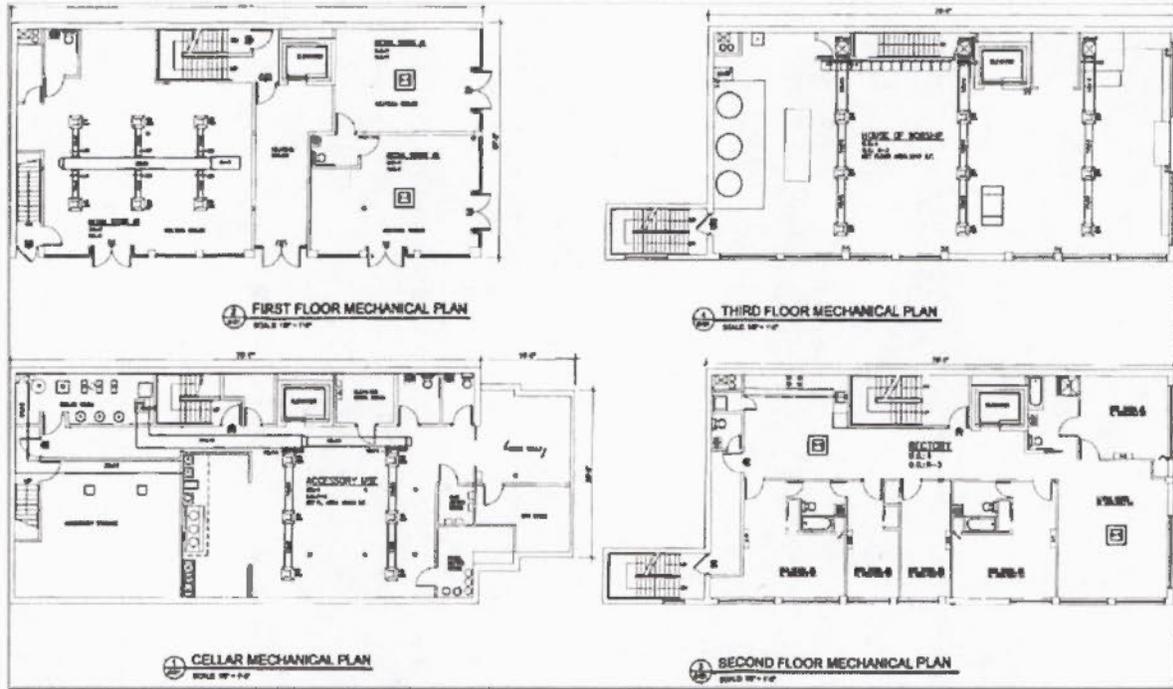


Photograph 6: 61 Canal Street (July 2012).

Based on the New York City Department of Buildings’ records and the corroborating photographs, the ground floor of 61 Canal Street has been used for commercial retail since at least 1932, and from all appearances such commercial use is unaffiliated with the religious use of the second and third floors by the Cheng Chio Buddhist Temple congregation.

As noted previously, the building at 61 Canal Street was recently fully renovated. As part of the most recent alteration application, the property owner filed drawings and accompanying documents with the New York City Department of Buildings that further confirm the building was used as explained above (ground floor for commercial retail use and upper floor for religious use)

and that the property owner intends to continue using the upper floors for the Cheng Chio Buddhist Temple and leasing the ground floor to commercial retail tenants. Architectural drawings (first filed in 2015 and subsequently amended) shown in part below and annexed hereto in full as Attachment 3, identify the use of the ground floor for commercial retail tenants and the use of the upper floors as a house of worship with ancillary office space and rectory:



**61 Canal Street Floor Plans:** Floor Plans filed by property owner, most recently amended in 2017, showing the cellar through third floor. The second-floor rectory and third-floor house of worship are accessed by elevator and staircase and are not accessible from the ground-floor retail units.

In addition to marking each ground-floor space as “Retail Store” on the plan, each space is also identified as “UG: 6” (Use Group 6). The Schedule A filing, which accompanies a New York City Department of Buildings’ alteration application (used to set forth the existing and proposed legal use of a space within a building that will be set forth on a new certificate of occupancy) (shown in part below and attached hereto in full as Attachment 4) further evidences that the ground floor was previously used for commercial “stores” and that the property owner intends to continue to use the space for “retail stores” after the completion of the alteration.



