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Governor

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Chairman

GREELEY FORD
Commissioner

DECLARATORY RULING

Premises located at 1413 Bushwick Ave, Brooklyn, NY

Agenda # 2022-01025

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 a current licensee, Salud Bar & Grill LLC (Kings RW 1287986) for a declaratory ruling as to whether, under the facts presented, the location is subject to the 200 Foot Law. The licensee does not dispute that its premises are on the same street as and within two hundred feet of St. Thomas Protestant Episcopal Church ("Church"), located at 1405 Bushwick Ave. The licensee seeks a ruling that the Church building is not occupied exclusively as a place of worship, which if true would render the 200 Foot law inapplicable. ABCL §64(7)(a).

The licensee alleges that the activities conducted or permitted by the Church render its use of the building as nonexclusive, offering a letter from the Church's Reverend that states: "We welcome people from all walks of life for worship, funerals, weddings, baptisms, anniversaries, and so on. We open our doors to daycares, Anonymous alcoholic programs, community and city-wide events, including primary and general elections. We commit to offering affordable senior housing through Duncan Genns's senior housing center, and we pledge to continue to keep the neighborhood safe for everyone."

The question presented is whether these activities are merely incidental uses or are uses that detract from the "predominant character of the building" as a place of worship, a standard first espoused by the Court of Appeals and later adopted in a legislative amendment to the 200 Foot Law.

In the 1985 Court of Appeals decision in *Fayez Restaurant, Inc. v. State Liquor Authority*, 66 N.Y.2d 978 (1985), the court considered whether church use would remain "exclusive" where:

- (a) the pastor and his wife used upstairs floors as their residence,
- (b) the pastor broadcasted evangelical radio shows from the building,
- (c) the pastor and his wife cared for persons in need, and
- (d) the church stated that it was "the home of New York Christian Outreach," a "department of the church which handles the evangelistic outreach and visitation endeavors of our congregation."

The Court did not find these activities to render the building non-exclusive because “its primary or paramount use is as a church, even though there is an incidental use not inconsistent or detracting the predominant character of the building as a church.”

The Legislature in 2007 (L. 2007, Ch. 406) essentially codified the holding in *Fayez Restaurant* through an amendment to ABCL §§ 64 et seq., providing a longer list of activities that would not constitute non-exclusive uses than the ones considered in *Fayez*. Pursuant to ABCL §64(7)(d-1):

[A] building occupied as a place of worship does not cease to be exclusively” occupied as a place of worship by *incidental uses that are not of a nature to detract from the predominant character of the building as a place of worship*, such uses which include, but which are not limited to:

- the conduct of legally authorized games of bingo or other games of chance held as a means of raising funds for the not-for-profit religious organization which conducts services at the place of worship or for other not-for-profit organizations or groups;
- use of the building for fund-raising performances by or benefitting the not-for-profit religious organization which conducts services at the place of worship or other not-for-profit organizations or groups;
- the use of the building by other religious organizations or groups for religious services or other purposes;
- the conduct of social activities by or for the benefit of the congregants; the use of the building for meetings held by organizations or groups providing bereavement counseling to persons having suffered the loss of a loved one, or providing advice or support for conditions or diseases including, but not limited to, alcoholism, drug addiction, cancer, cerebral palsy, Parkinson's disease, or Alzheimer's disease;
- the use of the building for blood drives, health screenings, health information meetings, yoga classes, exercise classes or other activities intended to promote the health of the congregants or other persons; and use of the building by non-congregant members of the community for private social functions.
- The building occupied as a place of worship does not cease to be "exclusively" occupied as a place of worship where the not-for-profit religious organization occupying the place of worship accepts the payment of funds to defray costs related to another party's use of the building.

This statutory list of incidental activities is broad; it includes the use of the building by non-congregant members for private functions, even if the church gets paid for such activities.

The Reverend’s initial letter provided a generalized list of activities that are either classically church events -- worship, funerals, weddings, baptisms -- or are the types of not-for-profit activities expressly identified as being “incidental” in ABCL §64(7)(d-1): day-care, AA programs, and voting/elections. The licensee’s letter goes further, suggesting that the church rents space for “unrelated church activities and community/city-wide events.”

We gave the licensee the opportunity to present additional evidence of such activities. All that was provided was another letter from the same Reverend and a single lease agreement. The Reverend's second letter indicated that "outside groups have used our church parish hall for a variety of public events," but indicated that the Church did not "permit them to depart from our mission and values." The letter also mentioned that "for the sake of the community, we accept rental agreements from schools or Pre-Ks to use our space."

Only one such rental agreement was provided, and no current "tenants" were identified. The Church appears to have leased a portion of the Church building, for a portion of the week, during the years 2014 to 2017, to house a "Pre-K school to serve the educational needs of children in our neighborhood." The lease called for the payment of \$5,000 per month. At the meeting in which the Declaratory Ruling request was discussed, it became clear that no such leasing agreement currently exists.

The Board hereby finds that the activities the Church has identified as involving outside groups are incidental to the predominate character of the building as a church. Even an agreement to rent space to a Pre-K school to serve the educational needs of neighborhood children for a monthly fee – if still in effect today – would appear to fall within the language of ABCL §64(7)(d-1) describing incidental uses. Nor is it relevant to the Board's decision that the Church itself supports licensing, or that the licensee is undergoing business hardships. The 200-foot law does not give the Members discretion to make exceptions.

Since the Church building is occupied exclusively as a place of worship, the licensee is barred by the 200' law from applying for a full liquor license at 1413 Bushwick Ave in Brooklyn.

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on June 22, 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 June 29, 2022.

Dated: 07/01/22



Donald Roper
Secretary to the Authority