

(Series 1974)  
Divisional Order #661  
February 4, 1974

TO: ALL LOCAL BOARDS AND ZONE OFFICES

SUBJECT: PREMISES ON UPPER FLOOR OF BUILDING WITHIN 200 FEET FROM  
SCHOOL OR PLACE OF WORSHIP --- DISTANCE MEASUREMENTS

Recently the Authority considered an application for a new on-premises liquor license for premises on the second floor of a commercial multi-tenant building located on Main Street, Medina. Adjacent to the building on the same street stood a church.

The distance along Main Street from the center of the church entrance to the street level entrance of the applicant's building measured 154 feet. The distance from the street level entrance, measured in a straight line up the stairway to the second floor was 39 feet; and the distance along the second floor corridor to the door leading to the entrance of the proposed premises was 49 feet. The total measured distance from the church entrance to the applicant's entrance on the second floor was thus 242 feet.

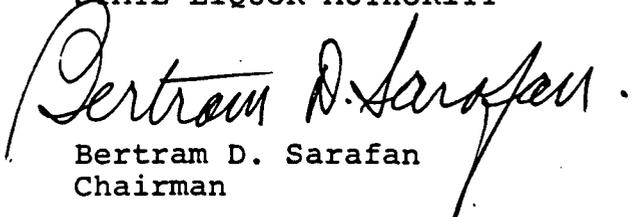
The Authority decided that the 154 foot measurement from the church entrance to the street level entrance of applicant's building was the total and correct measurement and disapproved the application as mandatory under Section 64.7 of the A.B.C. Law. The applicant sought review by an Article 78 proceeding, contending that the total measurement should also include the common stairway and corridors inside the building.

The applicant's contention was upheld by the court, at Special Term, which also noted that the church did not object and that the premises had previously been licensed. The lower court's decision was affirmed, without opinion, by the Appellate Division, Fourth Judicial Department (Child's v. S.L.A., 42 App. Div., 2d 688).

Accordingly, in all future applications where the proposed premises are on the upper floor of a building, the entrance to which building is less than 200 feet from the statutorily defined entrance of a school or house of worship on the same street, the applicant should be required to submit an authoritative survey or plan specifying separately each of the exterior and interior measurements between the entrance to the licensed premises and the entrance to the school or house of worship.

Other situations may hereafter require further amplification. The Authority will act on the particular facts of each case and where warranted, an appropriate directive will be issued.

STATE LIQUOR AUTHORITY

  
Bertram D. Sarafan  
Chairman