



CITY PLANNING COMMISSION

February 18, 2009 / Calendar 23

C 070486 ZSM

IN THE MATTER OF an application submitted by Little Red House, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit, pursuant to Section 74-782 of the Zoning Resolution to modify the use regulations of Section 15-021(e) to allow the conversion to residential use of the 2nd through 6th floors of an existing 6-story building erected prior to December 15, 1961, on property located at 372 Broome Street (Block 480, Lot 37 and p/o Lot 36), in a C6-2G District, within the Special Little Italy District (Preservation Area A), Community District 2, Borough of Manhattan.

The application for the special permit was filed by Little Red House, LLC on May 22, 2007, to allow the conversion to residential use of the second through sixth floors of an existing six-story building located at 372 Broome Street in a C6-2G District within the Special Little Italy District (Preservation Area A) in the Little Italy neighborhood of Community District 2, Manhattan.

BACKGROUND

372 Broome Street (the “Building”) is a six-story structure, located at the northwest corner of Broome and Mott streets. The ground floor of the Building is occupied by an as-of-right commercial use and the upper floors are vacant. The Building is on a zoning lot of 4,684 square feet and has a total floor area of 26, 919 square feet with a FAR of 5.7. The applicant proposes to convert the upper floors of the Building to eleven residential units while continuing the commercial occupancy of the ground floor. The Building would contain a total of 23,325 square feet of residential use and 3,594 square feet of commercial use.

According to Section 15-021 of the Zoning Resolution, in a C6-2G District, residential conversions of manufacturing and commercial buildings erected prior to December, 1961 are not allowed. Such conversions may be allowed by City Planning Commission special permit pursuant to Section 74-782 which requires the Commission to make certain findings, including findings that the existing tenants were given the opportunity to remain in their spaces at fair market rentals, and that the applicant has made a good faith effort for a minimum of one year to rent such space to a conforming use. Conforming uses include a wide range of commercial uses, including office, retail and entertainment, manufacturing, and community facility uses. The C6-2G designation was established

in 1984 to protect the garment industry located in the Chinatown area from displacement by as-of-right residential conversions.

The Building is located within the boundaries of the Special Little Italy District. The surrounding neighborhood is primarily developed with five-story buildings containing residential use on the upper floors and retail use or eating and drinking establishments on the ground floors.

ENVIRONMENTAL REVIEW

This application (C 070486 ZSM) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 *et seq.* and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977.

This application was determined to be a Type II action which requires no further environmental review.

UNIFORM LAND USE REVIEW

This application (C 070486 ZSM) was certified as complete by the Department of City Planning on October 27, 2008, and was duly referred to Community Board 2 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Public Hearing

Community Board 2 held a public hearing on this application on November 13, 2008, and on November 20, 2008, by a vote of 38 to 0 with 0 abstentions, adopted a resolution recommending approval of the application.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation on January 14, 2009 approving the application subject to the following condition: “provided that the Department of City Planning take steps to ensure that Zoning Resolution §74-782(c) is met more completely, and that data regarding the industrial sector in the area is provided to the ULURP decision-makers for their consideration, and possible further comment.”

The Borough President notes that the “applicant has generally made a good faith effort to fulfill the requirements of the Zoning Resolution. There remains, however, outstanding concern regarding the applicant’s response to Finding “C.” The Borough President states that while the text of Finding “C” requires the applicant to demonstrate that “there is sufficient alternative space to meet the needs of the commercial and manufacturing uses in the area” and that the “vacancy rate for the industrial space in the area shall be one evidentiary element to prove the availability of alternative space,” the applicant “contends that there is no readily available data that fulfills the requirement of Finding “C,” including an industrial vacancy rate. Furthermore, the applicant states that an industrial vacancy rate is no longer a viable indicator proving the availability of alternative space, because most nearby vacant industrial buildings have already been converted to residential space and there remains little demand in the area for more commercial space.”

The Borough President notes that “although the industrial vacancy rate need not be the sole determining factor in making this determination, the vacancy rate is inarguably required by the text of the Zoning Resolution. The fact that the applicant judges a requirement does not give it permission to disregard it.”

The Borough President states that if “the Commission agrees that the vacancy rate is not a relevant factor in considering the granting of this special permit, or that this data is not available, it should strongly consider working with the Borough President’s Office, the Community Board, community leaders, and industrial retention advocates to amend the Zoning Resolution to eliminate the vacancy rate requirement or replace it with a requirement that applicants can be reasonably expected to meet. It is inappropriate to continue reviewing applications for a special permit whose requirements cannot

be satisfied under the letter of the law. “The Borough President notes that his office”has previously drawn attention to this concern in his review of previous ULURP applications for a special permit pursuant to ZR § 74-782.”

