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February 18, 2019

By E-Mail

Jennifer Gravel
Director of Industry Studies
New York City Department of City Planning
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Re: Zoning Resolution Provisions Affecting Dancing and Music V1.0
Modification of Resolution to Implement Cabaret Law Repeal

Dear Ms. Gravel,

Thank you very much for your expeditious e-mail response to my letter of February 12, 2019 to Sarah Ellmore, e-mail reproduced below. You asked me to be more specific as to my questions and I have repeated and posed some questions in bold below.

It is encouraging to learn that DCP has a representative to the Nightlife Task Force and Advisory Board. I am not a member of the Advisory Board and Task Force have disseminated limited information, so I have no information as to what is being discussed.

I had hoped that the context of my letter was clear; the Zoning Resolution needs reform as it relates to dancing and live music. The Department of City Planning possesses the expertise to analyze areas requiring reform. These reforms are needed in part to synchronize the Zoning Resolution with the action by the City Council and the Mayor to repeal the Cabaret Law. The Zoning Resolution and the Cabaret Law were inter-related and had similar objectives and similar language.

So, my **first question is that I would like to know if I have misstated or misunderstood anything as to the Zoning Resolution in my letter.** It is important that everyone is operating on a common set of facts and understandings. In that regard, I, knowing a few people on the Nightlife Advisory Board, am sure that these members do not appreciate at all the complexity of the Zoning Resolution and of the revision process.

In that regard, I hope I was clear in that **another question was whether DCP would prepare authoritative mapping of the districts and sub-districts affected by restrictions against dancing and music?** I do not possess the ArcGIS skills to prepare such mapping and it is not possible to do so using ZoLa: for example, Special Districts may not be individually shown, multiple districts and subdistricts may not be shown, etc.

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Even were I able to have such a map prepared, it would not be authoritative having not been presented by DCP. I can assure you that at least some members of the Board are not aware of the extent of prohibition of dancing or even that Special Permits are required in some districts. I believe it to be important to accurately show this information. *The Industry study completed two weeks ago shows a map of "nightlife establishment" in areas of the City where dancing is prohibited, and this is highly misleading.*

More generally, I am hoping that DCP will seize the initiative in reviewing the restrictions against dancing and music and undertake a zero-based justification of each restriction. **So, another question is will DCP take the lead in performing this analysis, as it did in 1989?** The restrictions derive from the same anachronistic motives behind the Cabaret Law. The restrictions impose undue burdens upon establishments and musicians in the City, as well as patrons wishing to engage in dancing - whether the waltz or hip-hop. In that regard, any reform should not focus on large dance clubs and nightclubs, but also consider the impact of establishments that may even operate during the day time and may even be hosting semi-private events such as weddings and other celebrations.

For example, the famous and high-quality Red Rooster at 310 Lenox Avenue, which has helped reinvigorate Harlem, is in sub-district C4-4A. Ordinarily, C4 districts are within Use Group 12, but ZR §32-31 requires an establishment in C4-4A to obtain a Special Permit from the Board of Standards and Appeals if dancing is allowed. C4-4A is also within Use Group 6, and thus as long as no dancing is allowed, Red Rooster was allowed to operate as long as its occupancy was under 200. For years Red Rooster under Use Group 6 has legally operated a restaurant and cellar supper club, both with occupancies below 200. Live music was played in both venues. In 2016, Red Rooster began the process of obtaining a Special Permit to allow dancing in the cellar supper club. The Red Rooster was not increasing the occupancy and was not changing the nature and volume of the live and recorded music. The addition of dancing changed nothing in the impact on neighbors. There was no change in fire safety exits needs, because the number of customers remained the same. Red Rooster did wish to allow its customers in the cellar to dance. The Red Rooster then undertook a two-year effort with multiple hearings and the retention of attorneys, architects, contractors, sound consultants, and fire consultants, and finally obtained a three-year Special Permit in 2018. The Red Rooster had to satisfy multiple challenges from the BSA as to fire safety when no relevant changes were being made and fire safety is not a function assigned to the BSA under the relevant Zoning Resolution section – §73-244. In addition, Red Rooster was required to set aside 800 square feet of non-income producing space as a waiting area. All of this was required because Red Rooster wanted to allow dancing by a few patrons and the below ground cellar was within 100 feet of a residence district.¹

¹ I do not represent Red Rooster and do not speak for them Red Rooster may not wish to be a poster child for what is wrong with the Zoning Resolution. All of my information is obtained from my FOIL request to the BSA. In seeking a Special Permit, perhaps Red

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From Open Data, I analyzed all Special Permits from the BSA and identified only three active Special Permits granted to allow dancing. I also viewed the zoning map for Lenox Avenue north of the Red Rooster (home of the Lindy Hop at the Savoy Ballroom.) North of the Red Rooster, zoning prohibits dancing even with a special permit. A nice map would show this.

Among things, this example shows how mapping of districts allowing dancing is not so straightforward. C4-4A is in Use Group 12, but a separate provision requires a Special Permit.

So, my question to DCP is what is the legitimate regulatory purpose for imposing the substantial cost and expense upon Red Rooster for the sole purpose, not of running a 400 person dance nightclub, but to allow a few patrons to dance?

There are many other discrete questions – **one question is why does the Zoning Resolution impose extra burdens on eating and drinking establishments that impose a cover charge to provide income to pay live musicians?** This certainly has an effect on the ability of musicians to earn a living in New York City. I am not sure this provision is consistent with the 1986 and 1988 court decisions.

In order identify the questions, first one must view all of the restrictions in the Zoning Resolution in regard to dancing and music and then rationalize the policy behind each and every one of the restrictions. For that reason, for myself I prepared the extract which I am sharing. I apologize if DCP already has prepared such an analysis.

Anyway, my first and primary question, will DCP prepare accurate mapping showing areas where dancing is permitted without special permit, where dancing is permitted only with special permit, and where dancing is not permitted at all?

Sincerely,



Alan D. Sugarman

cc:

Ariel Palitz, apalitz@media.nyc.gov
Sarah Ellmore, sellmore@planning.nyc.gov

Rooster wished to avoid a swat team visit by MARCH for conducting activities not allowed by its Certificate of Occupancy or Public Assembly Permit.

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Subject RE: [WARNING: ATTACHMENT(S) MAY CONTAIN MALWARE]Restrictions in
Zoning Resolution Concerning Dancing and Music
From Jennifer Gravel (DCP) <JGRAVEL@planning.nyc.gov>
To sugarman@sugarlaw.com <sugarman@sugarlaw.com>
Cc Sulin Carling (DCP) <SCarling@planning.nyc.gov>
Date Wed 13:59
Good afternoon Mr. Sugarman.

*I am DCP's rep to the Nightlife Task Force and I received your message from Sarah
Ellmore in our Manhattan Office. In order to best assist you, it would be helpful to
understand your specific questions and their context.*

What specifically is it that you are trying to understand?

*Regards,
Jennifer Gravel*