



KATHY HOCHUL
Governor

LILY M. FAN
Commissioner

VINCENT G. BRADLEY
Chairman

GREELEY FORD
Commissioner

DECLARATORY RULING

Premises located at 977 Second Ave, NY, NY

Agenda # 2021-02520d

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 feet of the proposed location, *i.e.* the “500 Foot Law.” There are two exceptions: (i) 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 (ii) where there has been a full liquor license continuously in existence at the location since on or before November 1, 1993 [ABCL §64(7)(c), the “grandfather” exception].

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 feet 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 thus 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 applicant describes the facts as follows:

- The proposed licensed establishment is located at 977 Second Ave in Manhattan, New York.
- The location was licensed to Der Mon Restaurant, Inc. (New York OP 1026904) from 1988 to 2001 and then to Laggan Restaurant, Inc. (New York OP 1116023) from 2001 to September 24, 2020 (date of surrender).
- Applicant’s landlord represents that there has been no intervening use of the premises since the license was surrendered.

The proposed location was thus licensed prior to 1993 and was eligible for grandfather status from 1993 forward, at least until September 24, 2020. The question presented is whether

the premises can be considered “continuously licensed” now, even though the premises have been vacant for several months (during which there was no intervening use of the premises).

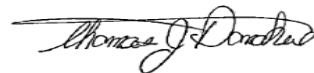
This issue arose in DR 2020-0014A where the license had been surrendered for a number of months, and the Authority held that the premises would be treated as continually licensed as long as it was vacant and not used for other purposes following license surrender. Here, the premises as represented has not been rented or used for any other purpose since becoming vacant in September of 2020. We see no reason to dispute the landlord’s representation of no intervening use or to reach a different conclusion on the impact of an intervening period of vacancy in this case.

The Members of the Authority find that the location should be deemed to have been continuously licensed since before 1993 for purposes of the 500 Foot Law.

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

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on September 15, 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