The recommendation states that “DCP should work with applicants seeking the special permit to identify alternative means of showing space availability. The applicant should have attempted to provide additional evidence and/or argument for whether there is sufficient alternative space in the area. Since DCP urges applicants to notify local industrial groups of the available space presumably based on their special understanding of industrial conditions in the City, perhaps these groups could provide insight to the applicant on industrial vacancy in the area. Furthermore, considering that the current zoning supports and promotes both commercial and industrial uses by allowing them as-of-right, the applicant might investigate the availability of alternative space for any of the conforming uses under the zoning and not just manufacturing uses.”

City Planning Commission Public Hearing

On January 7, 2009 (Calendar No. 7), the City Planning Commission scheduled January 21, 2009 for a public hearing on this application (C 070486 ZSM). The hearing was duly held on January 21, 2009 (Calendar No. 26). There were two speakers in favor of the application and none in opposition.

A representative of the Borough President reiterated the Borough President’s conditional support for the application. The speaker noted that while finding (c) of Section 74-782 states that the “vacancy rate for the industrial space in the area shall be one evidentiary element to prove the availability of the alternative space” to meet the needs of the commercial and manufacturing uses in the area, this vacancy rate is not available. The speaker requested that the Department amend the zoning text to request an alternative to the vacancy rate so that the finding could be met.

The applicant’s attorney also appeared in favor.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the grant of this special permit is appropriate.

The Commission notes that the applicant has made the necessary good faith marketing effort for a period of more than one year. In August 2005, the applicant signed an agreement with a real estate broker familiar with marketing commercial and retail space in the Special Little Italy District. Weekly advertisements appeared in The New York Times beginning in December 2005. In addition, weekly advertisements appeared in two Chinese-language newspapers, the Sing Tao Daily and the World Journal, beginning on July 2006. The advertisements in all three newspapers are continuing during the review of the application.

In 2006, a cover letter and flyer describing the space were sent to a targeted list of over 2,000 conforming users which the real estate broker had determined would be appropriate and the availability of the space was listed with a computer listing service. In addition, 200 other brokers affiliated with major New York City commercial brokerage firms were faxed the square footage of the space, location of the space, uses being sought, and the asking price per month. The applicant also notified local and citywide industry groups of the availability of the space, including the Industrial Space Bank at the New York City Economic Development Corporation.

Such marketing efforts proved unsuccessful as they did not succeed in obtaining a conforming use. No city, state or federal economic development programs that the building and the applicant qualified for were available to assist in the successful marketing of the upper floors for industrial and commercial tenancies.

The Commission notes that although residential use is the predominant upper floor use on the blocks immediately surrounding 372 Broome Street, upper floor spaces are available for lease by conforming industrial and commercial uses elsewhere in Community District 2, in areas zoned for

these uses, including in Chinatown, SoHo, and NoHo. These spaces are primarily located on Broadway and on the streets and avenues to the east of Broadway. The Commission therefore believes that there is sufficient alternative space to meet the needs of commercial and manufacturing uses in the area.

The Commission believes that the increased residential activity resulting from the conversion to eleven units of Use Group 2 residential use would not place a burden on the neighborhood. The Commission notes that buildings with residential use, joint living-work quarters for artists, or other forms of dwelling units on the upper floors and commercial uses on the ground floor is the predominant use in the vicinity of the building. The Commission believes that the units resulting from this conversion will continue existing land use trends in this area and will not burden the surrounding neighborhood. In addition, the Commission notes that the dwelling units will be in compliance with applicable standards for such units.

The Commission notes that while the building has not been maintained in over a decade resulting in the plumbing and electrical systems being in a deteriorated state, all inquiries that were received were from prospective tenants requiring “move-in” conditions. The Commission believes that the existing conditions of the building and the small floor plates of each of the upper floors reduce the building’s desirability for use by industrial uses. The Commission believes that these factors in conjunction with the inability to lease these floors for a conforming use indicate that the conversion would not hurt the industrial sector of the City’s economy.

The Commission notes that the cellar through the fourth floor was vacant when the applicant took possession of the Building in August 2005. The Commission has no reason to believe that the previous owner of the Building caused the tenants to vacate. The Commission further notes that the fifth floor tenant relocated to a larger space in Queens and the sixth floor tenant, believed by the applicant to be operating a sweatshop, vacated the space three months after the applicant purchased the Building.

