

March 23, 2018

STATEMENT IN SUPPORT OF AN APPLICATION FOR A SPECIAL PERMIT,  
PURSUANT TO SECTION 73-244 OF THE ZONING RESOLUTION,  
TO LEGALIZE ON THE CELLAR LEVEL A USE GROUP 12A  
EATING AND DRINKING ESTABLISHMENT  
AT THE RED ROOSTER HARLEM  
RESTAURANT.

Affected Premises:

310 Lenox Avenue  
(Block 1723, Lot 69)  
Manhattan, Community District 10.

Troutman Sanders LLP  
875 Third Avenue  
New York, New York 10022  
Attention: Jeremiah H. Candreva, Esq.

## STATEMENT OF FACTS

### PART I

#### INTRODUCTION

This statement is made in support of the application by the Red Rooster Harlem LLC (the “Applicant”) for a special permit, pursuant to Section 73-244 of the Zoning Resolution of the City of New York (“Zoning Resolution” or “ZR”), to facilitate the legalization of the use of the cellar level of the Red Rooster Restaurant, which was previously converted from a Use Group 6A Eating and Drinking Establishment to a Use Group 12A Eating and Drinking Establishment (“Proposed Use”). The Applicant seeks a term of three (3) years for the special permit. The special permit is required because the site is located within 100 feet of a residential district boundary. Use Group 12A eating and drinking establishments are otherwise permitted as a matter of right in C4-4A zoning districts.

310 Lenox Avenue (the “Site”) is located on the southeast corner of West 126<sup>th</sup> Street and Lenox Avenue. The Site has approximately 100 feet of frontage on Lenox Avenue and 85 feet of frontage on West 126<sup>th</sup> Street, a total lot area of approximately 8,500 square feet. The zoning lot comprising the Site is mapped within a C4-4A (125) zoning district. The majority of the block in which the Site is located is mapped within either a C4-4A zoning district or a C4-7 zoning district, a portion of the 126<sup>th</sup> Street frontage is located in an R6A zoning district (approximately 100 x 545). The Site is also wholly located within the Special 125<sup>th</sup> Street District, the regulations of which either supplements and/or supersedes the underlying C4-4A district regulations.

#### EXISTING SITE CONDITIONS

##### The Site

The Site is today improved with a three-story commercial building that is generally utilized for bank, office and restaurant use. The third floor, which was previously utilized for office use, is currently vacant. The second floor is leased to YAI Seeing Beyond Disability and used for office use. The

second floor and the third floor (when it was tenanted) are/were as a general matter occupied from 9 am to 5 pm Monday through Friday. M&T Bank occupies a portion of the ground floor.

The applicant and world-renowned Chef Marcus Samuelsson operates the Red Rooster Harlem (a/k/a, the Red Rooster Restaurant) on the remaining portion of the ground floor (3,444 zfa) and the cellar level (6,034 gsf). The Red Rooster Restaurant's certificate of occupancy permits a Use Group 6 eating and drinking establishment with an occupancy of 130 persons on the ground floor (see copies of attached Place Assembly Permits issued on 2-24-16 and 3-1-16, respectively). The applicant proposes to maintain the existing Use Group 6 eating and drinking establishment on such ground floor.

As discussed in more detail below, the Red Rooster's ground floor patrons are treated to live musicians and DJs every day of the week. This music is provided free to all patrons with no cover charges, no show times and no tickets necessary. The provision of music is an important component to the Red Rooster's image and offerings to its patrons and to the entire Harlem Community. The restaurant has on a typical day approximately 50-125 lunch patrons and approximately 200-250 dinner patrons. Staff levels vary from 20 to 35 depending upon service demands.

The Red Rooster Restaurant's certificate of occupancy also permits a Use Group 6 eating and drinking establishment with an occupancy of 200 persons on the cellar floor (see copies of attached Place Assembly Permits issued on 2-24-16 and 3-1-16, respectively). The applicant proposes to amend its certificate of occupancy to legalize the existing Use Group 12 eating and drinking establishment that is located on the cellar level to permit dancing and live performances with designated show times and cover charges. The applicant does not propose to increase the cellar occupancy level above the current limitation of 200 persons.

## The Red Rooster Restaurant

Red Rooster Restaurant is today a landmark restaurant that meets the growing and diverse tastes of an evolving neighborhood. Red Rooster Restaurant serves an eclectic mix of locals, area businesses, hardcore foodies and tourists. Chef Samuelsson brings his passion for food and desire to make a change through active participation with community based organizations; youth work apprenticeship programs and local artists. Red Rooster Restaurant is a space where diners and guests can share great food in a chic and open atmosphere. Red Rooster Restaurant's interior combine elements of modern farm to table design with Harlem's speakeasy history and music relevance. The unique combination comes together in subtle design elements placed throughout the restaurant.

