CITY PLANNING COMMISSION

January 21, 2015/Calendar No. 14 C 140353 ZSM

IN THE MATTER OF an application submitted by 102 Greene Owner pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify:

1. Section 43-17 - to allow the enlargement of an existing 3-story building containing joint living-work quarters for artists (JLWQA); and

2. Section 42-10 - to allow residential use (U.G. 2 use) on portions of the ground floor, 2nd – 3rd floors and within the proposed 4th – 5th floors and duplex penthouse levels;

on property located at 102 Greene Street (Block 499, Lot 6), in an M1-5A District, within the SoHo Cast-Iron Historic District, Borough of Manhattan, Community District 2.

*197-d (b)2 eligible

The application for the special permit was filed by 102 Greene Owner on April 14, 2014, for a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the bulk requirements of Section 43-17 to allow the enlargement of a building containing joint living-work quarters for artists (JLWQA) and use requirements of Section 42-00 to allow residential use (Use Group 2) on the second through the upper penthouse level of property located at 102 Greene Street within the SoHo Cast-Iron Historic District.

BACKGROUND

102 Greene Street is a three-story cast-iron building ("the Building") located on the east side of Greene Street between Prince and Spring streets. The Building was constructed in 1880-81 as a five-story structure. Following a succession of fires, the upper two stories of the building were removed in the early 1940s. The building has remained a three-story structure.

The ground floor of the building is occupied by Use Group 6 retail uses and the second and third floors have been approved for legal use by joint living-work quarters for artists (JLWQA), however, that space is currently leased to residential (Use Group 2) tenants. The lease for one unit expired in June 2014 and the lease for the second unit will expire in April 2015. The

Commission understands that the Department of Buildings has been made aware of this non-conforming use and will take appropriate action.

The ground floor of the building is occupied by Use Group 6 retail uses and the second and third floors have been approved by legal use by are leased to and are occupied by residential tenants (UG2). The building's Certificate of Occupancy lists UG 17-D JLWQA as the permissible use and occupancy of the second and third floors. Pursuant to the use regulations of Section 42-10 of the Zoning Resolution, UG 2 is non-conforming in an M1-5A zoning district. The lease for one unit expired in June 2014 and the lease for the second unit will expire in April 2015. The Commission understands that the Department of Buildings has been made aware of this non-conforming use and will take appropriate action.

The applicant proposes to reconstruct the fourth and fifth floors of the building and add a duplex penthouse. The proposed building will have a total of seven stories above grade. The building will have a street wall elevation, including cornice, of 77 feet 9 inches. At this height, the proposed penthouse would set back 18 feet. The building will have a total height of 94 feet 6 inches.

The building will have six units; one ground floor retail unit and five residential units. There will be one residential unit per floor on the existing second and third floors, and on each of the three reconstructed floors. The duplex penthouse will be an individual unit. The proposal includes three private terraces; a 150 square foot terrace on the 4th floor and two terraces of 200 sf and 392 sf on the lower penthouse level. No parking is proposed for the building.

Pursuant to the use regulations of Section 42-10 of the Zoning Resolution, residential use (UG 2) is non-conforming in an M1-5A zoning district. While the building is occupied by residential use (UG 2), the building's Certificate of Occupancy lists UG 17-D JLWQA. Pursuant to the bulk regulations of Section 43-17 of the Zoning Resolution, buildings containing JLWQAs may not be enlarged. Section 74-711 of the Zoning Resolution allows the City Planning Commission, by special permit, to modify use and bulk regulations (except floor area) in order to further the

preservation of designated landmark buildings or buildings located within historic districts. The application seeks a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the M1-5A bulk and use regulations to allow the enlargement of a building containing JLWQAs and a change of use on the second and third floors from JLWQA to residential use (UG 2) and to allow the proposed 4th and 5th floors and duplex penthouse enlargement to be occupied by residential use (UG 2).

The subject M1-5A zoning district allows a maximum FAR of 5.0. The Building is located on a 2,500 sf zoning lot and has lot coverage of 2,350 square feet. The existing three-story building has a total zoning square footage of 6,550 square feet and a Floor Area Ratio (FAR) of 2.62. A maximum of 12,500 zoning square footage is allowed on the site. With the construction of the fourth and fifth stories and the penthouse, the building would have a total of 12,418 zoning square feet and a FAR of 4.97.

The application includes a report from the Landmarks Preservation Commission stating that a continuing maintenance program has been established that will result in the preservation of the building, and that the proposed use and bulk modifications contribute to a preservation purpose.

