



KATHY HOCHUL
Governor

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Commissioner

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Chairman

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Commissioner

DECLARATORY RULING

Restroom requirement – The Beer Assembly

Agenda # 2022-00173

Introduction

The State Liquor Authority (SLA) has received a request for a declaratory ruling from The Beer Assembly LLC (“Applicant”). Applicant has an application for an on-premises tavern license under review. The premises are currently under construction. Applicant is requesting a declaratory ruling as pertains to the two-bathroom requirement. Applicant asks whether the four proposed water closets or compartments, (including one that is ADA accessible with its own sink) and one communal sink (lavatory) within a single communal bathroom is sufficient to meet the Authority’s two-bathroom requirement, or in the alternative, that the two-bathroom requirement of Authority Rule § 48.2 be waived. The Applicant’s Establishment Questionnaire lists its maximum occupancy as 248 people.

SLA Rule Involved

Authority Rule § 48.4(d)(2) provides:

§ 48.4 Physical standards

(d) General physical standards. The following standards shall be applicable to all on-premises licenses:

(2) Each premises licensed hereunder shall provide separate sanitary facilities for both sexes. The provision of such facilities may be waived by the Authority provided there is a satisfactory showing that such facilities are in an area adjacent or proximate to the licensed premises and available to the patrons thereof. 9 NYCRR § 48.4(d)(2)

NYC Administrative Code Involved

NYC Administrative Code § 27-922.3(a) provides that for a maximum occupancy of 151 to 300 people, there must be two water closets for men and four water closets for women. NYC Administrative Code § 27-922.3(c) provides that unisex bathrooms may be provided in lieu of separate bathrooms for men and women. NYC Building Code Table 403.1 “Minimum Number of

Required Plumbing Fixtures” lists the required number of water closets for taverns to be 1 per 40 people and the number of lavatories (sinks) to be 1 per 75 people.

Questions

Do the bathroom facilities as currently framed and proposed by the Applicant meet the NYC Code minimal requirements for a tavern at its listed occupancy?

Assuming the Applicant’s bathroom facilities meet the minimal municipal building code requirements for a tavern with the proposed occupancy, shall the Authority’s two-bathroom rule be waived?

Analysis

Per the NYC Code, a water closet is basically a toilet or urinal. In contrast, a bathroom, as commonly understood, contains both a toilet and a sink. Applicant’s contention that a water closet, unequipped with an attendant sink, is a bathroom, is without merit.

The Applicant’s architect’s claim that a total of four water closets was sufficient is based on the *factual error* that Applicant was a restaurant, rather than a tavern. It is uncontroverted that Applicant is a tavern, where the service of food is incidental to the sale of alcoholic beverages. While BC 403.1 requires 1 water closet per 75 persons for a restaurant, it requires 1 water closet per 40 persons for a tavern. With a maximum occupancy listed at 248, a tavern would need a minimum of 6 water closets per the Code, not 4.

The Applicant has also submitted a plan to have 1 communal sink (lavatory) and another sink in the ADA accessible water closet. However, BC 403.1 requires 1 sink per 75 people, meaning that there must be at least three sinks installed for 248 people.

At the Full Board meeting held on January 19, 2022 to consider this request, the Applicant’s attorney represented that the Applicant would reduce its occupancy to 145 people, in order for the Applicant to meet the local Code requirements for use of the premises as a tavern with four toilets and two sinks within a single communal bathroom.

Determination

The Members declare that, based upon Applicant’s representations that the maximum occupancy will be limited to 145 people, and that there will be four toilets (water compartments) and two sinks (lavatories) within a single communal bathroom, the Authority’s two-bathroom rule is waived. This waiver is made conditional on meeting those requirements and the occupancy limit of 145 will be a condition of the liquor license.

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on January 19, 2022 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 March 7, 2022.

Dated: 3/9/22

A handwritten signature in black ink, appearing to read "Donald Roper". The signature is fluid and cursive, with the first name "Donald" and last name "Roper" clearly distinguishable.

Donald Roper
Secretary to the Authority