The Red Rooster Restaurant was recently reviewed by food critic and columnist Steve Cuozzo and featured in his October 8, 2016 Article 'The 7 Restaurants that changed New York City.' Mr Cuozzo described the Red Rooster Restaurant as follows:



“This is Exhibit No. 1 of how a visionary chef with a smart business model can bring change far beyond the kitchen.

Chef Marcus Samuelsson’s rollicking bistro — a jolly blend of Ethiopian, southern-American and Swedish influences, served in a colorful dining room behind a retro, horseshoe-shaped bar — made the biggest splash in uptown food since the Harlem Renaissance of the 1920s. But its larger legacy is the renaissance it inspired in the historic African-American neighborhood around Lenox Avenue and West 125th Street.

Emboldened by Red Rooster’s success, a dozen new cafes — Italian, Indian, French, Japanese and “crafted American soul” — have opened on Lenox since 2011. Local residents who were long denied modern dining options suddenly had choices. Downtown customers finally discovered the area’s charms. And a nearby lot that stood empty for decades sprouted a retail complex where Whole Foods will open in early 2017.”

### **The Cuisine**

At Red Rooster Restaurant, the mission is to provide uncomplicated, fresh food that is inherently soulful. The menu at Red Rooster Restaurant offers Chef Samuelsson’s contemporary interpretation of chicken and waffles, collard greens and catfish po’boys. Chef Samuelsson gives a nod to Harlem’s culinary traditions with selections featuring a modern slant with arugula and lemon vinaigrette, roasted whole sea bass with corn and browned lime butter and oven roasted chicken stuffed with apple and thyme, slow cooked in an exposed rotisserie. Red Rooster Restaurant distinguishes itself as a brunch destination, offering a distinctive twist on hearty omelets, salads and griddled creations.

### **Farm-To-Table**

Chef Samuelsson’s menu at the Red Rooster Restaurant represents the diversity found in American cuisine while drawing upon fresh local ingredients to create dishes that are creative, lively and full of

flavor. The restaurant serves breakfast, lunch and dinner, with a menu featuring classic southern comfort dishes prepared with regionally raised meats, fruits and vegetables, fresh seafood from the Northeast, and a wide variety of flavorful vegetarian offerings, artisanal breads and cheeses.

### **The Café**

Red Rooster Restaurant serves three meals a day at the front-of-the-house café. In the morning, fresh baked muffins, pain au chocolate, bagels and breakfast sandwiches are available for commuters on their way to the office. At lunch and dinner, seasonal salads and gourmet sandwiches are served both takeout and delivery. Given the restaurant's proximity to the bustling business district and transit hubs, clientele include destination shoppers, museum goers, neighborhood residents and local business people.

### **The Bar**

Red Rooster Restaurant serves as a popular meeting ground and lively after-work destination with a welcoming social scene. Experienced mixologists tend the well-stocked bar during weekday happy hours and busy weekends. A variety of signature cocktails are offered alongside a diverse selection of tap beers, including premium craft ales, stouts and ciders.

### **Music – Ground Floor**

Red Rooster's patrons are treated to live musicians and DJs every day of the week. This music is provided free to all patrons with no cover charges, no show times and no tickets necessary. The provision of music is an important component to the Red Rooster's image and offerings to its patrons and to the entire Harlem Community. Although, musicians and musical offerings vary from time to time, the following is a list of the musical offerings on the ground floor:

**MONDAY**

The “Rakiem Walker Project” (RWP) is a 7 piece band that consists of horns, drums, vocals, guitar, keyboards, and more. The band plays different genres and musical feels including Jazz, RnB, Neo-Soul, Live Hip Hop, Reggae, Gospel, Blues, and Latin.

**TUESDAY**

Johnny Mambo is a spicy quintet of vivacious horns and congos that light up the bar each week Red Rooster. Guests are invited to dance while enjoying the spirit of Latin grooves.



**WEDNESDAY**

DJ Hard Hittin Harry was born in Haiti in the late sixties. At the tender age of three, his family made a series of moves starting with Brooklyn New York, and Montreal, Canada. He spent the majority of his life in New Jersey and eventually returned to Brooklyn where he currently resides.

