



ANDREW M. CUOMO
Governor

LILY M. FAN
Commissioner

VINCENT G. BRADLEY
Chairman

GREELEY FORD
Commissioner

DECLARATORY RULING

Application of the 200' Law on premises located at 60 Stewart Ave, Roscoe, NY

Agenda # 2020-01308

The Alcoholic Beverage Control Law [ABCL] §64(7)(b) prohibits the Authority from issuing a retail license for the sale or consumption of liquor (OP) for any premises which is on the same street and within 200 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," ABCL §64(7)(a).

The Members of the Authority are in receipt of a request for a declaratory ruling as to whether, under the facts presented, a particular location is subject to the 200 Foot Law. The proposed on-premises liquor license would be in a premises located at 60 Stewart Avenue in Roscoe, New York. There is a church, Roscoe Presbyterian Church, located "around the corner" on Route 206 (Old Rte. 17). Applicant concedes that the Church is within 200 feet of the premises.

The building housing the applicant contains three attached structures with three separate businesses all on the same tax lot. The building sits on the corner of Stewart Avenue and Route 206. Under prior case law, generally, a building on a corner is deemed to be located on both streets, see *Gorman's Restaurant, Inc. v. O'Connell*, 275 AD 166 (1st Dept. 1949, affd. 299 NY 733). However, the applicant states that the proposed premises and the church are not on the same street since there will be two businesses between the applicant and the corner position (although all are arguably in the same "building"). The applicant will have its own separate entrance located on Stewart Ave, while the Church's entrance will be on Route 206.

The premises to be licensed consists of a third adjoining structure and separate business in from the corner. The two intervening non-licensed businesses stand between the applicant's premises and the corner. This request, thus, presents the question of whether a licensed premises that sits off the corner, separated from the corner by other businesses, should nonetheless be deemed to be located on the corner (and thus on two streets) because the building it sits in extends to the corner.


ABCL § 64(7)(a) provides that the 200' law prohibition applies when the applicant's premises is on the same street as the church. Here, the corner position of the applicant's building is to be occupied by an unlicensed third party. In *Our Backyard, Inc. v. NYSLA*, 90 Misc2d 339 (1977), where the applicant's premises was underground due to the sloping of the intersecting street, the court held that it was not on the same street as the church so that the applicant was not disqualified from receiving a liquor license. The court, thus, made a reasonable interpretation of the "same street" requirement and concluded that the license should be permitted.

Similarly here, the applicant's premises will not be in the corner position as that location will be occupied by an unlicensed third party operating a fishing store. There is an additional unlicensed entity between them. Thus, the premises-to-be-licensed is truly "around the corner" from the church, and should not be considered to be on the same street as the church just because its building extends to the corner.

Accordingly, the Members of the Authority find that the licensed establishment is not on the same street as the Roscoe Presbyterian Church, so the Authority is not prohibited by the 200' law from issuing an OP liquor license to the applicant at this location.

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on September 30, 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 April 8, 2021.

Dated: 4/9/21



Thomas J. Donohue
Secretary to the Authority