The surrounding portion of the SoHo neighborhood is generally developed with five- to six-story loft buildings. While the upper floors in many of these buildings have been converted to dwelling units, including JLWQA and interim multiple dwellings, the upper floors in other buildings contain UG2 residential use, and as-of-right uses including offices, art galleries, and other commercial uses. Ground floor uses primarily consist of a mix of home furnishing stores, clothing stores and restaurants.

ENVIRONMENTAL REVIEW

This application (C 140353 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. The designated CEQR number is 14DCP199M. The lead is the City Planning Commission.

After a study of the potential environmental impacts of the proposed action, a Negative Declaration was issued on August 18, 2014, superseded by a Revised Negative Declaration issued on January 20, 2015. The Negative Declaration included (E) designations to avoid the potential for significant adverse impacts related to air quality and noise (E-349) applicable to the project site (Block 499, Lot 6), as described below:

The (E) designation text related to air quality is as follows:

Any new residential and/or commercial development on the above-referenced property must use natural gas for HVAC systems and ensure that the heating, ventilation, and air conditioning stack is located at 105.5 feet in height and at least 21.26 feet from the lot line facing Prince Street to avoid any potential significant adverse air quality impacts.

The (E) designation related to noise is as follows:

In order to ensure an acceptable interior noise environment, future residential/commercial uses must provide a closed-window condition with a minimum of 31dB(A) window/wall attenuation on all building's facades in order to maintain an interior noise level of 45 dB(A). In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning or air conditioning sleeves containing air conditioners.

With the implementation of the above (E) designation (E-349), no significant adverse impacts related to air quality and noise would occur.

UNIFORM LAND USE REVIEW

This application (C 140353 ZSM) was certified as complete by the Department of City Planning on August 18, 2014, and was duly referred to Community Board 2 and the Borough President, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules.

Community Board Public Hearing

Community Board 2 held a public hearing on this application on October 18, 2014, and on October 23, 2014, by a vote of 46 to 0, adopted a resolution recommending a conditional

disapproval of the application . The Community Board wrote that it "Recommends DENIAL of the use modification to allow Use Group 2 unless plans are modified to include one floor consisting of one or two affordable units at a level correlating to an appropriate Area Median Income."

Borough President Recommendation

On November 24, 2014, the Borough President recommended a conditional disapproval of the subject application "unless the applicant preserves both of the Use Group 17D Joint Live-Work Quarters for Artists units."

City Planning Commission Public Hearing

On December 1, 2014, (Cal. No. 6), the Commission scheduled December 3, 2014, for a public hearing on this application (C 140353 ZSM). The hearing was duly held on December 3, 2014 (Cal. No. 9). There were two speakers in favor of the application and two in opposition.

The attorney for the project described the subject proposal and stated that it met the requisite findings. In response to a question from the Commission, the attorney commented that while the JLWQA zoning provisions, adopted in the 1970s, responded to a need to regulate the conversion of manufacturing buildings; retention of a zoning policy restricting occupancy of the units as JLWQAs is currently anachronistic. An attorney who has represented owners of other properties in the SoHo area spoke in favor of the application. He stated that the requested modification to allow residential use presented in the subject application was notably similar to other applications in the SoHo area which the Commission had approved.

A representative of the Borough President reiterated the Borough President's conditional disapproval of the application.

The Chair of Community Board Two spoke in opposition of the application. The speaker noted that the mix of uses in SoHo greatly contributes to the character of the area; yet, the Commission's ongoing approval of applications seeking the conversion of JLWQA units to

residential use is incrementally eroding the character of SoHo. The Chair of the Community Board commented that the ongoing movement of artists from SoHo to other less-costly areas of the city is diminishing the character of the neighborhood. He also stated that the existing provisions in the Zoning Resolution governing the use and bulk of development in SoHo no longer reflect the existing conditions in the area. He further stated that a re-examination of the zoning in SoHo is needed to evaluate which portions of the existing text remain current, which provisions do not serve to preserve the character of the area, and how to proceed.

There were no other speakers and the hearing was closed

CONSIDERATION

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

The applicant, 102 Greene Owner, seeks a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the M1-5A bulk and use regulations to facilitate the enlargement of 102 Greene Street, a change of use on the second and third floors from JLWQA to Use Group 2 residential use, and to allow the proposed 4th and 5th floors and duplex penthouse enlargement to be occupied by residential uses.

