**CITY PLANNING COMMISSION**

July 13, 2016 Calendar No. 10 C 160137 ZMM

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**IN THE MATTER OF** an application submitted by SMBRO Rivington, LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 12c:

1. eliminating from an existing R8A District, a C1-5 District bounded by East Houston Street, a line midway between Clinton Avenue and Attorney Street, a line 100 feet southerly of East Houston Street, and a line midway between Suffolk Street and Clinton Street; and

2. establishing within an existing R8A District, a C2-5 District bounded by East Houston Street, a line midway between Clinton Avenue and Attorney Street, a line 100 feet southerly of East Houston Street, and Norfolk Street;

Borough of Manhattan, Community District 3, as shown on a diagram (for illustrative purposes only) dated February 22, 2016.

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This application for a zoning map amendment was filed by SMBRO Rivington LLC on December 18, 2015. The proposed amendment would establish a C2-5 commercial overlay to a depth of 100 feet on two and half blocks on the south side of East Houston Street between the east side of Norfolk Street and the centerline of the block between Clinton Street and Attorney Street. The requested action would facilitate ground floor commercial use in a new 13-story mixed used building to be constructed at 255 East Houston Street (Block 355, Lot 54), in the Lower East Side neighborhood of Manhattan Community District 3.

**BACKGROUND**

The proposed zoning map amendment would replace an existing C1-5 commercial overlay district with a C2-5 district, and establish a new C2-5 district, on the south side of East Houston Street between the east side of Norfolk Street and the centerline of the block between Clinton Street and Attorney Street (Block 350, Lots 12, 14, 17, 18, 20, 50, 51, 54, 55, 56, part of 8, part of 16 and part of 57; and Block 355, Lots 48, 49, 51, 52, 53, 57 and part of 54).

The area to be rezoned is generally developed with three to six story residential buildings, some with commercial uses on the ground floor. The area includes several legal non-conforming commercial uses, such as retail stores and eating and drinking establishments and, within the existing C1-5 district, commercial uses include eating and drinking establishments, stores, a hair salon, and a laundromat.

The three block fronts subject to the zoning change are currently zoned R8A, and a portion of the area to be rezoned has an existing C1-5 overlay district. The permitted residential FAR for R8A districts in Inclusionary Housing Designated Areas is 5.4, which may be increased to 7.2 by providing affordable housing complying with the provisions of ZR Section 23-952. The maximum permitted FAR for community facility uses is 6.5. The maximum permitted commercial FAR in the C1-5 overlay is 2.0.

The proposed C2-5 commercial overlay will facilitate the construction of ground floor commercial use at a new mixed-use building at 255 East Houston Street (Block 355, Lot 54), which has frontage on both East Houston Street and Suffolk Street. This site is currently zoned R8A, and commercial uses are not permitted in new developments in residential districts. The maximum permitted commercial FAR in the C2-5 overlay is also 2.0, but C2 districts allow for a slightly wider range of commercial uses than C1 districts, including a variety of repair shops and rental establishments.

**ENVIRONMENTAL REVIEW**

This application (C 160137 ZMM) 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 New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR Number is 16DCP077M. The lead is the City Planning Commission.

After a study of the potential impacts of the proposed actions, a Negative Declaration was issued on February 22, 2016.

**UNIFORM LAND USE REVIEW**

On February 22, 2016, this application (C 160137 ZMM) was certified as complete by the Department of City Planning, and was duly referred to Manhattan Community Board 3 and the Manhattan 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 3 submitted a letter dated May 2, 2016, recommending disapproval of the application.

**Borough President Recommendations**

This application (C 160137 ZMM) was considered by the President of the Borough of Manhattan, who issued a recommendation disapproving the application on June 1, 2016.

**City Planning Commission Public Hearing**

On May 25, 2015 (Calendar No. 1), the City Planning Commission scheduled June 8, 2016 for a public hearing on this application (C 160137 ZMM). The hearing was duly held on June 8, 2016 (Calendar No. 29). There were two speakers in favor of the application and two speakers in opposition.

The applicant's land use counsel spoke in favor of the application, providing a description of the land use patterns of the rezoning area, including the existing non-conforming commercial uses in the proposed rezoning area.

A representative from the Manhattan Borough President's Office spoke in opposition, reiterating the Borough President's disapproval of the application. The representative acknowledged that the

commercial overlay and commercial uses are appropriate for streets with similar characteristics to East Houston Street, but pointed to the community's desire to see more community facility uses in the neighborhood.

The Chair of Manhattan Community Board 3 spoke in opposition of the application, reiterating the Community Board's desire to see community facility uses on the proposed development site, which had been previously occupied as a day care center.