**THURSDAY**

DJ Masai is the center of the storm. He has been spinning for over 23 years and has played in some of the biggest venues in the city and Tri-State area. DJ Masai just about always knew what elements were essential to rock a party.





**FRIDAY**

Dj Stormin' Norman originally hails from East London, UK and is now a resident of Harlem, USA. In the 90's, he was part of a groundbreaking DJ collective who brought the Thunderstorm Mix on WBLS 107.5FM NYC, introducing live mixing to daytime radio previously reserved for weekend nights broadcasted from night-clubs, setting a new precedent in national radio. Dj Stormin' Norman is also the DJ resident of Marcus Samuelsson's Red Rooster in Harlem.

**SATURDAY BRUNCH**

DJ NessDigital is a true Music Selector. Since 2005, he has been jamming at a wide range of events; some include fashion parties, clubs, lounges, gallery events, weddings and live radio. He is the essential crowd pleaser incorporating a wide variety of tracks that ranges from funk, rock, soul, r&b, house, world, jazz, hip-hop, old and new.



## SATURDAY NIGHT

A native New Yorker, DJ Lex NY's sound has been influenced by the diverse cultures that shape New York City. Since 2002, he has played all over the five boroughs, as well as in other cities. It's his ability to entertain with intricate sets of Afro Beat, Dancehall, Hip Hop, House, and Soca that has earned him a reputation as one of the best up and coming dj's in NYC.



## SUNDAY BRUNCH

Come to Red Rooster on Sunday mornings and you will hear the lovely vocals of Boncellia Lewis. Having performed with the who's who of the Harlem jazz underground, including Bill Saxton, Donald Smith, Kim Clarke, and Harry Whitaker, Boncellia embodies the spirit of music and Harlem in every grace-plucked note she sings.



## SUNDAY DINNER

Whether you're sipping cocktails in the bar or enjoying the comfort food standards on the menu, live jazz can help stave off the late-weekend blues. Every Sunday, the Nate Lucas Quartet sets up shop and begins jamming its way through classic jazz tunes and forgotten nuggets.



## PROPOSED CONDITIONS

### PART II

#### **Harlem's Historical Neighborhood Context**

During the 1920's in Harlem there were over 125 entertainment establishments clustered between 125<sup>th</sup> Street and 135<sup>th</sup> Street on 7<sup>th</sup> Avenue and Lenox Avenue that drew visitors from around the world. The impressive mix was made up of taverns, supper clubs, lounges, theatres, dance halls and hundreds of speakeasies. Included were the legendary big four: the Cotton Club, Connie's Inn, Small's Paradise and Barron Wilkins Club. Entertainers included Duke Ellington and his big band, Louis Armstrong, Cab Calloway, Fats Waller, Louis Jordan, Chick Webb and Fletcher Henderson. Canary singers included Ella Fitzgerald, Bessie Smith, Ethel Waters and Lena Horne. Bojangles Robinson danced with his gold pistol in his hand while six lovely chorus girls strutted at the Cotton Club. The most famous theatre (just two blocks from the Red Rooster Restaurant) was "The Hurtig and Seamon's Burlesque" which changed its name to the Apollo in 1934. There were restaurants of all kinds – Chinese, rib joints, clam houses, fried chicken parlors – from white tablecloths to weathered counter tops. There was the A train to Sugar Hill (145<sup>th</sup> to 155<sup>th</sup> Streets) and Stompin' at the Savoy Ballroom (596 Lenox Avenue).

#### **Harlem Today**

Harlem is undergoing an exciting change with new business investment opportunities, housing developments and brownstone renovations, all of which bring a renewed energy to this community. East Harlem will also see more exciting growth in the future with the recent adoption of City Planning's East Harlem Rezoning, which was approved by the City Planning Commission on October 2, 2017. Although in Harlem, the Red Rooster Restaurant is located outside of the East Harlem Rezoning area.

## **The Re-establishment of Harlem's Entertainment Uses**

The Red Rooster Restaurant seeks to re-establish and re-capture part of Harlem's history and culture through its "supper club" experience. Red Rooster's proposal builds upon a central ideal that flourished during the Harlem Renaissance: the view of neighborhood eateries as extended dining rooms for social interaction and artistic enjoyment. Few existing venues provide this type of entertainment that Harlem was once known for. Red Rooster Restaurant's proposal steps into this void because it provides an innovative music program that features a variety of live music including Jazz, R&B, Soul and Salsa. The Red Rooster Restaurant regularly coordinates its performances with up-and-coming local artists, as well as premier musicians. The cellar space can also be utilized for special events such as wine tastings, food pairings and book signings by Chef Sameulsson and other notables. The incorporation of the typical supper club experience at the Red Rooster Restaurant is consistent with and in furtherance of society's collective memory of Harlem's days long past.

