
Raritan Rd. Baptist Church v. Cranford and Coachman Inn
Cite as 2 *N.J.A.R.* 218

RARITAN RD. BAPTIST CHURCH,
Petitioner,
v.
**TOWNSHIP OF CRANFORD AND COACHMAN
INN AND RESTAURANT, INC.**
Respondents.

Decided December 23, 1980

Initial Decision

SYNOPSIS

Raritan Road Baptist Church sought judgment against the Township of Cranford and the Coachman Restaurant, Inc. declaring that the opening and paving of a city street to provide access to the restaurant would violate *N.J.S.A.* 33:1-76 which prohibits the issuance of a liquor license for the sale of alcoholic beverages within 200 feet of a church.

In a preliminary determination, the administrative law judge noted that although the Division of Alcoholic Beverage Control had technically transmitted this contested case as an appeal, the judge would handle the matter as if it had been transmitted for a declaratory ruling on the basis of *N.J.A.C.* 1:1-3.9 and 1:1.9.7(e).

The judge noted that while *N.J.S.A.* 33:1-76 precludes the issuance of a license for the sale of alcoholic beverages within 200 feet of a church, the statute was silent as to the conflict in this case, created by the enactment of a municipal ordinance. The judge concluded, however, that given Coachman's interest in the improvement project and the Division's exceedingly broad regulatory powers, ABC had the authority to determine whether the street improvement would affect Coachman's license at the time of renewal.

As to the actual distance measurement, the administrative law judge noted the *N.J.S.A.* 33:1-76 provides that the 200 foot measurement "shall be measured in a normal way that a pedestrian would properly walk from the nearest entrance of said church . . . to the nearest entrance of the premises to be licensed" and that of the numerous ways a pedestrian could proceed, the shortest governs. *Presbyterian Church v. Div. of Alcoholic Bev. Con.*, 53 *N.J. Super.* 271 (App. Div. 1968) certif. den., 29 *N.J.* 137 (1958). On that basis, the judge determined that the distance was to be measured from the nearest church entrance through the restaurant's parking

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lot to the nearest entrance to the Coachman's restaurant - a distance of over 300 feet.

Accordingly, the administrative law judge declared that the street improvement would not impair Coachman's liquor license and would not violate *N.J.S.A.* 33:1-76.

Paul Williams, Esq., for Petitioner.

Ira D. Dorian, Esq., for Respondent, the Coachman Inn and Restaurant

Edward J. Toy, Esq., for Respondent, the Township of Cranford

LEFELT, ALJ:

Raritan Road Baptist Church seeks judgment against the Township of Cranford and the Coachman Restaurant, Inc. declaring that the opening and paving of Coleman Avenue to provide access to the Coachman Motor Lodge and Restaurant would violate *N.J.S.A.* 33:1-76 which prohibits a liquor license being issued for the sale of alcoholic beverages within 200 foot of a church.

Utilizing what it considered to be the only existing procedure to bring this matter before the Division of Alcoholic Beverage Control (ABC), the Church appealed the decision of the Mayor and Council of the Township of Cranford authorizing the dedication of Coleman Avenue, and ABC transmitted this matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.* and *N.J.S.A.* 52:14B-1 *et seq.*