The applicant spoke in favor of the application and discussed its efforts to market its building within the rezoning area for community facility uses, which ultimately proved to be unsuccessful and prompted the desire to include ground floor commercial uses.

There were no other speakers and the hearing was closed.

**CONSIDERATION**

The Commission believes that the proposed zoning map amendment, is appropriate.

There is an existing C2-5 commercial overlay on the north side of East Houston Street between First Avenue and Avenue B, and the proposed action will create consistency in the permitted commercial uses along each side of East Houston Street, which includes a wide range commercial uses from retail shopping, grocery stores, and restaurants. Together, these commercial amenities provide much needed services to Lower East Side residents.

The Commission believes that the proposed C2-5 commercial overlay on the blocks and lots on the south side of East Houston Street between the east side of Norfolk Street and the centerline of the block between Clinton Street and Attorney Street is in context with the surrounding zoning and reflective of existing uses.

The Commission further recognizes that the proposed rezoning would support and connect the stretch of existing ground floor commercial uses that are located along East Houston Street.

Specifically, to the west is a C6-2A district that runs along the south side of East Houston Street from Chrystie Street to Essex Street (to the west of the proposed rezoning area, separated only by ABC Playground) and an existing C1-5 commercial overlay mapped along either side of Clinton Street, running from East Houston Street south to Delancey Street.

The Commission notes that the owner of the property at 255 East Houston Street made several attempts over a number of years to market the building for community facility use, but was unsuccessful in securing a tenant, pointing for the need to allow for a wider range of ground floor uses, including commercial uses. In addition, the Commission acknowledges that the owner is amenable to precluding nightlife use at the proposed project site.

East Houston Street is a wide street, which is heavily trafficked by vehicles and pedestrians. The Commission therefore believes that commercial retail uses are appropriate ground floor uses on East Houston Street. Moreover, retail is also desirable as it will bring active uses to the streetscape thereby attracting greater pedestrian activity. Further, the Commission believes the C2 district is appropriate as it allows for a slightly wider range of commercial uses than C1 districts, including a variety of repair shops and rental establishments.

**RESOLUTION**

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

**RESOLVED**, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, that based on the environmental determination and consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is hereby amended by changing the Zoning Map, Section No. 12c:

1. eliminating from an existing R8A District, a C1-5 District bounded by East Houston Street, a line midway between Clinton Avenue and Attorney Street, a line 100 feet southerly of East Houston Street, and a line midway between Suffolk Street and Clinton Street; and

2. establishing within an existing R8A District, a C2-5 District bounded by East Houston Street, a line midway between Clinton Avenue and Attorney Street, a line 100 feet southerly of East Houston Street, and Norfolk Street;

Borough of Manhattan, Community District 3, as shown on a diagram (for illustrative purposes only) dated February 22, 2016.