PW1A: Schedule A - Occupancy / Use



Must be typewritten. Sheet 1 of 3

DOC#1 DATA CORRECTION

Floor	Existing Legal Use						Proposed Use					
	Maximum Number of Persons	Live Load (psf)	2014 Code Designations?	Building Code Occupancy Group(s)	Dwelling/Rooming Units (BC)	Zoning Use Group(s)	Maximum Number of Persons	Live Load (psf)	2014 Code Designations only*	Building Code Occupancy Group(s)	Dwelling/Rooming Units (BC)	Zoning Use Group(s)
CEL		OG	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	C		6	70	OG	<input checked="" type="checkbox"/> Yes	A-3, S-2		4, 6
	Description: STORAGE						Description: ACCESSORY USE, SPRINKLER ROOM, BOILER ROOM, RESTROOMS & KITCHEN ACCESSORY TO HOUSE OF WORSHIP, ACCESSORY STORAGE.					
OSP		OG	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	K		4		OG	<input checked="" type="checkbox"/> Yes	A-3		4
	Description: ONE(1) OPEN PARKING SPACE						Description: ONE(1) OPEN PARKING SPACE					
001	50	120	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	C		6	70	120	<input checked="" type="checkbox"/> Yes	M		6
	Description: STORES						Description: RETAIL STORES					
002	73	75	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	F-1B		4		75	<input checked="" type="checkbox"/> Yes	R-3		4
	Description: CHURCH OFFICES, MEETING ROOM, RECREATION ROOM.						Description: RECTORIES.					
003	180	60	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	F-1B		4		60	<input checked="" type="checkbox"/> Yes	A-3		
	Description: CHURCH						Description: HOUSE OF WORSHIP					

Falsification of any statement is a misdemeanor and is punishable by a fine or imprisonment, or both. It is unlawful to give to a City employee, or for a city employee to accept, any benefit, monetary or otherwise, either as a gratuity for properly performing the job or

Applicant's Name (please print) SUGNAM CHANG (R.A.)



New York City Department of Building Filing: Schedule A showing Floor 1 Retail Stores

In sum, all documents filed with the New York City Department of Buildings as part of the recent renovation of 61 Canal Street exhibit a historic use of the ground floor space for commercial retail tenants and an intention to lease such space in the future for similar commercial retail use.

B. 61 Canal Street Does Not Use A Full Religious Tax Exemption

In addition to the Department of Building filings evidencing a non-exclusive religious use of the building, property tax records from the New York City Department of Finance similarly indicate that 61 Canal Street maintains a commercial retail use and is not solely a building used for religious worship.

According to available New York City Department of Finance records the property at 61 Canal Street has always paid property taxes to the City and has not received a full religious exemption for the building. From 2009 (the first statement year available online) through 2011, the property took two partial exemptions for its use as a house of worship and a parsonage, but paid more than three quarters of its assessed property taxes to the City after applying such exemption. In 2012, the religious exemption was made for just the parsonage and, thereafter, from 2013 through 2018, the building has not taken any exemptions for religious use of the property and the owner is paying the fully assessed amount of taxes for the commercial property. Copies of the 61 Canal Street Property Tax Bills 2009 – 2019 are annexed hereto as Attachment 5.

C. *Activity at 61 Canal Street Confirms  
the Property is a Mixed-Use Building*

During recent visits to 61 Canal Street it was apparent that the upper floors of the building are undoubtedly used for religious services. However, the three ground floor units do not appear to be used for any religious purposes. On information and belief, operators interested in leasing the ground floor units have visited the spaces and discussed operating commercial establishments in the storefront retail. Photographs taken by an individual touring the space for proposed commercial use are annexed hereto as Attachment 6.

New York State Court and Authority  
Declaratory Rulings on the 200 Foot Law

The Authority has issued declaratory rulings under similar circumstances to find that buildings are not exclusively occupied as places of religious worship where there exist non-incidental residential or commercial uses of such property. As frequently noted by the Authority, ABCL Section 64(7)(a) uses the phrase “building occupied exclusively” as a place of worship, but New York State courts have adopted a test, which the Authority has followed, that looks to whether a building is used *primarily* as a place of worship. Although the Authority and the courts generally scrutinize contested use situations in favor of finding exclusivity for religious organizations (even identifying specific activities it deems merely incidental to primarily religious use of a property thereby retaining the prohibition of the 200 Foot Law), both have consistently confirmed that traditional commercial use of a property renders a building non-exclusive.