FACTS

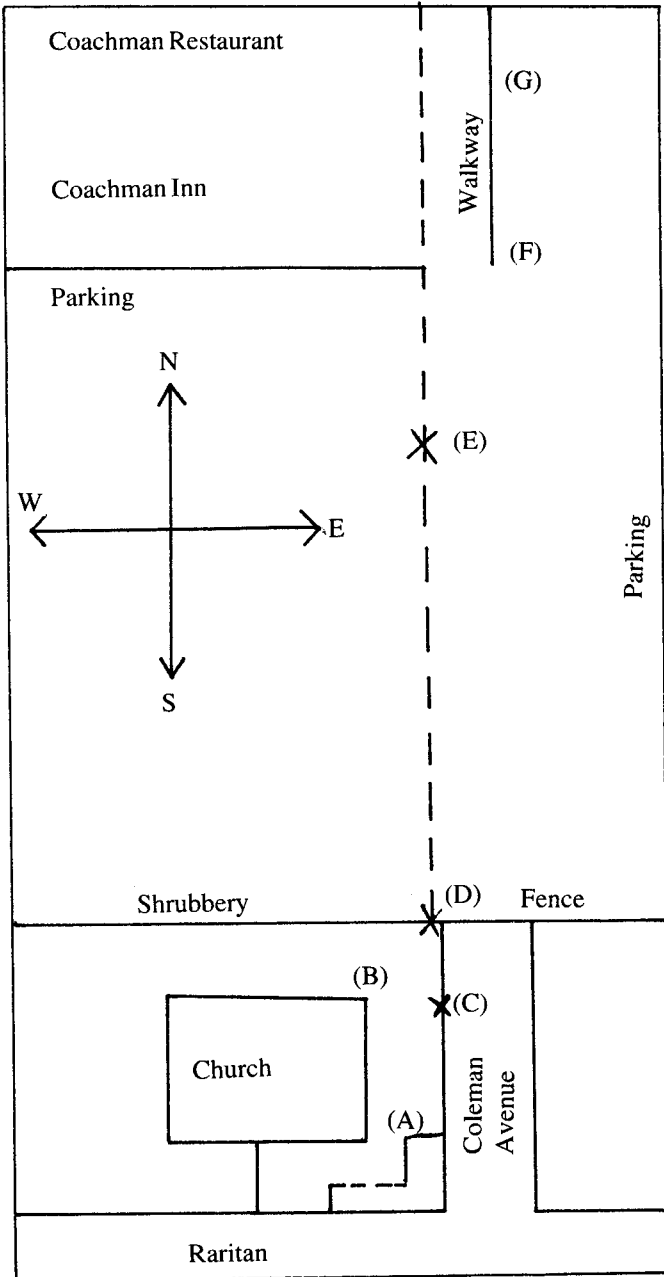
The facts are uncontested and show that Raritan Road Baptist Church has been located at 611 Raritan Road (corner of Raritan Road and Coleman Avenue) Cranford, New Jersey since 1957-58, thus preceding the 1969 Coachman Restaurant, Inc. liquor license. Coachman Restaurant, Inc. is the corporate owner of the Coachman Motor Lodge and Restaurant consisting of a motel, office building and parking area.

A map of the new church facilities for the Raritan Road Baptist Church indicates that a preexisting church structure, smaller in area than the existing church, but between 10 and 14 feet closer to the Coachman property, was demolished and removed from the site in 1975-76 when the existing church was built. Both churches had front and rear entrances. The following diagram, adapted from the evidence, depicts the area as it existed at the time of hearing: There are no public sidewalks on either Coleman Avenue or on

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the Coachman property. The improvement would pave Coleman Avenue, now surfaced with crushed rock, and would remove the fence that currently separates Coleman Avenue from the Coachman parking area.

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DECLARATORY RULING

The church lost an action in Superior Court to enjoin the Township and Coachman from proceeding with the improvement of Coleman Avenue. In the opinion granting summary judgment, Judge Milton A. Feller said:

The Township has the legal right to provide for the pavement of the street. Assuming *arguendo* that the above statute (33:1-76) will be violated as a result this will affect the status of the liquor license only. It will not affect the status of the public street. If the defendant Coachman Restaurant and Inn is willing to take the chance of having the street paved, which might affect their liquor license that is their problem. That is a matter that will have to be considered by the local Alcoholic Beverage Control Board.