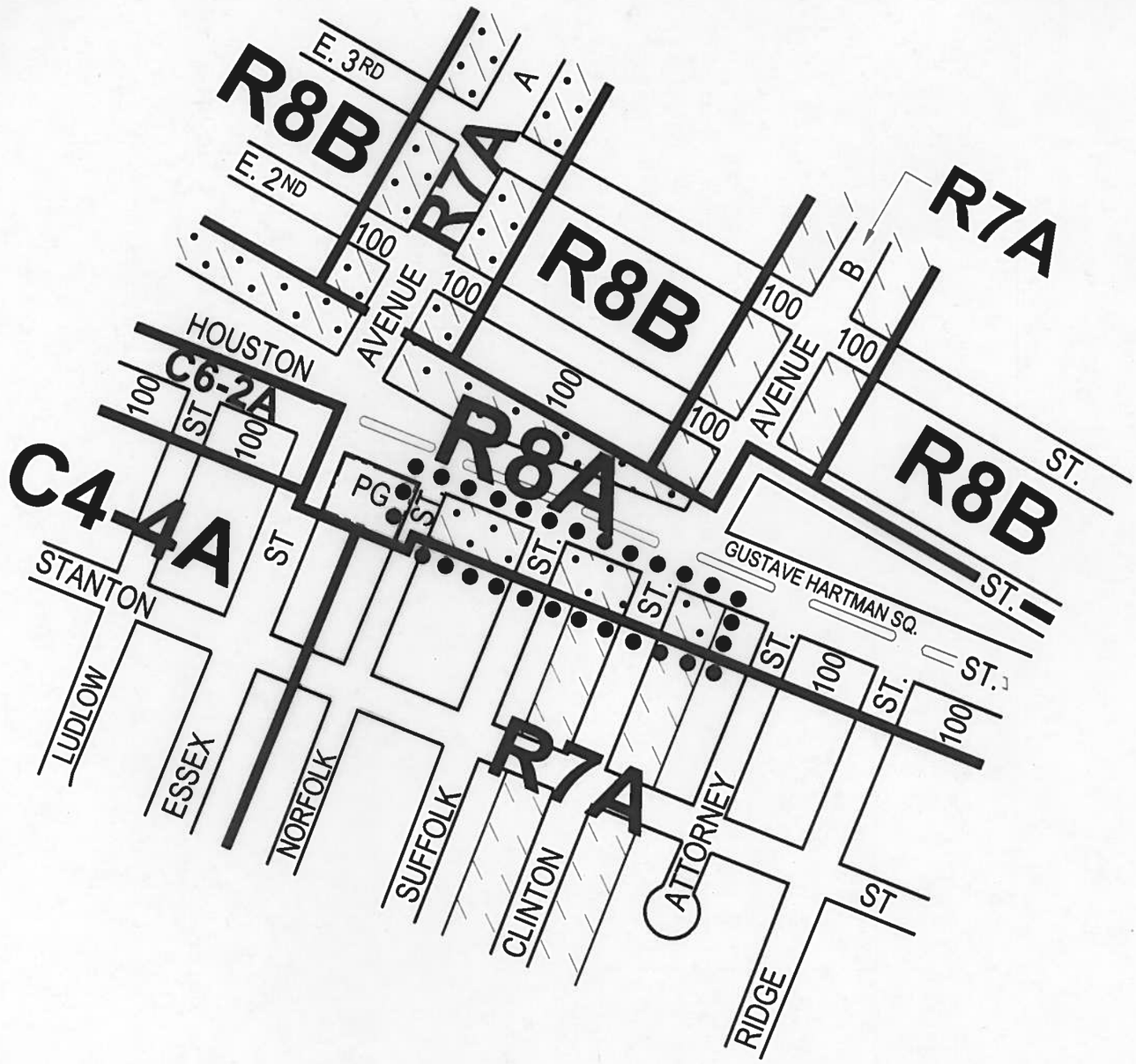
The above resolution (C 160137 ZMM) duly adopted, by the City Planning Commission on July 13, 2016 (Calendar No. 10), is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

**CARL WEISBROD,** Chairman
**KENNETH J. KNUCKLES, ESQ.,** Vice Chairman

**RAYANN BESSER, IRWIN G. CANTOR, P.E., ALFRED C. CERULLO, III, CHERYL COHEN EFFRON, MICHELLE R. DE LA UZ, JOSEPH I. DOUEK, RICHARD W. EADDY, HOPE KNIGHT, ANNA HAYES LEVIN, ORLANDO MARIN, LARISA ORTIZ,** Commissioners

C.D. 03

C 160137 ZMM




CITY PLANNING COMMISSION

CITY OF NEW YORK

DIAGRAM SHOWING PROPOSED

**ZONING CHANGE**

ON SECTIONAL MAP

**12c**

BOROUGH OF

**MANHATTAN**

New York, Certification Date
*FEBRUARY 22, 2016*

J. Miraglia, Director
Technical Review Division

SCALE IN FEET

300 0 300

NOTE:

Indicates Zoning District Boundary.

● ● ● ● The area enclosed by the dotted line is proposed to be rezoned by eliminating a C1-5 District from an existing R8A District and by establishing a C2-5 District within an existing R8A District.

Indicates a C1-5 District.

Indicates a C2-5 District.

NOTE: THIS DIAGRAM IS FOR ILLUSTRATIVE PURPOSES ONLY.

THE CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD 3
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Gigi Li, Board Chair

Susan Stetzer, District Manager

May 2, 2016

Carl Weisbrod, Director
Department of City Planning
120 Broadway, 31st Floor
New York, New York 10271

Dear Director Weisbrod,

At its March 2016 monthly meeting, Community Board 3 passed the following resolution:

**VOTE: To disapprove the application, C160137 ZMM ULURP Zoning Map Amendment, to map a C2-5 commercial overlay to a depth of 100' along two and one-half blocks on the south side of East Houston Street between the east side of Norfolk Street and the centerline of the block between Clinton Street and Attorney Street to facilitate the construction of a 13-story mixed use building on 255 Houston Street.**

**WHEREAS**, the applicant Samy Mahfar has a well-documented history of illegal construction and construction harassment at sites including but not limited to 210 Rivington Street, 22 Spring Street, and 102 Norfolk Street; and