The New York State courts have rendered several decisions in which they have found multi-use buildings non-exclusive for the purposes of the 200 Foot Law. For example, in *111 East 22<sup>nd</sup> Management Corp. v. NYSLA*, 152 Misc.2d 842 (1991), the court held that a building which housed a school as well as dental and medical clinics and non-affiliated technology resource center (as well as other operations), was not exclusively used as a school, because the activities were not incidental to the operation of the school and the building appeared to be more of a multi-use facility than a school. The First Department, analyzing cases in a similar manner to the lower courts, has likewise held that a church renting out a portion of its building as an embassy was not “occupied exclusively” as a place of worship. *See Brasero v. State Liquor Authority*, 176 A.D.2d 462 (1<sup>st</sup> Dept., 1991).

The Authority, too, has issued rulings finding that buildings housing religious establishments as well as other commercial spaces are not “occupied exclusively” as a place of worship. In Declaratory Ruling 2017-02673 (Property Located at 41-43 Division Street, Manhattan), a recently published ruling of the Authority on the subject, the Members declared that “a school located within a large, multi-use structure that also includes residential apartments, commercial businesses, retail offices and a commercial parking garage” was not located within a building occupied exclusively as a school and the Two Hundred Foot Law did not prevent an on-premises license from being issued for the proposed premises. Numerous other rulings by the Authority come to a similar conclusion: Declaratory Ruling 2013-01030 (“the Members of the Authority find that the presence of the commercial enterprise at [a building with a church] renders the location a building not exclusively occupied as a place of worship.”); Declaratory Ruling 2013-01031 (a building housing a church which was internally connected to a second building which leased space to a commercial bank was deemed not occupied exclusively as a house of worship);

Declaratory Ruling 2011-03310 (a church building with an internal connection to a separate building used for residential and commercial purposes unrelated to church activities was “not exclusively occupied by a place of worship.”).

In addition to the traditional decisions cited above, the Members have on occasion made several non-exclusive findings based on the assumed and/or proposed uses of a building. In Declaratory Ruling 2013-02625 (Property Located at 315 West 54<sup>th</sup> Street in Manhattan), for example, the Authority considered whether St. George Orthodox Church was located in a building that was “occupied exclusively” as a place of worship. The Authority, in determining that the building was not exclusively occupied for religious purposes, relied on photographs of the building showing a sign for a stationary business and a website printout showing that the stationary store used the same building address as the church. The Authority concluded:

*[b]ased on the apparent use of the building at 307 West 54<sup>th</sup> for commercial purposes by an entity that, for the purposes of this ruling, we will assume is unrelated to the religious organization, we find that the building is not exclusively occupied by a place of worship. Accordingly, the proximity of the restaurant to the place of worship will not prohibit the issuance of an on-premises license for the restaurant.*

In Declaratory Ruling 2011-02878 (Property Located at 347 Bowery Street in Manhattan), perhaps the most similar set of facts to that proposed in this request, the Authority considered the prospective use of property in making a determination about its exclusive occupancy by a house of worship. According to the statement of facts, a property on Bowery had applied for a change in use from the New York City Department of Buildings to use its second and third floors for a synagogue, library and offices, but the other floors of the building were to be used for commercial and residential purposes. The Authority determined that the property was not occupied exclusive as a place of worship, because the “synagogue (together with the library and offices) is but one of many current and/or anticipated uses for this building.”

### Conclusion

As demonstrated, the building at 61 Canal Street has never been exclusively occupied as a house of worship (at least since 1932), and the property owner does not intend to change its method of operation in the future. While the building clearly has a house of worship on floors two and three, it is undeniable that 61 Canal Street has three retail storefronts on the ground floor of the building which the property owner has historically leased for commercial use. Further, but for a renovation of the building, these ground-floor units would be currently occupied for retail use unaffiliated with the Cheng Chio Buddhist Temple on the upper floors. Based on New York City Department of Building filings as part of the alteration application, the 61 Canal Street property owner clearly intends to lease the modernized spaces once possible to continue the mixed-use operation of the building which existed before the renovation. Additionally, the fact that the property owner pays the full assessed commercial property taxes is further evidence that the building at 61 Canal Street is not used exclusively for religious purposes. As such, 61 Canal Street should be considered a mixed-use building that is *not* exclusively occupied as a place of religious worship.

Therefore, we respectfully request the Authority issue a declaratory ruling identifying that 61 Canal Street is not exclusively occupied as a place of worship for purposes of the 200 Foot Law and thus applications for new on-premises liquor license with entrance doors within 200 feet of 61 Canal Street would not be subject to the general prohibition proscribed by the 200 Foot Law.

Very truly yours,



Benjamin Savitsky

Enclosures