### **Music – Cellar Floor**

#### **Ginny's Supper Club**

The proposed legalization of the cellar level to a Use Group 12A Eating and Drinking Establishment would permit a traditional supper club to operate where patrons eat dinner, have drinks and listen to a live performance (with designated show times and cover charges). Ginny's typically offers two seated dinner and live entertainment shows each Thursday, Friday and Saturday. The doors open at 6pm. The first set begins at or about 7:30pm. The second set begins at or about 9:30 pm. Show times may vary depending upon the musicians/musical entertainment offered. However, the restaurant's website lists set show times to enable patrons to book a specific show in advance of a nightly performance.

Ginny's typically offers live entertainment post dinner service on Friday and Saturday evenings starting at or about 11:30pm until 4am. Ginny's does not have a dance floor and there is no designated area for dancing activities. However, Ginny's does not prohibit its patrons from dancing either during dinner or its gospel performances.

### **GOSPEL BRUNCH**

Ginny's offers Sunday Gospel Brunch. The doors open at 10am. The first set starts at or about 10:30 am and the second set starts at or about 12:30pm.

Gospel Brunch featuring Vi Higginsen's Gospel For Teens Choir and Red Rooster's famous soul food brunch.



Photo by Bobby Fisher

**Site Improvements – First Floor:**

The applicant has completed the following improvements on the ground floor:

1. The applicant has undertaken and completed certain interior alterations of the ground floor pursuant to the Alteration Type 2 permit issued by the NYC Department of Buildings (DOB Work Permit # 123326748-01-EW-OT) that have resulted in (i) a new entry door within the existing lobby that provides direct access to the convenience stairway and new cellar waiting areas that were constructed on the cellar level; and (ii) a new knee wall partition within the existing lobby that (a) directs and controls patron movements along a new circulation path, through the new entry door, down the convenience stairway and to the new waiting areas and (b) segregates patrons from tenant use of the lobby, all of which is code compliant;
3. The applicant has established a security guard station within the lobby to direct and control patron movements and supervise lobby conditions;
4. Walters-Storyk Design Group (WSDG LLC) conducted acoustical noise testing at the Red Rooster Restaurant on June 5, 2017 to evaluate compliance with the New York City Noise Code and the potential for noise code impacts. WSDG LLC concluded based upon its acoustical testing that no additional action was necessary to comply with New York City Noise Code (See copy of June 22, 2017 WSDG LLC Noise Report attached hereto). WSDG LLC did recommend that the applicant properly seal the existing entry doors to 310 Lenox Avenue to reduce the potential transmission of noise from the Red Rooster Restaurant to the street. Consequently, the applicant repaired these doors consistent with the WSDG LLC's recommendations.
5. The Red Rooster Restaurant's existing walls and ceilings include at the first floor 12" Johns-Manville Formaldehyde-Free thermal and acoustical un-faced fiberglass insulation or equal. Two layers of 5/8" Gypsum Board were installed at areas of existing walls and ceilings. All areas with two layers of Gypsum Board have staggered and caulked seams and a tape and spackle finished layer of Gypsum

Board. In addition, a resilient clip system was applied to the Gypsum Board. Openings were cut in existing walls and ceilings and “blown in” insulation was installed to seal these areas. All seams were caulked solid with Titebond-green choice non-hardening acoustical sealant or equal.

#### **Site Improvements – Cellar Floor Configuration:**

1. The applicant has undertaken and completed certain interior alterations of the cellar floor pursuant to the Alteration Type 2 permit issued by the NYC Department of Buildings (DOB Work Permit # 123326748-01-EW-OT) that have resulted in the construction of two (2) new cellar waiting areas that provide the minimum required area of 4 sq. ft. per person (in fact these waiting areas provide 4.38 sq. ft. per person for the entire cellar occupancy).
2. The Red Rooster Restaurant’s walls and ceilings include at cellar level 12” Johns-Manville Formaldehyde-Free thermal and acoustical un-faced fiberglass insulation or equal. Two layers of 5/8” Gypsum Board were installed at areas of existing walls and ceilings or one layer of 5/8” Gypsum Board with White Echo Eliminator 1” wall panels by acoustical surfaces adhesive applied. All areas with two layers of Gypsum Board have staggered and caulked seams and a tape and spackle finished layer of Gypsum Board. In addition, a resilient clip system was applied to the Gypsum Board. Openings were cut in existing walls and ceilings and “blown in” insulation was installed to seal these areas. All seams were caulked solid with Titebond-green choice non-hardening acoustical sealant or equal.

