



ANDREW M. CUOMO
Governor

LILY M. FAN
Commissioner

VINCENT G. BRADLEY
Chairman

GREELEY FORD
Commissioner

DECLARATORY RULING

Application of the 500' Law on premises located at 795 8th Ave. in Manhattan

Agenda # 2020-00140A

The Alcoholic Beverage Control Law [ABCL] §64(7)(b) prohibits the Authority from issuing a retail license for the sale or consumption of liquor for on-premises consumption where there are three or more such liquor licenses within 500' of the proposed location, i.e. the "500 Foot Law." There are two exceptions; the first where issuance of the license would be in the public interest after a hearing and in consultation with the community board [ABCL §64(7)(f)], and the second where there has been a full liquor license continuously in existence at the location since on or before November 1, 1993 (the "grandfather" exception) set forth in ABCL §64(7)(c).

The Members of the Authority are in receipt of a request for a declaratory ruling as to whether, under the facts presented, the above location is subject to the 500 Foot Law. For the purposes of this request, it is not disputed that the location is within 500' of three or more full (OP) liquor licenses. A ruling is sought as to whether the location may be deemed to be continuously licensed since before 1993 and thus "grandfathered-in" so as to be exempt from the 500 Foot Law.

The issue before the Members of the Authority is whether a full (OP) liquor license has been in existence continuously since November 1, 1993, or should be deemed to have been continuously licensed at this location based upon the facts presented.

The facts upon which this ruling is based are as follows:

- The proposed licensed establishment is located at 795 8th Avenue in Manhattan, New York.
- The location was licensed to Blarney Stone Restaurant, Inc. (New York RL 1028489) from 1959 to 2003, then to 795 8th Ave Corp. (New York OP 1136695) from 2003 to 2013, and then to Social 8th Ave Corp. (New York OP 1261550) from 2013 to April 12, 2019 (date of surrender).
- The most recent two licenses proceeded as if they were subject to the 500' law.
- Applicant's attorney represents that there has been no intervening use of the premises since the last license was surrendered.

The proposed location was thus licensed prior to 1993 and is eligible for grandfather status. There are two remaining questions: (i) is the premises “continuously licenced,” even though the license has been vacant for several months (during which there was no intervening use of the premises), and (ii) does the prior decisions of licensees at the premises to proceed as if they were subject to the 500’ law bear on the analysis.

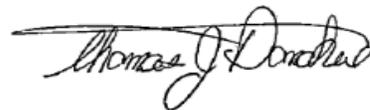
As to (i), this issue arose in DR 2017-2724, and the Authority held that the premises would be treated as continually licensed as long as it was vacant and not used for other purposes following a prior license surrender. Here, the premises apparently have not been rented or used for any other purpose since becoming vacant in April of 2019. We see no reason to reach a different conclusion on the impact of an intervening period of vacancy in this case. As to (ii), we do not believe that the intervening decisions of prior licensees, who mistakenly believed that the premises were not grandfathered, should have any bearing on a determination as to whether the premises were “continually licensed.”

The Members of the Authority find that the location should be deemed to have been continuously licensed since before 1993.

An applicant at this location for an OP license thus would not be subject to the procedural and substantive requirements of the 500’ law.

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on January 15, 2020 before Chairman Vincent Bradley, Commissioner Lily Fan and Commissioner Greeley Ford. The above written ruling was approved by Chairman Bradley on behalf of the Members on June 15, 2020.

Dated: 6/16/20

A handwritten signature in black ink, appearing to read "Thomas J. Donohue". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Thomas J. Donohue
Secretary to the Authority