Throughout the better part of the last century, the five- to twelve story loft style buildings which characterize the area known as SoHo were occupied by a variety of light manufacturing uses. Over the last thirty years much of the ground floor frontages of many buildings in this area have been converted from manufacturing use to Use Group 6 retail commercial uses. After the adoption of the zoning text governing Use Group 17D (Joint Living Work Quarters for Artists) in 1971, the upper floors of many buildings were occupied by a mix of office, interim multiple dwellings and JLWQA (Use Group 17D) uses. Within the past ten years, buildings in the M1-5A/B districts have increasingly been converted by special permit to residential use (Use Group 2), including buildings that had at one time been occupied by JLWQA tenants.

The Commission notes that its approval of prior applications pursuant to Section 74-711 to allow the enlargement of buildings designated for JLWQA occupancy, and the conversion to Use Group 2 residential uses in other instances reflects an acknowledgement of these changing neighborhood conditions. The record shows that the units on the second and third floors of 102 Greene Street have not been occupied by certified artists since at least 2006,and that the applicant previously advertised the existing spaces as "artist lofts" in seeking conforming JLWQA occupancy. It should be further noted that the current owner has been forthright in the characterization of the existing non-conforming residential tenancies and his intention to not renew the existing residential lease., The Commission believes that the special permits are appropriate in such circumstances where it is has been demonstrated that JLWQA tenants have not been actively displaced from their units and where the Owner has demonstrated a prior, unsuccessful effort to market such units to JLWQA tenants. However, the Commission cautions that its approval of such applications, which have each been considered on a case by case basis, should not be viewed as a signal of an abandonment of the current zoning framework. This special permit mechanism cannot be a vehicle by which tenants that contribute to the rich mixed-use character of Soho are removed from their live-work spaces to permit conversion to residential use. The Commission believes that it is essential that property owners seek to lease their spaces to conforming uses in an effort to reinforce the mix of uses that satisfies the provisions of the zoning and historic conditions of the neighborhood. The record here indicates that the Owner previously made an unsuccessful effort to advertise units on the second and third floors as "artist lofts", consistent with JLWQA occupancy as specified in Use Group 17-D.

The Commission has carefully considered resolutions and testimony provided by Community Board 2 and the Manhattan Borough President and presented at the Commission's Public Hearing and appreciates the thoughtful nature of their consideration of this application and its greater implications. The neighborhoods encompassed within the M1-5A and M1-5B zoning districts of Soho and Noho owe much to the artist community that revitalized a largely underutilized area of former manufacturing buildings. Today's dynamic, mixed-use character of artist live-work space, residential use, offices, manufacturing, and retail is testament to the role that artists have played in creating an energetic and desirable community in Soho and Noho. The

Commission is pleased that the current owner has continued the dialogue begun by his predecessor and has responded to Community Board concerns regarding roof access and the placement of a plaque in the lobby describing the historic nature of the building and its former occupants.

The Commission acknowledges the Community Board's request to restrict occupancy in a portion of the converted building at 102 Greene Street to JLWQA tenants as well as its desire to ensure continued affordability for JLWQA tenants. The Commission understands that zoning on the subject site permits a range of uses from JLWQA occupancy to office or manufacturing use. As such, the Commission does not believe it appropriate to restrict use within the building to a subset of allowable uses and furthermore believes it not feasible to prescribe occupancy by certified-artists, as the definition of JLWQA requires. On the question of affordability, the Commission recognizes that the existing units in the 102 Greene Street building are leased at market rents and that incorporation of such a small number of units as those present at this location cannot be managed in existing affordability programs.

The Commission believes that this application will facilitate the renovation and preservation of 102 Greene Street and restoration to its previous built form prior to the removal of the upper floors in the 1940's. The Commission further acknowledges that the renovation, enlargement and conversion of the building, to be accomplished as a result of this special permit, will enhance the architectural and historical built fabric of the SoHo Cast-Iron Historic District.

Further, the Commission notes it is in receipt of a report from the Landmarks Preservation Commission stating that it has reviewed the proposal and that the proposed bulk modifications relate harmoniously to the subject building. The surrounding area consists of five- to ten-story buildings and a 12-story building is directly adjacent to 102 Greene Street. The City Planning Commission believes that the modification of bulk would have minimal adverse effects on the structures or open space in the vicinity in terms of scale, location and access to light and air.