**WHEREAS**, the development site, was previously a community facility, an affordable city-subsidized day care center serving 350 children that had operated for over 40 years; and

**WHEREAS**, the day care center had over fifteen years remaining on its lease; and

**WHEREAS**, the day care was forced to be vacated due to the open violations and the applicant's failure to address them; and

**WHEREAS**, there are still open violations on the site; and

**WHEREAS**, the community intended that this site remain a community facility during the 2008 East Village rezoning and is currently facing the loss of many community facilities throughout CB 3; and

**WHEREAS**, the existing zoning accommodates community facilities on the ground floor; and

**WHEREAS**, while the proposed zoning amendment covers two and one-half blocks, the application is driven by the desire to grant new zoning to a single property, a type of "spot zoning" that runs counter to the community planning process that resulted in the 2008 rezoning; and

**WHEREAS**, in an apparent effort to reduce the appearance of "spot zoning" the proposed rezoning would place a commercial overlay on more properties that currently have none and increase the commercial overlay from C1-5 to C2-5 on others, inconsistent with community intentions for the blocks as expressed in the 2008 rezoning; and

**WHEREAS**, the CB 3 community already has a preponderance of residential areas with commercial overlays, where the commercial space is used for nightlife and other activities that are degrading the quality of life for residents, and this rezoning would open up additional areas on Houston Street and narrow side streets for such activity, contrary to the needs of the community; so

**THEREFORE BE IT RESOLVED**, CB 3 disapproves the C160137 ZMM ULURP Zoning Map Amendment, to map a C2-5 commercial overlay to a depth of 100' along two and one-half blocks on the south side of East Houston Street between the east side of Norfolk Street and the centerline of the block between Clinton Street and Attorney Street to facilitate the construction of a 13-story mixed use building on 255 Houston Street.

Please contact the community board office with any questions.

Sincerely,

Gigi Li, Chair
Community Board 3

MyPhuong Chung, Chair
Land Use, Zoning, Public and Private Housing Committee

Cc: Tommy Lin, Mayor's Office of Community Affairs
Andrew Lombardi, Office of Manhattan Borough President Gale Brewer
Erica Baptiste, Office of Manhattan Borough President Gale Brewer
Basha, Gerhards, Office of Manhattan Borough President Gale Brewer
Matthew Viggiano, Office of New York City Council Member Rosie Mendez
Joel Kolkmann, Office of New York City Department of City Planning
Miriam Gonzalez, Housing Preservation and Development
Sean Berens, Applicant's Representative

OFFICE OF THE PRESIDENT
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Gale A. Brewer, Borough President

**June 1, 2016**

**Recommendation on**
**ULURP Application No. C 160137 ZMM – East Houston Street Rezoning**
**by SMBRO Rivington, LLC**

## PROPOSED ACTION

SMBRO Rivington, LLC[1] ("the applicant") seek an amendment to the Zoning Map, Section No. 12c to map a C2-5 commercial overlay to a depth of 100 feet along two and a half blocks on the south side of East Houston Street between the east side of Norfolk Street and the centerline of the block between Clinton Street and Attorney Street to facilitate the construction of a 13-story mixed use building at 255 Houston Street (Block 355, Lot 54), within an existing R8A (IHDA) and R8A/C1-5 (IHDA) zoning district in the Lower East Side neighborhood of Manhattan Community District 3.

## PROJECT DESCRIPTION

The applicant seeks a zoning map amendment to map a C2-5 commercial overlay to a depth of 100 feet along two and a half blocks on the south side of East Houston Street between the east side of Norfolk Street and the centerline of the block between Clinton Street and Suffolk Street to facilitate the construction of a new 13-story mixed-use building with Use Group 6 (retail or eating and drinking establishment) on the ground floor at 255 East Houston Street. The portion of the rezoning area between Norfolk Street and the centerline of the block between Clinton Street and Suffolk Street is zoned R8A while the remainder of the rezoning area is R8A with a C1-5 district.

The building at 255 East Houston Street will consist of 7,240 square feet of retail use on the ground floor, and 62,500 square feet for 63 residential units, twenty percent of which will be affordable. The building's proposed total floor area is 69,740 square feet.

