

2017-240-BZ

CEQR No. 18-BSA-016M

APPLICANT – Troutman Sanders LLP, for Red Rooster Harlem LLC, owner.

SUBJECT – Application August 15, 2017 – Special Permit (§73-244) to permit the legalization of the conversion of the cellar level of an existing eating and drinking establishment without restrictions and no limitation on entertainment and dancing (UG 12A) (Red Rooster Harlem Restaurant located on the cellar level . C4-4A (Special 125th Street District).

PREMISES AFFECTED – 310 Lenox Avenue, Block 1723, Lot 69, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Sheta.....4
Negative:0
Abstain: Commissioner Scibetta.....1
THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 23, 2018, acting on Alteration Application No. 104522508, reads in pertinent part:

“The proposed Use Group 12A Eating and Drinking Establishment is contrary to Zoning Resolution Section 32-21, as it is not permitted within a C4 zoning district where such use is within 100 feet of a Residence District boundary”; and

WHEREAS, this is an application under ZR §§ 73-244 and 73-03 to permit, in a C4-4A zoning district and the Special 125th Street District, the operation of an eating or drinking establishment within 100 feet from the boundary of a residential zoning district, contrary to ZR § 32-21; and

WHEREAS, a public hearing was held on this application on February 27, 2018, after due notice by publication in *The City Record*, with a continued hearing on March 27, 2018, and then to decision on the same date; and

WHEREAS, Community Board 10, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Lenox Avenue and West 126th Street, in a C4-4A zoning district and the Special 125th Street District, in Manhattan; and

WHEREAS, the subject site has approximately 100 feet of frontage along Lenox Avenue, 85 feet of frontage along West 126th Street, 8,493 square feet of lot area and is occupied by a three-story, with cellar, commercial building; and

WHEREAS, ZR § 73-244 provides that:

In C2, C3, C4*, C6-4**, M1-5A, M1-5B, M1-5M and M1-6M Districts, the Special

Hudson Square District and the *Special Tribeca Mixed Use District*, the Board of Standards and Appeals may permit eating or drinking establishments with entertainment and a capacity of more than 200 persons or establishments of any capacity with dancing, for a term not to exceed three years, provided that the following findings are made:

- (a) that a minimum of four square feet of waiting area within the *zoning lot* shall be provided for each person permitted under the occupant capacity as determined by the New York City Building Code. The required waiting area shall be in an enclosed lobby and shall not include space occupied by stairs, corridors or restrooms. A plan shall be provided to the Board to ensure that the operation of the establishment will not result in the gathering of crowds or the formation of lines on the *street*;
- (b) that the entrance to such *use* shall be a minimum of 100 feet from the nearest *Residence District* boundary;
- (c) that such *use* will not cause undue vehicular or pedestrian congestion in local *streets*;
- (d) that such *use* will not impair the character or the future use or development of the surrounding residential or mixed use neighborhoods;
- (e) that such *use* will not cause the sound level in any affected conforming *residential use, joint living-work quarters for artists or loft dwelling* to exceed the limits set forth in any applicable provision of the New York City Noise Control Code; and
- (f) that the application is made jointly by the owner of the *building* and the operators of such eating or drinking establishment.

The Board shall prescribe appropriate controls to minimize adverse effects on the character of the surrounding area, including, but not limited to, location of entrances and operable windows, provision of sound-lock vestibules, specification of acoustical insulation, maximum size of establishment, kinds of amplification of musical instruments or voices, shielding of flood lights, adequate screening, curb cuts or parking.

Any violation of the terms of a special permit may be grounds for its revocation.

* In C4 Districts where such *use* is within 100 feet from a *Residence District* boundary

** In C6-4 Districts mapped within that

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portion of Community District 5, Manhattan, bounded by West 22nd Street, a line 100 feet west of Fifth Avenue, a line midway between West 16th Street and West 17th Street, and a line 100 feet east of Sixth Avenue; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, inter alia, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant proposes to legalize the subject eating or drinking establishment located in the cellar of the subject building; and

WHEREAS, the applicant represents that the subject eating or drinking establishment operates with the following hours of operation: 6:00 p.m. to 1:00 a.m., Thursday, 6:00 p.m. to 4:00 a.m., Friday and Saturday, and 10:00 a.m. to 2:00 p.m., Sunday; and

WHEREAS, the applicant represents that the total occupancy of the cellar level is limited to 200 persons and that there are two waiting areas with 860 square feet of floor space, which is more than the 800 square feet required for 200 persons; and

WHEREAS, the Board finds that the subject eating or drinking establishment will provide a minimum of four square feet of waiting area within the zoning lot for each person permitted under the occupant capacity determined by the New York City Building Code; and