The Commission appreciates the testimony provided by the Chair of Community Board 2 that the zoning in the M1-5A and M1-B districts of Soho and Noho merits additional attention. The points raised by the Community Board in their resolution and testimony speak to the complexity of issues in Soho, including those of affordability, the evolving nature of the community, and the importance in recognizing the historic conditions that have resulted in today's vibrant, mixed-use neighborhoods. Further, the Commission recognizes that the analysis required to shed light on the many questions raised is formidable and brings forth concerns regarding the method of accurately identifying existing JLWQA tenants, privacy of existing residents, and planning resources. The Commission supports ongoing staff efforts to study these issues in concert with partner agencies and the local community, as it examines proposed future conversions and development.

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-711 (Landmark preservation in all districts) of the Zoning Resolution:

(1) such bulk modifications shall have minimal adverse effects on the structures or open space in the vicinity in terms of scale, location and access to light and air.

(2) such use modifications shall have minimal adverse effects on the conforming uses within the building and in the surrounding area.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the actions described herein will have no significant impact on the environment; and be it further

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 102 Greene Owner LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify:

1. Section 43-17 - to allow the enlargement of an existing 3-story building containing joint living-work quarters for artists (JLWQA); and

2. Section 42-10 - to allow residential use (U.G. 2 use) on portions of the ground floor, 2nd – 3rd floors and within the proposed 4th – 5th floors and duplex penthouse levels;

on property located at 102 Greene Street (Block 499, Lot 6), in an M1-5A District, within the SoHo Cast-Iron Historic 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 140353 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following approved plans, prepared by Marin Architects, filed with this application and incorporated in this resolution:

Dwg. No.	Title	Last Date Revised
CPC 001	Zoning Analysis	01/08/2015
CPC 010	Site Plan	01/08/2015
CPC 100	Cellar Thru Third Fl Plans	01/08/2015
CPC 101	Fourth Fl Thru Bulkhead Floor Plans	01/08/2015
CPC 200	Proposed Building Section	01/08/2015

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. In the event the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this resolution and the restrictive declaration described below and any subsequent modifications to either document shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.

5. 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, sub-lessee or occupant.

6. Development pursuant to this resolution shall be allowed only after the attached restrictive declaration dated January 20, 2015, executed by 102 Greene Owner LLC, the terms of which are hereby incorporated in this resolution, shall have been recorded and filed in the Office of the Register of the City of New York, County of New York.

7. 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 and the attached restrictive declaration 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 or of the attached restrictive declaration.

8. 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.

The above resolution (C 140353 ZSM), duly adopted by the City Planning Commission on January 21, 2015 (Calendar No. 14), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

CARL WEISBROD, Chairman
KENNETH J. KNUCKLES, ESQ., Vice Chairman
RAYANN BESSER, IRWIN G. CANTOR, P.E., ALFRED C. CERULLO, *III*, MICHELLE R. DE LA UZ, RICHARD W. EADDY, CHERYL COHEN EFFRON, BOMEE JUNG, ANNA HAYES LEVIN, ORLANDO MARIN, LARISA ORTIZ,
Commissioners

David Gruber, *Chair*
Bo Riccobono, *First Vice Chair*
Terri Cude, *Second Vice Chair*
Bob Gormley, *District Manager*

Antony Wong, *Treasurer*
Susan Kent, *Secretary*
Keen Berger, *Assistant Secretary*

COMMUNITY BOARD NO. 2, MANHATTAN

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Greenwich Village • Little Italy • SoHo • NoHo • Hudson Square • Chinatown • Gansevoort Market

October 24, 2014

Carl Weisbrod, Director
City Planning Commission
22 Reade Street
New York, NY 10007

Dear Mr. Weisbrod:

At its Full Board meeting on October 23, 2014, CB#2, Manhattan (CB#2-Man.), adopted the following resolution:

102 Greene Street (East side of Greene Street between Spring and Prince.) Application **#C-140353-ZSM** submitted by BLDG Greene St. LLC to the City Planning Commission pursuant to ZR 74-711 to modify 1) Section 43-17 to allow enlargement of an existing 3-story building containing Joint Living Work Quarters for Artists, and 2) Section 41-10 to allow UG 2 residential on portions of the ground floor through 5th floor and penthouse in an M1-5A zoning district within the SoHo Cast Iron Historic District. [Continuation of Hearing]

A resolution recommending DENIAL of the application unless plans are modified to include one or two affordable units