#### **Completed Fire Safety Measures**

The Red Rooster Restaurant is in compliance with NYC fire safety regulations, as it includes the following life, safety systems:

- The entire restaurant is sprinklered (both ground and cellar floors);
- The restaurant has an existing fire alarm system that is centrally monitored;



- All areas within the restaurant that have separate usages include rated separations including between the restaurant and the waiting areas;
- All rated doors are self-closing; and
- Emergency lighting and exit signs as required are located throughout the restaurant.

### **Additional FDNY Safety Measures**

On March 21, 2018, a site inspection was performed by members of FDNY including a Battalion Chief of BN12, LPPA Inspector and John V. Daly, Deputy Chief Inspector. Set forth below are FDNY's recommendations for the proposed occupancy, all of which the applicant has agreed to undertake and complete:

- The applicant shall install a module in the fire alarm panel that will turn off all power to any musical instruments in the event that the fire alarm system is activated on any floor (a note has been added to the cellar floor plan A-101.00).
- The applicant agrees that there shall be no curtains or drapery in the restaurant that obscures the view to an exit passageway.
- The applicant shall install a rated wall of one-hour to separate the existing cellar corridor and exit passageway on the cellar level (all as noted on cellar floor plan A-101.00). The applicant shall be permitted to install doors within such rated wall provided all doors to be installed are of similar rating to the rated-wall (such a proposed door is noted on cellar floor plan A-101.00).
- The applicant shall list the total number of customers, staff and performers on the plan. A note has been added to the cellar floor plan with the requested information (See cellar floor plan A-101.00).
- The applicant shall remove all shelving and other obstructions within the exit passageway corridors on the cellar level, and such exit passageways shall be cleared at all times. The applicant shall be permitted to install storage cabinets within this exit passageway provided such cabinets are fire rated and accepted by the Department of Buildings. The minimum clear distance between the cabinets and corridor walls shall be determined by the building code for public assembly use.
- The applicant shall install additional exit signs along all exit passageway's to better direct people to the means of egress (all as noted on cellar floor plan A-101.00).

- The applicant shall recess the door to the large holding room located on the cellar level so that the door will not reduce the width of the exit passageway (all as noted on cellar floor plan A-101.00).
- The applicant agrees that all security personnel used by the restaurant during performances shall hold an F-03 Certificate of Fitness "Indoor Place of Assembly Safety Personnel" issued by the Fire Department of the City of New York.
- Cellar Floor Plan A-101.00: The cellar floor plan has been amended to comply in all respects with the recommendations that FDNY set forth in its letter dated March 21, 2018.
- Area Calculations/Occupancy Load A-101.00: The total occupancy of the cellar level is limited to 200 persons as per the existing public assembly permit for the cellar level. The applicant is not proposing to increase the cellar occupancy. It should be noted that during live performances there is a total of 90 seats in the main dining room on the cellar level (which includes 18 seats at the bar). When one combines total number of seated dinner patrons with the total number of staff (10-15) and performers (5-10), the estimated operational occupancy of the main dining area (where dinner/shows take place) is 115. I note that there is a private dining room on the cellar level that holds an additional 28 seats, however patrons located within the private dining room cannot view the live performances. The private dining room is only utilized for special occasions, large dinner parties and certain VIP events. However, we have included the private dining area to provide a conservative analysis of the estimated functional capacity of the cellar level, the result of which is an aggregate of 143 occupants (which total includes 100 seated dinner patrons).

### **The Special Permit**

Although the Proposed Use requires a special permit in accordance with Section 73-244 of the Zoning Resolution, it is important to note that both Use Group 6A Eating and Drinking Establishments (i.e., including those that have music for which there is no cover charge and no specified show times) and Use Group 6C Eating and Drinking Establishments (i.e., including those that have musical entertainment but not dancing with a capacity of 200 persons or less) are permitted by the Zoning Resolution as a matter of right. We also note that but for the proximity of the Site to a residential district boundary (i.e., the Site is within 100 feet of a residence district boundary), the proposed Use Group 12A Eating and Drinking Establishment would be an as-of-right use pursuant to the Zoning Resolution.

