



**KATHY HOCHUL**  
Governor

**LILY M. FAN**  
Commissioner

**VINCENT G. BRADLEY**  
Chairman

**GREELEY FORD**  
Commissioner

-----  
**DECLARATORY RULING**  
-----

Premises located at 52 41 Center Blvd, Queens, NY

Agenda # 2021-01973

The Alcoholic Beverage Control Law [ABCL] prohibits the Authority from issuing a retail license for the sale or consumption of liquor 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."

The Members of the Authority are in receipt of a request on behalf of an owner of property to be used in a planned development which will contain a school and up to three proposed retail locations. The owner seeks a declaratory ruling as to whether, under the facts presented (which includes the attached diagram of the planned development), proposed retail licenses would be subject to the 200 Foot Law. For the purposes of this request, three separate issues are presented: the grandfather clause; same street; and points of measurement.

Notwithstanding the general prohibition created by the 200 Foot Law, there are certain statutory exceptions that allow a retail liquor license to be issued. Two of these exceptions are the "grandfather" provisions. The first provides that a license that was in effect on December 5, 1933, may continue to be renewed even if the location would otherwise be subject to the 200 Foot Law. The second grandfather provision 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 a license has remained in effect at the location since that time, the 200 Foot Law does not apply [ABCL §64-a (7)(a)(iii)].

The purpose of the 200 Foot Law is to prevent liquor licensed establishments from being too close to schools and houses of worship. The grandfathering exceptions are designed to create an exception for established, licensed businesses who would not know, when investing into such businesses, that a school or house of worship might end up being established within 200 feet.

In Declaratory Ruling 2011-03141A, the Board considered a similar issue and decided that when a school already is planned to be located within 200 feet of premises for which no liquor license application had yet been filed, the grandfather clause would not apply. Here, the school to be built is part of the planned building project for the entire site. The rationale behind grandfathering – to protect a licensee's investment in a business made before it could know that

a school might someday be established within 200 feet – would not apply in this case either. Thus, even if one or more of the liquor licenses are issued prior to the school being occupied, the Board determines that there will be no grandfathering. Accordingly, the Members will move to the other issues to determine whether the proposed premises are within 200 feet of the proposed school.

The second issue presented is whether the school and the proposed locations of the three potential liquor licenses (retail spaces A, B, and C) will be on the same street, as the 200 Foot Law does not apply at all if the school is on a different street. Reference is made to the attached diagram of the development site provided by the owner. Generally, it has long been the law in New York that a licensed premises occupying a building situated on a corner will be deemed to be on both streets for purposes of 200 Foot Law analysis. Exceptions have been made to this general rule when the building is a large one and there are intervening businesses or other spaces between the corner and the licensed premises; in such cases, we have determined that the licensed premises is not on the same street as a school or church around the corner. While we are unaware of prior rulings (by the Board or in the courts) on whether a school or house of worship occupying a building on a corner is also deemed to be located on both streets, we see no reason why the same rule would not apply to both the licensed premises and the school or house of worship.

Accordingly, the Board finds that the school is on both 54<sup>th</sup> Avenue and 2<sup>nd</sup> Street. The Board determines that retail space B is also on 2<sup>nd</sup> Street such that it will be subject to the 200' law. With respect to retail spaces A and C, the Board determines that they are around the corner from the school, with other storefronts or the lobby of a residential building between them. Retail spaces A and C are thus not on the same street as the school and thus will not be subject to the 200 Foot Law.

With respect to retail space B, which is on the same street as the school, the third issue remains. Whether the premises are within 200 feet will depend on where the appropriate measuring points are located, such points being subject to which doors qualify as entrances, where those doors are actually located, whether they are recessed from the street, where the pathways to such doors meet the street, etc.

When already completed buildings have recessed doors, determining the appropriate measuring points can be a matter of reasonable dispute. The proposed buildings here, however, are not even fully constructed. The locations and types of doors, the location and types of pathways, and other material matters easily could be changed. The Board thus declines to rule now on the third legal issue; it would be premature to do so prior to the completion of the building project.

This Ruling is based on and is limited to the facts depicted on the attached diagram.

---

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on July 14, 2021 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 December 20, 2021.  
Dated: 12/29/21



Thomas J. Donohue  
Secretary to the Authority