Whereas,

1. The application was presented to the committee by Caroline Harris of Goldman Harris at the September meeting and laid over to October;
2. The existing building, located in an M1-5A zone in the SoHo Cast Iron Historic District, is the portion of a five-story building remaining after the upper two stories were lost in a fire;
3. The proposal provides a full restoration of the original five-story building with original materials and details plus the addition of a duplex penthouse not visible from the street;
4. The current uses are non-conforming retail in the ground floor and cellar and JLWQA units on the second and third stories that have been vacant since before the current ownership;
5. The existing retail use which is allowed in the M1-5A zone will be continued and the JLWQA units would be converted to Use Group 2 residential;

6. At the September meeting the committee asked the applicant to consider (1) retention of JLWQA apartments or inclusion of affordable housing units, (2) elimination of resident access to the upper roof deck thereby reducing the overall height of the building including elevator bulkhead, and (3) a plaque or other acknowledgement of the historical significance of the building as the home and studio of artist Buffie Johnson, an important member of the original SoHo artist community;
7. CB2, Man. received letters from two residents of 110 Greene Street requesting eliminating the upper roof deck because of its potential for noise nuisance and objecting to the replacement of JLWQA units with luxury residences;
8. A third resident of 110 Greene Street spoke at the hearing objecting with similar concerns and also raising concerns about to the location of air rooftop air conditioning units because of their appearance and potential for noise generation;
9. At the October meeting the applicant agreed to eliminate roof deck access and to install a plaque in the lobby, but stated that the project costs ruled out retaining JLWQA units or including affordable units;
10. The applicant also stated a decision had been made, in response to a request from the committee, that the residential units would be condominiums rather than rental units, however there had been no such request;
11. The applicant assured the committee that rooftop air conditioning units would be mini-split units that run almost silently;
12. The stock of affordable housing in the district is in decline, with the continued loss of rent stabilized units;
13. JLWQA housing is a conforming use in the zone that when legally occupied provides residential units for artists with the rent and purchase levels reduced by the more limited market;
14. The loss of two JLWQA units represents a loss of affordable housing for the district;
15. The loss of affordable units and artists housing has had a harmful impact on the character of the area by reducing the diversity of the residential population;
16. City policy now recognizes the negative impact of the loss of affordable housing causing a burden on residents and threatening the long term viability of the economy as well a diminishing the diversity in many neighborhoods;
17. In response to changing conditions in the neighborhood, CB2, Man. favors mandatory inclusion of affordable units in all developments requiring special permits or variances;
18. Per 74-711, use modifications shall have minimal adverse effects on the conforming uses with the building and the surrounding neighborhood;
19. The development as proposed will cause the loss of two conforming JLWQA units in the building and will promote and encourage continuation of the harmful trend that reduces the affordability of artists housing in the neighborhood and thereby harms the successful character of SoHo;
20. Per ZR 74-711, the City Planning Commission may prescribe appropriate additional conditions to enhance the character of the development.

Therefore it is resolved that CB#2, Man.

1. Appreciates the elimination of roof access and reduction of the height of the elevator bulkhead and also the agreement to add a historic marker in the lobby;
2. Recommends DENIAL of the use modification to allow Use Group 2 unless plans are modified to include one floor consisting of one or two affordable units at a level correlating to an appropriate Area Median Income.

Vote: Unanimous, with 46 Board members in favor.

Please advise us of any decision or action taken in response to this resolution.

Sincerely,

David Gruber, Chair
Community Board #2, Manhattan

Tobi Bergman, Chair
Land Use & Business Development Committee
Community Board #2, Manhattan

DG/fa

c: Hon. Jerrold L. Nadler, Congressman
Hon. Sheldon Silver, Assembly Speaker
Hon. Deborah Glick, Assembly Member
Hon. Daniel Squadron, NY State Senator
Hon. Brad Hoylman, NY State Senator
Hon. Gale A. Brewer, Manhattan Borough President
Hon. Margaret Chin, Council Member
Hon. Rosie Mendez, Council Member
Hon. Corey Johnson, Council Member
Edwin Marshall, Dept. of City Planning

Borough President Recommendation

City Planning Commission

22 Reade Street, New York, NY 10007
Fax # (212) 720-3356

INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representative as indicated on the Notice of Certification.