Under *N.J.S.A. 52:14B-8*, “an agency upon the request of any interested person may in its discretion make a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or rule enforced or administered by that agency”. Technically, this matter was transmitted to OAL as an appeal, *N.J.A.C. 13:2-17.1 et seq.*, even though OAL rules, *N.J.A.C. 1:15-9.1 et seq.*, would have permitted ABC to transmit this case for a declaratory ruling. Usually, declaratory rulings are not advisory opinions based upon future, contingent and uncertain facts, *Civil Service Comm. of N.J. v. Senate of N.J.*, 165 *N.J. Super.* 144 (App. Div. 1979), certif. den., 81 *N.J.* 266 (1979). Declaratory rulings are permissible when an actual and bona fide controversy is present. *Bress v. L. F. Dommerich & Co., Inc.*, 94 *N.J. Super.* 282 (App. Div. 1967). The controversy must be justiciable as contrasted with a hypothetical, or speculative controversy. *Unsatisfied Cl & Judg. Fd. Bd. v. Concord Ins.*, 110 *N.J. Super.* 191 (Law Div. 1970). Thus petitioner must assert definite legal rights of sufficient immediacy and reality to warrant declaratory ruling. *Condenser Service, Co. v. American, Ins. Co.*, 45 *N.J. Super.* 31 (App. Div. 1957), certif. den., 24 *N.J.* 547 (1957). Respondent must positively deny petitioner’s assertions and petitioner must have standing, or an interest in the subject matter in order to obtain a declaratory ruling. *N.J. Home Builders Ass’n v. Div. on Civil Rights*, 81 *N.J. Super.* 243 (Ch. Div. 1963), aff’d 45 *N.J.* 301 (1965). The declaratory ruling must serve a tranquilizing function to help terminate the controversy between the parties. *Unsatisfied Cl. & Jud. Fd. Bd.*, *supra*. In this case, a full hearing was “afforded the interested parties,” *N.J.S.A. 52:14B-8*, and all parties desire a ruling on the merits since improvement of Coleman Avenue has been deferred pending determination of whether the paving of the street would adversely affect the Coachman liquor license. Coachman and the Township of Cranford main-

tain that the building housing the Church bringing this suit was constructed after Coachman's license was issued and that therefore Coachman is not restricted by *N.J.S.A.* 33:1-76. In addition, they argue that the distance between the nearest entrance of the church and the nearest entrance of Coachman exceeds the 200 foot limit. The Township and Coachman move respectively for dismissal and judgment. The Church argues that the ordinance was designed to benefit only Coachman and seeks a ruling that the improvement would violate *N.J.S.A.* 33:1-76 by causing a licensee to be "within two hundred feet of any church..." Thus, an immediate, concrete and justiciable dispute is presented. OAL is to "expedite the just conclusion of contested cases," see, Statement of Purpose, *Senate Bill* 766, L. 1978 C. 67, and a declaratory ruling on the applicability and effect of *N.J.S.A.* 33:1-76 will clearly terminate the controversy between the parties. *N.J.A.C.* 1:15-9.2 and 1:15-9.4. Therefore, I will consider this matter as if the ABC had transmitted the case for declaratory ruling. See *N.J.A.C.* 1:1-3.9 and *N.J.A.C.* 1:1-9.7(e).

JURISDICTION OF ABC

N.J.S.A. 33:176 precludes the issuance of licenses for the sale of alcoholic beverages too close to churches, but is silent concerning the conflict in this case, created by the enactment of a municipal ordinance. Preliminarily, therefore, we must decide whether the Director of ABC has subject matter jurisdiction over this situation.

N.J.S.A. 33:1-73 provides that the ABC law is "to be remedial of abuses inherent in liquor traffic and shall be liberally construed." Under *N.J.S.A.* 33:1-23, the Director of ABC shall "do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration" of ABC law. "The right, most extensive in nature, to regulate the field of intoxicating liquors is within the police power of the State, and this power is practically limitless." *Borough of Fanwood v. Rocco*, 33 *N.J.* 404, 411 (1960).

Our purpose of *N.J.S.A.* 33:1-76 is presumably to preserve the public welfare and safety by separating the imbibers from the believers. The ordinance paving Coleman Avenue facilitates the possibility of contact between Coachman customers and the Church, and provides the Church, at the time Coachman's license is up for renewal, with the first opportunity to present its objection under *N.J.S.A.* 33:1-76. Furthermore, Coachman's interest and involvement in the Coleman Avenue improvement is apparent. The ordinance states as one of the purposes for passage that "The owners of the Coachman Motor Lodge and Restaurant have determined that for a more

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efficient and economical operation of their establishment, additional means of ingress and egress are required.” Township of Cranford, Ordinance No. 80-18. The licensee was thus directly involved in the ordinance’s passage and under the ordinance is paying for the paving of Coleman Avenue (Ord. No. 80-18 Section III). Therefore, I **CONCLUDE** that given the Director’s exceedingly broad regulatory powers, ABC has authority to determine whether the Coleman Avenue Improvement pursuant to Township of Cranford Ordinance No. 80-18 will affect Coachman’s license at the time of renewal. *Cf., Blanck v. Mayor and Borough Council of Magnolia*, 38 *N.J.* 484 (1962).