The Commission acknowledges the comments from the Borough President regarding the lack of data and consequent difficulty in determining vacancy rates for manufacturing uses in the area of the Special Little Italy District. However, the Commission notes that a text amendment would be necessary to change or eliminate this finding. The Commission believes that the applicant has demonstrated the availability of alternative locations for commercial uses.

FINDINGS

The City Planning Commission hereby makes the following finding pursuant to Section 74-782 (Residential conversion in C6-1G, C6-2G, C6-2M, C6-4M, M1-5A, M1-5B, M1-5M and M1-6M Districts) of the Zoning Resolution:

- (a) the conversion will not harm the industrial sector of the City's economy;
- (b) the applicant for the special permit or a predecessor in title has made a good faith effort to rent such space to a mandated use at fair market rentals. Such effort shall have been actively pursued for a minimum of one year immediately preceding the application. A good faith effort shall include, but not be limited to, advertising in local and citywide press, listing the space with brokers doing business in the industrial real estate market, notifying the New York City Office of Economic Development, and informing local and citywide industry groups. The applicant shall provide records showing the specific efforts to rent such space;
- (c) there is sufficient alternative space to meet the needs of commercial and manufacturing uses in the area. The vacancy rate for industrial space in the area shall be one evidentiary element to prove the availability of alternative space;
- (d) city, state and federal economic development programs, to the extent applicable, had been explored and found not suitable;
- (e) the commercial and industrial tenants were given the opportunity by the applicant or predecessor in title to remain in the spaces at fair market rentals, and the property owner or predecessor in title did not cause the vacating of the space for the additional conversion;
- (f) the neighborhood in which the conversion is taking place will not be excessively burdened by increased residential activity; and

(g) all dwelling units or joint living-work quarters for artists permitted by this special permit meet the standards of the applicable district for such units or quarters.

If the Commission determines that floor area in the building, or portion thereof, was occupied as dwelling units or joint living-work quarters for artists on September 1, 1980, findings (b), (c), (d), and (e) shall not be required for the grant of a special permit for such floor area, provided that a complete application to prove occupancy as a dwelling unit or joint living-work quarters for artists is submitted to the City Planning Commission by the owner of the building or the occupant of a dwelling unit or joint living-work quarters for artists in such buildings not later than June 21, 1983. In addition, the Commission must find that there is no substantial evidence that the landlord forced commercial or manufacturing tenants to vacate such floor area through harassment, non-renewal of leases, or the charging of rents in excess of the then fair market value. Notwithstanding anything to the contrary above, the Commission shall not grant or deny a special permit pursuant to the provisions of this Section unless an application for such special permit has been submitted by the owner of the building.

The Commission shall request a report from the Office of Economic Development regarding information useful in making findings (a), (b), (c), (d), and (e). Said report is to be provided within 30 days of the Commission's request.

The applicant shall provide a copy of any application for a special permit under this Section to the Industrial Loft Advisory Council, c/o Mayor's Office of Economic Development.

In granting the special permit under this Section, the Commission shall require the preservation of the maximum amount of floor area for commercial or manufacturing uses that the Commission deems feasible.

RESOLUTION

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the environmental determination, and the consideration and findings described in this report, the application submitted by Little Red House, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit, pursuant to Section 74-782 of the Zoning Resolution to modify the use requirements of Section 15-021(e) to allow the conversion to residential use of the 2nd through 6th floors of an existing 6-story building on

a zoning lot located at 372 Broome Street, in a C6-2G District, Borough of Manhattan, Community District 2, is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 070486 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Archi-tectonics, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
A-02	Site Plan	October 17, 2008
A-03	Cellar Plan	October 14, 2008
A-04	First Floor Plan	October 14, 2008
A-05	Second-Fourth Floor Plan	October 14, 2008
A-06	Fifth Floor Plan	October 14, 2008
A-07	Sixth Floor Plan	October 14, 2008

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
4. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.

5. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted.

6. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

Pursuant to Section 200 of the New York City Charter, the action by the City Planning Commission in this matter is final. The report is forwarded to the Office of the Speaker, City Council, for information and filing.

AMANDA M. BURDEN, FAICP, Chair
KENNETH J. KNUCKLES, Esq., Vice Chairman

ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E., ANGELA R. CAVALUZZI, AIA,
ALFRED C. CERULLO, III, BETTY Y. CHEN, MARIA M. DEL TORO,
RICHARD W. EADDY, SHIRLEY A. MCRAE, JOHN MEROLO, KAREN A. PHILLIPS,
Commissioners