Application: C 140353 ZSM

Docket Description:

C 140353 ZSM - IN THE MATTER OF an application submitted by 102 Greene Owner, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of special permits pursuant to the following sections of the Zoning Resolution:

1. Section 74-711- to modify the use regulations of Section 43-17 (Floor Area Regulations) to allow the enlargement of the building and modify Section 42-10 (Use Regulation) to allow Use Group 2 uses (residential use);

To allow the enlargement of an existing three story building containing Joint Live-Work Quarters for artists ("JLWQA" and modify use regulation 42-10 to allow residential use (Use Group 2) on portions of the ground floor, 2nd through 3rd floors, and within the proposed 4th through 5th floors and duplex penthouse levels of an existing building at 102 Greene Street, Block 499, Lot 6, located in an M1-5A zoning district in the SoHo-Cast Iron Historic District in Community District 2, Manhattan

COMMUNITY BOARD NO: 2 BOROUGH: Manhattan

RECOMMENDATION

- ☐ APPROVE
- ☐ APPROVE WITH MODIFICATIONS/CONDITIONS (List below)
- ☐ DISAPPROVE
- ■ DISAPPROVE WITH MODIFICATIONS/CONDITONS (Listed below)

EXPLANATION OF RECOMMENDATION – MODIFICATION/CONDITIONS (Attach additional sheets if necessary)

See Attached

Gale A Brewer

BOROUGH PRESIDENT

Nov 24 2014

DATE

OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN
THE CITY OF NEW YORK

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Gale A. Brewer, Borough President

November 24, 2014

Recommendation on ULURP Application No. C 140353 ZSM – 102 Greene Street
By 102 Greene Owner LLC

PROPOSED ACTION

102 Greene Owner LLC[1] ("the applicant") seeks a special permit pursuant to Section 74-711 of the New York City Zoning Resolution ("ZR") to modify use regulation 43-17 to allow the enlargement of an existing three-story building containing joint live-work quarters for artists ("JLWQA") and modify use regulation 42-10 to allow residential use (Use Group 2) on portions of the ground floor, 2nd through 3rd floors, and within the proposed 4th through 5th floors and duplex penthouse levels of an existing building at 102 Greene Street, Block 499, Lot 6, located in an M1-5A zoning district in the SoHo-Cast Iron Historic District in Community District 2, Manhattan.

Pursuant to ZR § 74-711, applicants may request a special permit to modify the use regulations of zoning lots that contain landmarks or are within historic districts as designated by the Landmarks Preservation Commission ("LPC"). In order for the City Planning Commission ("CPC") to grant use modifications, the applicant must first meet the following conditions:

1) LPC has issued a report stating that the applicant will establish a continuing maintenance program for the preservation of the building and that such modification or restorative work will contribute to a preservation purpose;[2]
2) the application shall include a Certificate of Appropriateness, other permit, or report from LPC stating that such bulk modifications relate harmoniously to the subject landmark building in the Historic District[3]; and
3) the maximum number of permitted dwelling units is as set forth in ZR § 15-111.[4]

Further, in order to grant a special permit, the CPC must find that:

1) the modifications shall have minimal adverse effects on the structures or open space in the vicinity in terms of scale, location and access to light and air; and
2) such modifications shall have minimal adverse effects on the conforming uses within the building and in the surrounding area.

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[1] 102 Greene Owner LLC is a subsidiary of SL Green Realty Corp., which also owns other buildings in the area, such as 131-137 Spring Street, 121 Greene Street, 115 Greene Street, and 530 Broadway.
[2] The LPC issued a report on October 8, 2013.
[3] The LPC issued a Certificate of Appropriateness on October 8, 2013.
[4] Pursuant to ZR § 15-111, up to 14 dwelling units would be permitted in the building. As proposed, this building will have five dwelling units. This is less than the maximum number of dwelling units.

PROJECT DESCRIPTION

The applicant seeks to expand an existing three-story building to match its original condition in 1880. Constructed as a five-story building, two stories were removed following a fire in 1941. The proposed expansion and restoration will bring the building into line with its "sister building," two doors down at 98 Greene Street, which was architecturally identical when the two buildings were constructed. In addition to the proposed expansion and restoration, the applicant seeks to convert two existing JLWQA units to unrestricted residential use, and add residential units to the reconstructed floors.

As part of this special permit application the project will incorporate a reconstruction of the building's original five story cast-iron façade pursuant to LPC's regulations as well as a restrictive declaration between LPC and the applicant to ensure continued maintenance of the building. As described in the approved Certificate of Appropriateness, the reconstruction of the fourth and fifth floors will restore the massing, scale and street wall height of the original loft building.

The proposed enlargement will require the closing of fourteen lot line windows, split between the two neighboring buildings. These lot line windows are not required for legal light and air for the commercial and residential units of 104-110 Greene Street and 100 Greene Street.