**PRIOR BOARD APPLICATIONS**

No previous actions by the Board with respect to the Site were sought by the applicant or its predecessor in title.

**OPEN DEPARTMENT OF BUILDINGS VIOLATIONS**

There are no open DOB and ECB violations against the Site.

**STATEMENT OF FINDINGS  
PART III**

**(12/19/80)**

**73-03**

**General Findings Required for All Special Permit Uses and Modifications**

**The Board of Standards and Appeals shall have the power, as authorized by Section 73-01, paragraph (a) or (b), and subject to such appropriate conditions and safeguards as the Board shall prescribe, to grant special permit uses or modifications of uses, parking, or bulk regulations as specifically provided in this Chapter, provided in each case:**

**(a) The Board shall make all of the findings required in the applicable sections of this Chapter with respect to each such special permit use or modification of use, parking or bulk regulations and shall find that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of such special permit use or modification of use, parking or bulk regulations at the particular site are outweighed by the advantages to be derived by the community by the grant of such special permit. In each case the Board shall determine that the adverse effect, if any, on the privacy, quiet, light and air in the neighborhood of such special permit use or modification of use, parking or bulk regulations will be minimized by appropriate conditions governing location of the site, design and method of operation.**

The legalization of the cellar level for the proposed Use Group 12A eating and drinking establishment presents no hazards or disadvantages to the community at large. The Red Rooster Restaurant seeks to re-establish and re-capture part of Harlem's history and culture through its "supper club" experience. Red Rooster's proposal builds upon a central ideal that flourished during the Harlem Renaissance: the view of neighborhood eateries as extended dining rooms for social interaction and artistic enjoyment. Few existing venues provide this type of entertainment that Harlem was once known for. The incorporation of the typical supper club experience at the Red Rooster Restaurant is consistent with and in furtherance of society's collective memory of Harlem's days long past.

In the event that the Board determines that hazards or disadvantages may come to exist, or that the approval of the special permit requested herein has an adverse effect on the privacy, quiet, light or air in the neighborhood, the Applicant will adhere to the appropriate mitigating conditions imposed by the Board.

**(b) In all cases the Board shall deny a special permit whenever such proposed special permit use or modification of use, parking or bulk regulations will interfere with any public improvement project (including housing, highways, public buildings or facilities, redevelopment or renewal projects, or right-of-way for sewers, transit or other public facilities) which is approved by or pending before the Board of Estimate, Site Selection Board or the City Planning Commission as determined from the calendars of each such agency issued prior to the date of the public hearings before the Board of Standards and Appeals.**

To the best of the Applicant's knowledge, there are no public improvement projects (including housing, highways, public buildings or facilities, redevelopment or renewal projects, or right-of-way for sewers, transit or other public facilities) which have been approved by or are pending before the City Council (as successor to the Board of Estimate with regard to certain ULURP items), Site Selection Board or the City Planning Commission within the Site's vicinity. Accordingly, this finding is not applicable.

**(c) When under the applicable findings the Board is required to determine whether the special permit use or modification of use, parking or bulk regulations is appropriately located in relation to the street system, the Board shall in its discretion make such determination on the basis of the Master Plan of Arterial Highways and Major Streets on the official City Map. Whenever the Board is required to make a finding on the location of a proposed special permit use or modification of use, parking or bulk regulations in relation to secondary or local streets and such classification of streets is not shown on the Master Plan, the Board in its discretion shall request the City Planning Commission to establish a report on the appropriate classification of such street.**

The Board is not required to make a determination relevant to this finding.

**(d) For applications relating to Sections 73-243, 73-48 and 73-49, the Board in its discretion shall request from the Department of Transportation a report with respect to the anticipated traffic congestion resulting from such special permit use or modification of use, parking or bulk regulations in the proposed location. If such a report is requested, the Board shall in its decision or determination give due consideration to such report and further shall have the power to**

**substantiate the appropriate finding solely on the basis of the report of the Department of Transportation with respect to the issue referred.**

This is not an application relating to ZR Sections 73-243, 73-48 or 73-49.

**(e) If a term of years is specified in the applicable section, the Board shall establish a term of years not to exceed such maximum. For those special permit uses or modification of use parking or bulk regulations for which a maximum term has not been specified, the Board may fix an appropriate term for any such special permit use or modification of use parking or bulk regulations.**

The Applicant seeks the requested special permit for a three (3) year term consistent with the provisions of Section 73-244 of the Zoning Resolution.