THE MEASUREMENT

A review of the law governing measurement under *N.J.S.A.* 33:1-76 reveals a few easily stated principles that are most difficult to apply. *N.J.S.A.* 33:1-76 provides that the “two hundred feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of said Church...to the nearest entrance of the premises to be licensed.” Of the numerous ways a pedestrian can properly proceed from one place to another, the shortest governs. *Presbyterian Church, etc. v. Div. of Alcoholic Bev. Con.*, 53 *N.J. Super.* 271, 279 (App. Div. 1958), certif. den., 29 *N.J.* 137 (1958). The term nearest entrance means “the point at which the line between the sidewalk and the premises proper would intersect a line from the entrance door to the nearest sidewalk which a pedestrian would normally traverse in leaving or entering the premises...” (the intersecting line rule) *Karam, et al. v. Alcoholic Bev. Con.*, 102 *N.J. Super.* 291, 293-4 (App. Div. 1968), certif. den., 53 *N.J.* 63 (1968).

Counsel for the Church argues that the distances to be calculated are of only three possibilities: (1) 7 feet from the curb of Coleman Avenue adjacent to the rear entrance of the Church to the fence that currently separates Coleman Avenue from the Coachman parking area (C to D on map); (2) 20 feet from the Church rear entrance to the curb of Coleman Avenue and 20 feet to the fence (40 feet B to C to D on map); and (3) 78 feet along Coleman Avenue to the fence plus 49.5 feet to a point in a northerly direction which a person would normally walk to enter the walkway that runs along the front of the Coachman Inn, plus 60 feet to the walkway, approximately 190 feet (A to D, D to E and E to F).

Counsel for the Coachman Inn argues that measurements must be taken from (A) on the Coleman Avenue curb adjacent to the Church front entrance to the fence at (D) 78 feet plus 49.5 feet to (E) where a person would walk toward the walkway, 60 feet to the walkway (F) and then a distance of 160

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feet to the Coachman Restaurant entrance (G) a total distance of 347.5 feet. Coachman also contends that it is improper to measure distance through the parking lot and, therefore, the distance should be measured from the front or rear entrance of the Church, east or west on Raritan Road, around the intersecting streets, entering the Coachman properties from either the east or west, which all parties agree would far exceed the 200 foot restriction.

Much of the confusion in applying the measurement principles is created by the meaning of “properly walk” and nearest entrance” in *N.J.S.A.* 33:1-76. For example, Church and Coachman dispute whether a pedestrian may properly walk though a parking lot. Furthermore, Coachman argues that Coachman’s “entrance” should be given its plain meaning (G on map). Church counters by arguing that the “nearest entrance” of Coachman under *Presbyterian Church, supra*, is the parking lot or the beginning of the walkway to the Coachman entrance (D or F on map). Should the Church’s argument be accepted, a tavern owner could purchase a 100-acre parcel of land, build its premises in the middle of a 100-acre parking lot and nevertheless violate *N.J.S.A.* 33:1-76 if a church building was adjacent to any perimeter of the parcel. Such an unreasonable result misconstrues *Presbyterian Church, supra*, and the statutory purpose and therefore should be avoided. *David v. Heil*, 132 *N.J. Super.* 283 (App. Div. 1975).

Presbyterian Church, supra, holds that where an average pedestrian would normally walk across a painted crosswalk to a public sidewalk, this route is proper and should be measured for purposes of *N.J.S.A.* 33:1-76 even though the local police authorities failed to obtain the Director of Motor Vehicles’ approval before painting the crosswalk. Thus, *Presbyterian* dealt only with a crosswalk leading to a public sidewalk abutting the premises in question and is inapplicable to this case. Any argument derived from *Presbyterian* that would permit measurement between the Church and Coachman to begin at the Church and end at the Coachman parking lot is based on conjecture.