The applicant also seeks to add a penthouse duplex that will be set back on top of the fifth floor, which will not be visible from the street. The proposed project will modify use regulations to allow for unrestricted residential use on the existing second and third floors, which currently contain JLWQA units, as well as the newly constructed fourth, fifth, and duplex penthouse stories. Of the two existing JLWQA units, one had a lease that expired in June, 2014, and the other has a lease that will expire in April, 2015 102 Greene Street was part of a previous ULURP application in 2010.[5] In that application, the applicant sought a special permit pursuant to section 74-711 to enlarge the building and a use change for the proposed enlargement portions of the building. However, the applicant sought to create 3 new JLWQ units in the fourth through penthouse floors. The Borough President's recommendation at that time was for disapproval unless the applicant's construction mitigation plan include provisions to protect the exist tenants of the building, which the applicant had sought to remove as part of the plan to demolish the building's interior.[6] By displacing the occupant of the third floor JLWQA unit as a result of a successful application, the Borough President indicated that there would be an adverse effect on the conforming uses within the building. The application was withdrawn the prior to a decision by the CPC.

Area Context

The project site is located in the SoHo neighborhood of Manhattan in an M1-5A zoning district. M1-5A districts permit a maximum floor area ratio (FAR) of 5.0, with 6.5 for community facilities. Buildings are allowed a front wall height of 85 feet, after which buildings must setback 20 feet. In M1-5A zoning districts, buildings that occupy less than or equal to 3,600 SF of lot area are allowed to have commercial and manufacturing uses below the floor of the second story.[7] M1-5A and M1-5B districts are distinct from other manufacturing districts as they provide for Joint Live-Work Quarters for Artists (JLWQA), which is a program that allows for the residential conversion of manufacturing floor area to be used by

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[5] C 080260 ZSM. Certified on January 1, 2010. Borough President Recommendation submitted March 22, 2010. Application withdrawn April 16, 2010.
[6] "Recommendation on ULURP Application No. C 080260 ZSM - 102 Greene Street by 102 Greene Street Realty LLC" Office of the Manhattan Borough President. March 22, 2010.
[7] Restrictions to specific commercial use groups within M1-5A zoning districts are enumerated in ZR § 42-14D.

"Certified Artists."[8]

Over the last thirty years, the area's land use has shifted from light manufacturing to a mix of retail, office space, multi-family residential buildings, JLWQA, and community facilities. In the last ten years, it appears that the nature of special permit applications in CB2 has changed from an expansion of JLWQA in existing buildings to a new pattern of converting the artist housing to Use Group 2 Residential ("UG2"). A search through the Department of City Planning's Land Use & CEQR Application Tracking System ("LUCATS") reveals that residential conversions that came at the expense of existing JLWQA units began in 2011 with Application No. C 120039 ZSM, 70 Greene Street. Prior to that, LUCATS shows that all special permits to create new UG2 floor area came as a result of new construction or substantial reconstruction. Existing buildings such as 115 Wooster Street, 200 Lafayette Street, 150 Lafayette Street, and 149 Wooster Street were the subjects of special permit applications that were certified by the Department of City Planning to expand the number of JLWQA units. In 2005, an application for 96 Spring Street was modified from a request to convert newly added floor area to UG2 to a request to establish the new floor area as JLWQA. Indeed, as has been stated, the 2010 application for 102 Greene Street would have created three new JLWQA units.

Since the beginning of 2014, only one other applicant has sought to convert JLWQA into UG2. In that application, C 140114 ZSM, also known as 37 Great Jones Street, the Borough President recommended approval until new information appeared that the formerly vacant JLWQA units that were proposed to be converted to UG 2 were filled with a tenant before the Special Permit was granted by the City Planning Commission. Upon learning of the premature change in use, the Borough President immediately wrote to the City Planning Commission to rescind her recommendation of approval. The application was ultimately withdrawn.

COMMUNITY BOARD RECOMMENDATION

At its Full Board meeting on October 23, 2014 Manhattan Community Board 2 ("CB2") recommended a disapproval with conditions of this application. CB2 wrote that although the applicant was willing to eliminate general roof access, reduced the height of the elevator bulkhead and agreed to add a historic marker in the lobby, the loss of JLWQA was akin to losing affordable housing units and would negatively impact the character of the district. CB2 voted to disapprove the application unless the applicant agreed to provide one or two affordable units at an income band that represented the community need.