**(f) On application for renewal of any such special permit authorized in this Chapter, the Board shall determine whether the circumstances warranting the original grant still obtain. In addition, the Board shall ascertain whether the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term. In the event that the Board shall find the applicant has been in substantial violation thereof, it shall deny the application for renewal.**

This Application does not seek the renewal of a previously adopted special permit. Accordingly, the Board is not required to make a determination relevant to this finding.

**(g) The Board may permit the enlargement or extension of any existing use, which, if new, would be permitted by special permit in the specified districts under the provisions of Section 73-01 and other applicable provisions of this Chapter, provided that before granting any such permit for enlargement, or extension within the permitted districts, the Board shall make all of the required findings applicable to the special permit use, except that:**

**(1) in the case of colleges or universities in RI or R2 Districts, the Board may waive all such required findings set forth in Section 73-121 (Colleges or universities); and**

**(2) in the case of public utility use, the Board may waive all such required findings set forth in Sections 73 14 (Public Service Establishments) or 73 16 (Public Transit, Railroad or Electric Utility Substations).**

**No such enlargement or extension shall create a new non-compliance or increase the existing degree of non-compliance with the applicable bulk regulations, except as may be permitted in accordance with the provisions of Sections 73-62 to 73-68, inclusive, relating to Modification of Bulk Regulations.**

This application does not seek the enlargement or extension of an existing use.

### **Special Permit Pursuant to ZR Section 73-244**

The Proposed Use requires a special permit in accordance with Section 73-244 of the Zoning Resolution, which states in part:

**12/15/61**

**73-00**

### **Special Permit Uses and Modifications**

3/20/13

**73-244**

**In C2, C3, C4<sup>1\*</sup>, C6-4\*\*, M1-5A, M1-5B, M1-5M and M1-6M Districts, the Special Hudson Square District and the Special Tribeca Mixed Use District. (Note: C6-4 \*\* end note n/a and omitted).**

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 requisite findings are made:

The Proposed Use meets each of the required findings specified in Zoning Resolution Section 73-244 as follows:

- (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 ensure that the operation of the establishment will not result in the gathering of crowds or the formation of lines on the #street#.

The total occupancy of the cellar level is limited to 200 persons. The applicant is not proposing to increase the cellar occupancy. The applicant has undertaken and completed certain interior alterations of the cellar floor pursuant to the Alteration Type 2 permit issued by the NYC Department of Buildings (DOB Work Permit # 123326748-01-EW-

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<sup>1</sup> \* In C4 Districts where such #use# is within 100 feet from a #Residence District# boundary.

OT) that have resulted in the construction of two (2) new cellar waiting areas that provide 4.3 sq. ft. per person for the entire cellar occupancy (an amount that exceeds the requirement of 4.0 sq feet per person as set forth in the Zoning Resolution). The required waiting areas do not include space occupied by stairs, corridors or restrooms.

As noted on Plan A-101.00, the waiting areas include (i) a large waiting area that holds 175 people and provides in excess of 4.0 square feet of waiting area per person; and (ii) a smaller waiting area that is required to hold only 25 individuals but, has an area that permits it to hold up to 38 persons, in excess of 4.0 square feet per person of waiting area. The average waiting area per person when you combine both waiting areas is 4.3 square feet per person.

The applicant has undertaken and completed certain interior alterations of the ground floor pursuant to the Alteration Type 2 permit issued by the NYC Department of Buildings (DOB Work Permit # 123326748-01-EW-OT) that have resulted in (i) a new entry door within the existing lobby that provides direct access to the convenience stairway and new cellar waiting areas that were constructed on the cellar level; and (ii) a new knee wall partition within the existing lobby that (a) directs and controls patron movements along a new circulation path, through the new entry door, down the convenience stairway and to the new waiting areas) and (b) segregates patrons from tenant use of the lobby, all of which is code compliant. Ginny's patrons arrive for their dinner reservations and will be directed to enter 310 Lenox Avenue at the designated lobby entrance and under the direction of the security guard and designated staff members proceed either directly to their tables or to the designated waiting areas (when the dining room is being cleaned and readied for service).



With these measures, the applicant has demonstrated that the operation of the proposed establishment will not result in the gathering of crowds or the formation of lines on the street. Consequently, the project complies with this finding of the Zoning Resolution.

- (b) That the entrance to such #use# shall be a minimum of 100 feet from the nearest #Residence District# boundary.

The entrance to the cellar level is located 126 feet from the nearest residential district boundary. The Applicant has provided a scaled land-use map indicating the same.

- (c) That such #use# will not cause undue vehicular or pedestrian congestion in local #streets#.