The intersecting line rule’s applicability seems most appropriate when a tavern abuts a *public* sidewalk in typical city development. The rule’s application becomes more difficult to discern when the tavern is in a modern shopping center, a relatively rural area or surrounded by large parking areas. The reason for the intersecting line rule as discussed in *Karam, et al. v. Alcoholic Bev. Cont., et al.*, 102 *N.J. Super.* 291, 193-4 (App. Div. 1968) cert. den., 53 *N.J.* 63 (1968) is to provide a practical construction of the measurement required when a doorway is accessible by public sidewalk. *Presbyterian Church, etc. v. Div. of Alcoholic Bev. Con.*, 53 *N.J. Super.* 271, 276 (App. Div. 1958), cert. den., 29 *N.J.* 137 (1958). The rule precludes only the necessity of calculating the distance a person must travel when leaving

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the public sidewalk and moving toward the nearest doorway. *Gaskin's Restaurant, Inc. v. City Council of the City of Long Branch*, Bulletin 3327 (1980). There is no public sidewalk in the Coachman parking lot and Coachman is accessible only through the parking areas. Thus the distance must be measured between the nearest church entrance and the nearest entrance to the Coachman liquor licensed facility (B to G on the map) - a distance of 309.5 feet. *Mari v. Long Branch, et al.*, ABC Bulletin 2170, Item 3. Any other measurement would, in this case, where there is no public sidewalk adjacent to either the nearest Church entrance or the Coachman (liquor licensee) entrance, violate *N.J.S.A. 33:1-76* which requires measurements from "nearest entrance to nearest entrance" in order to benefit the "persons attendant therein." Therefore, the proper measurement in this case, B to G on map, exceeds the 200 foot restriction.

It is important to acknowledge that the buildings in question have not changed location; they remain where they have coexisted for at least 11 years. *Cf. Price v. Excise Board of Town of Millburn*, 28 N.J. Super. 103 (App. Div. 1953).

CONCLUSION

Within New Jersey's system of liquor control, the municipal issuing authority is vested with the right to exercise sound discretion in granting or refusing liquor licenses. *Fanwood, supra*. The Division of ABC may not reverse the municipal issuing authority's decision in the absence of manifest mistake or other abuse of discretion. *Florence Methodist Church v. Township Committee of Florence Township*, 38 N. J. Super. 85 (App. Div. 1955); *Rajah Liquors v. Div. of Alcoholic Bev. Cont.*, 33 N.J. Super. 598 (App. Div. 1955). The burden of proof of establishing that the action of the board would be erroneous rests entirely with appellant. *See, Downie v. Sumerdale*, 44 N.J. Super. 84 (App. Div. 1957).

The Church could not demonstrate a violation of *N.J.S.A. 33:1-76* even if the ordinance were passed for the sole benefit of Coachman and was not in the public interest, a showing that cannot be made on this record which contains the Township's public welfare concerns considered in enacting the ordinance and the Superior Court Judge's summary judgment permitting the improvement. Renewal of Coachman's license by the Township thus would not violate *N.J.S.A. 33:1-76* and would not be a manifest mistake or an abuse of discretion.

Even though *Albrecht v. City of Hollywood*, 157 So. 2d 839 (Fla. Ct. of App. 1963) and *State Beverage Dept. v. Brentwood Assem. of God Ch.*, 149 So. 2d. 871 (Fla. Ct. of App. 1963) were submitted after the record

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closed and are both out-of-State cases, I carefully considered their rationales and find the cases not controlling because of different regulatory language. Since the proper measurement in this case yields a result over 100 feet in excess of the 200 foot statutory preclusion, it is unnecessary to determine whether *N.J.S.A.* 33:1-76 protects a church that antedates the liquor license but is located virtually on the same site as a church which preexisted the liquor license.

I, therefore, **DECLARE** that the opening of Coleman Avenue will not impair Coachman's liquor license and would not violate *N.J.S.A.* 33:1-76. The Church's appeal is thus dismissed with prejudice.

After reviewing this Initial Decision, the Division of
Alcoholic Beverage Control on December 30, 1980
issued the following Final Decision:

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the legal memorandum of the parties, the initial decision and the written exceptions filed thereto by the appellant and respondent, Coachman Restaurant, Inc., I concur in the findings and recommendations of the administrative law judge and adopt same as my conclusion herein.