BOROUGH PRESIDENT'S COMMENTS

The establishment of Joint Live-Work Quarters for Artists (JLWQA) was a tool that legalized an existing artist community that had thrived within a blighted manufacturing district. For decades, these units have existed to provide a means to occupy industrial lofts for their unique qualities as spacious and inspiring work environments. When properly enforced, the restrictive nature of JLWQA units makes them less attractive to buyers than residential units of comparable size that are not bound by vocational restrictions.[9] For this reason JLWQA units are viewed by CB2 and many others as what had been historically affordable housing for artists. By the same token, property owners see JLWQA units as an impediment to achieving what they feel to be the full value of their buildings.

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[8] Artist certification is administered by the New York City Department of Cultural Affairs. The application for certification can be found at http://www.nyc.gov/html/dcla/html/about/artist.shtml.
[9] "In a Changed SoHo, Legal Pentimento" by Nadine Brozan. The New York Times. June 8, 2003

To date, the Borough President has recommended approval for change of use regulations to allow UG2 for projects where the land, or building, had been vacant for some time. At the time of certification of this application, however, both JLWQA units were occupied, presumably by an artist. If both of these units were converted to residential use, the change would have adverse effects on the conforming use of the building as artist live-work lofts. Furthermore, the applicant in its discussion of the findings argues that residential use is "in keeping with the continued transition of this neighborhood into a district of preserved, historic structures of exceptional quality occupied by retail and residential uses which serve the residents and draw shoppers alike." This description of the neighborhood context is wholly nonconforming with the SoHo zoning. The aggregate nonconformity of a neighborhood should not justify additional waivers.

The continued use of special permits to eliminate JLWQA in favor of residential use will have an adverse effect on the conforming uses in the surrounding area as there will be a systematic reduction in affordable artist housing in SoHo. The applicant's discussion of the findings revealed that a detailed study of the certificates of occupancy of buildings within the surrounding area found that 104 buildings contained JLWQA units and only two buildings contained Use Group 2 Residential units. Greater amount of oversight over existing and future JLWQA units by the Department of Cultural Affairs and the Department of Buildings to limit their use to artists will deepen their affordability and preserve them for future generations of artists who wish to live and work in SoHo. The conforming uses within 102 Greene Street will likewise be affected by the conversion of JLWQA spaces to UG 2 Residential. Certified artists were not otherwise given the opportunity to continue living and working in the two existing units of artist housing as a result of planned use change and renovation of the units.

CB2 in its recommendation equates JLWQA units as a form of affordable housing and asks that this affordable housing be replaced in the new development. The provision of affordable housing units at this site, however, would require a program by the Department of Housing Preservation and Development that could manage affordable units in buildings of this size which does not currently exist. Though this building is small, the aggregate effect of affordable units in small multi-family buildings across the city could be quite large, and the City should seriously explore the feasibility of such a program. Alternatively, the City could create a program whereby developers of small buildings could mitigate the loss of affordable housing by seeding an affordable housing fund.

The applicant has presented a commendable restoration and maintenance plan for the property. The Borough President does not believe, however, that the SoHo community should be forced to choose between historic preservation and affordable housing for artists, as both are essential to the character of the neighborhood. At present, the Department of City Planning has not created any mechanism with which the City might recapture some of the value of the affordable housing that is being lost when units are converted from JLWQA to residential. Such a program would be especially useful for smaller projects, where developers simply throw up their hands and say that the project is not large enough to consider creating affordability. If the scale of the project is too small to create a whole unit of affordable housing, then let it contribute the equivalent of a fraction of a unit into a fund that aggregates those fractions into whole units.

Regardless of the existence of such an affordable housing program, the Borough President does not believe that the remaining JLWQA units in SoHo should be eliminated and SoHo turned into a de facto residential district by special permit. If City Planning and the Community Board believes that SoHo should be rezoned, proposals for such a rezoning should be put forward for discussion. If JLWQA is to be phased out in the neighborhood, then alternative programs for artist housing should be discussed. And, in either instance the Manhattan Borough President would like to work with the Department of City Planning and CB2 to explore options for affordable and artist housing in smaller projects, especially if new residential units are added or existing JLWQA units are proposed for elimination.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends <u>conditional disapproval</u> of ULURP Application No. C 140353 ZSM, to grant a Special Permit pursuant to ZR § 74-711, unless the applicant preserves both of the Use Group 17D Joint Live-Work Quarters for Artists units.

Gale A. Brewer
Manhattan Borough President