The proposed legalization of the cellar restaurant supper club will not cause vehicle or pedestrian congestion on local streets. Most restaurant patrons take mass transit and/or walk to our location from the 125<sup>th</sup> Street transit corridor that provides access to a multitude of subway trains (the No. 2, No. 3, No.4, No. 5, No. 6, A, B, C & D), to the Metro-North railroad, as well as many NYC rapid transit buses. In fact, the restaurant's entrance is located within 64 feet of the MTA's entrance to the No.2 and No. 3 subway lines.

The project does not trigger a CEQR threshold for transportation impacts. According to Table 16-1 of the CEQR Technical Manual, the minimum development density for uses in Zone 2 (Manhattan north of 110th Street) potentially requiring a transportation analysis is 200 dwelling units, 100,000 gross square feet of office, 20,000 gross square feet of regional retail, 15,000 gross square feet of local retail, 20,000 gross square feet of restaurant (emphasis added), 25,000 gross square feet of community facility use or off-street parking facilities with 85 new spaces.

The Red Rooster Restaurant contains a total of 9,748 square feet (3,444 sq feet on the ground floor and 6,034 sq feet on the cellar level), an amount that is less than half of the minimum development density (20,000 square feet) that would trigger a traffic assessment in Zone 2 (if we were building a new restaurant). The Red Rooster is an existing restaurant and the applicant is not proposing to increase its size, as this proposal is limited to the legalization of the UG 12A use on the cellar level (6,034 sq. feet). Accordingly, a formal traffic assessment is not required, as the project screens out from such an assessment based upon the methodology set forth in the CEQR Technical Manual.

Restaurant patrons avoid the use of the local street system especially in the evenings and instead utilize the 125<sup>th</sup> Street corridor, which is an active, secure and well lit commercial corridor with a direct link to mass transit facilities. In addition, the proposed legalization of the cellar restaurant supper club will not cause pedestrian congestion at or directly in front of 310 Lenox Avenue, as this proposal has been designed to provide (i) a new segregated lobby entrance and (ii) two new cellar waiting areas specifically designed to foster the movement of patrons off street and within the restaurant. Consequently, the legalization of the proposed use will not cause undue vehicle or pedestrian congestion on 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.

A shown on the Land Use Map included within the Application, the immediate and surrounding community along 125<sup>th</sup> Street is overwhelmingly comprised of commercial uses. The entire Lenox Avenue street frontage on both the block in which the Red Rooster Restaurant is located and the block directly across the street from the restaurant

are entirely comprised of commercial uses. The nearest residential use is located on the south side of 126<sup>th</sup> Street, one block north of the restaurant.

The Red Rooster Restaurant is a use that is entirely consistent with not only with the existing neighborhood's character but, with the uses permitted in and fostered by the Zoning Resolution and the Special 125<sup>th</sup> Street District. In addition, the legalization of the proposed use is completely consistent with the historical character and musical uses that once flourished in Harlem. As such, the legalization of the proposed use will complement Harlem as a whole, as well as the immediate surrounding neighborhood.

- (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.

The proposed use complies strictly with the New York City Noise Code. The Site is wholly located within a commercial zoning district and the Proposed Use is located within a completely enclosed building at the cellar level (which reduces the potential for noise transmission from the premises). To our knowledge, there are no joint living-work quarters for artists or loft dwellings in proximity of the Site.

Walters-Storyk Design Group (WSDG LLC) conducted acoustical testing at the Red Rooster Restaurant on June 5, 2017 to evaluate compliance with the New York City Noise Code and the potential for noise code impacts. WSDGLLC concluded based upon its acoustical testing that no additional action was necessary to comply with New York City Noise Code. However, WSDGLLC did recommend that the applicant properly seal the existing entry doors to 310 Lenox Avenue to reduce the potential transmission of noise from the Red Rooster Restaurant to the street. Accordingly, the applicant has undertaken

and completed the repair of these doors consistent with the recommendations of the Walters-Storyk Design Group (WSDG LLC) Noise Report dated June 22, 2017.

- (f) That the application is made jointly by the owner of the #building# and the operators of such eating or drinking establishment.

This application has been filed jointly by the owner of the building and the operators of the proposed Use Group 12A Eating and 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.

## CONCLUSION

### PART IV

Accordingly, we kindly request the BSA grant the proposed special permit for a term of three (3) years, pursuant to ZR Section 73-244, to permit the legalization of the proposed Use Group 12A Eating and Drinking Establishment on the cellar level.