WHEREAS, the applicant states that the entrance to the cellar level of the subject building is located 126 feet from the nearest boundary of a residential zoning district; and

WHEREAS, the Board finds that the entrance to the subject eating or drinking establishment is a minimum of 100 feet from the nearest boundary of a residential zoning district; and

WHEREAS, the applicant states that most patrons of the existing eating or drinking establishment on the first floor of the subject building take public transportation or arrive by foot and that the proposed layout of the subject eating or drinking establishment provides a separate lobby entrance and two cellar waiting areas designed to foster the movement of patrons out of the street system and into the cellar; and

WHEREAS, the Board finds that the subject eating or drinking establishment will not cause undue vehicular or pedestrian congestion in local streets; and

WHEREAS, the applicant submitted a land-use survey demonstrating that the surrounding area includes a vibrant mix of commercial and residential uses, including restaurants and other commercial uses; and

WHEREAS, the Board finds that the subject

eating or drinking establishment will not impair the character or the future use or development of the surrounding mixed use neighborhood; and

WHEREAS, the applicant states that the subject eating or drinking establishment complies with the New York City Noise Code and is located entirely within the cellar of a completely enclosed building; and

WHEREAS, the applicant submitted a noise study indicating that no additional action would be necessary for compliance but recommending that the applicant seal the existing entry doors to the subject building to reduce the potential transmission of noise to the street; and

WHEREAS, the applicant provided evidence that said repairs to the doors have been completed; and

WHEREAS, the Board finds that the subject eating or drinking establishment will not cause the sound level in any affected conforming residential use to exceed applicable limits set forth in the New York City Noise Control Code; and

WHEREAS, the applicant has submitted authorizations from the building owner as well as the operator of the subject eating or drinking establishment; and

WHEREAS, the Board finds that this application is made jointly by the building owner of and the operators of the subject eating or drinking establishment; and

WHEREAS, in response to the Board's comments at hearing, the applicant clarified the hours of operation and provided evidence that the subject eating or drinking establishment would not adversely affect other tenants in the subject building; and

WHEREAS, by letter dated March 21, 2018, the Fire Department states that it has no objection to this application provided that a module be installed in the fire alarm panel to turn off all power to any musical instruments should the fire alarm system be activated on any floor; that no curtains or drapery, in areas of the subject eating or drinking establishment, be hung to obscure the view of an exit passageway; that, in the cellar, a rated wall of one-hour be constructed to separate the corridor and exit passageway with any doors installed being of similar rating to the rated wall; that the total number of customers, staff and performers be listed on the plans with total number of occupants not to exceed 200 persons; that, along exit passageway corridors outside of the subject eating or drinking establishment space, all shelving and obstructions be removed and such corridor be maintained cleared at all times with any storage cabinets installed along said corridor being of a rated cabinet and accepted by DOB with a minimum clear distance between the cabinets and corridor walls determined by the New York City Building Code for public assembly occupancy; that additional exit signs be installed along all exit passageways to better direct occupants to the means of egress; that, in the large waiting area, the door leading

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to the exit passageway protrudes its full width into the passage way with the door recessed into a large holding room so that, in the event of an evacuation, the door will not reduce the width of the passageway; that all security personnel employed by the subject eating or drinking establishment, during performances, hold an F-03 Certificate of Fitness "Indoor Place of Assembly Safety Personnel," issued by the Fire Department; and

WHEREAS, in response, the applicant amended the plans to reflect the Fire Department's recommended fire-safety measures; and

WHEREAS, by letter dated March 26, 2018, the Fire Department represents that, based upon its review of this application for egress and fire safety as well as an inspection of the subject site, it has no objection to this application; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed special permit use will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR Part 617.4(b)(9); and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 18BSA016M, dated November 16, 2017; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction Impacts; and

WHEREAS, by letter dated December 22, 2017, the New York City Department of Environmental Protection states that the proposed project would not result in any potential for significant adverse impacts with regard to noise; and

A true copy of resolution adopted by the Board of Standards and Appeals, March 27, 2018.
Printed in Bulletin No. 14, Vol. 103.

Copies Sent
To Applicant
Fire Com'r.
Borough Com'r.

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-244 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type I Negative Declaration determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-244 and 73-03 to *permit*, in a C4-4A zoning district and the Special 125th Street District, the operation of an eating or drinking establishment within 100 feet from the boundary of a residential zoning district, contrary to ZR § 32-21; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received "March 27, 2018 – Two (2) sheets; and *on further condition:*

THAT the term of this grant shall be for three (3) years, expiring March 27, 2021;

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by March 27, 2019;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 27, 2018.