### Background

In 2008, the City Council adopted the East Village / Lower East Side Rezoning which encompasses a 111-block area generally bounded by East 13th Street, Avenue D, Delancey Street and Third Avenue. The rezoning addressed the need for contextual districts to maintain the low and mid-rise scale of the neighborhood , reinforce mix retail and residential along the avenues, and concentrate new residential development along wide streets with incentives to create and preserve affordable housing. Under this rezoning, R7-2 and C6-1 districts were

[1]SMBRO Rivington, LLC is a Limited Liability Company and represented by Samy Mahfar.

rezoned to R7A, R7B, R8A, R8B, C4-4A and C6-2A. The R7-2 district was rezoned to R8A along East Houston and Delancey Street and subject to the Inclusionary Housing Program. R8B districts were introduced along the avenues to protect existing non-conforming uses. Commercial overlay districts remained and portions of 2nd Avenue between East 3rd Street and East 7th Street were remapped from C6-1 to R7-A district with C2-5 commercial overlay to be consistent with the existing commercial overlay further north along 2nd Avenue.

**Area Context**

The rezoning area is in the Lower East Side neighborhood bounded by the East River to the east and south, Bowery and Forsyth Streets to the west and East Houston to the north. The area contains many 19th and early 20th century tenement style buildings and row houses and has historically been known as an immigrant neighborhood and at one time, one of the most densely populated in the world. The blocks south of the rezoning area contain a mix of multifamily residences and ground floor commercial uses.

The area is served by the J/M/Z and F trains three blocks south at Essex Street and Delancey Street and the F train east of the site at Second Avenue and East Houston Street. The M9 and M12 buses run east and west along East Houston Street and there are Citibike bicycle stations north and south of the site.

*Area Zoning*

The proposed rezoning area and the north side of East Houston Street, is mapped R8A. The R8A district permits a maximum floor area ratio ("FAR") of 7.2 for residential use if affordable housing is provided; if affordable housing is not provided, the allowable FAR is 5.4. The community facility maximum allowable FAR is 6.5. The district has a building height limit of 60 to 85 feet and a maximum overall height of 120 feet. A portion of the rezoning area, not including the development site, is zoned R8-A with a C1-5 overlay which has a maximum permitted commercial FAR of 2.0.

*Existing Conditions in the Rezoning Area*

The rezoning area is occupied by 16 properties fronting East Houston Street. Seven of these properties are within the existing C1-5 commercial overlay. At the southeast corner of East Houston at Norfolk, is Remedy Diner which has frontage on both streets. To the east of the diner is a building that is undergoing electrical work and being advertised as a retail space but recently pulled permits for a doctor's office on the first floor and a store in the cellar. The next building was previously a synagogue with apartments above but now uses the first floor as an art gallery and the basement as an Italian café. The building directly west of the building has no signage indicating a ground floor use but is mapped as manufacturing. To the east of the site is 265 East Houston Street, a 10-story multifamily residential building with a ground floor community facility space currently near completion.

On the southeast corner of the next block at 271 East Houston Street is a residential building with Suffolk Arms, a bar occupying the ground floor. 279 East Houston Street is occupied by an architecture office and a cigar smoke shop next door. The first space in the existing commercial overlay is Heaven's Hot Bagel at 283 E. Houston. Immediately adjacent to the bagel shop is a recently demolished lot that will be an 11-story condominium building. At the corner is Ariel's

Latin Bistro which has frontage on East Houston and Clinton Street. On the east side of Clinton Street at East Houston Street is Clinton Street Baking Company followed by a nail salon, a Pay-O-Matic store, and an income tax store.

**Proposed Actions**

The applicant is proposing a zoning map amendment to establish a C2-5 district within an existing R8A district on two and a half blocks on the south side of East Houston Street to a depth of 100 feet between Norfolk Street and midway between Clinton Avenue and Attorney Street. The amendment to the Zoning Map will eliminate a C1-5 district from an existing R8A District bounded by East Houston Street, a line midway between Clinton Avenue and Attorney Street, a line 100 feet southerly of East Houston Street, and a line midway between Suffolk Street and Clinton Street. This proposal will facilitate the construction of a 13-story mixed use building at 255 East Houston Street.

## COMMUNITY BOARD RECOMMENDATION

At its Full Board meeting on March 22, 2016 Manhattan Community Board 3 ("CB3") recommended disapproval of this application. CB3 wrote that the development site at 255 East Houston Street was intended to remain as a commercial facility under the 2008 East Village / Lower East Side rezoning and that any ground floor use should comply with the existing zoning framework. CB3 stated the proposed zoning map amendment is an effort to reduce the appearance of a spot zoning by an applicant known for illegal construction and construction harassment in residential buildings in the area. The Board also stated that there are commercial overlays in the area that degrade the quality of life of residents and increasing such a use, would be contrary to the needs of the community.

## BOROUGH PRESIDENT'S COMMENTS

The applicant is proposing a zoning map amendment to establish a C2-5 district within an existing R8A district on two and a half blocks on the south side of East Houston Street to a depth of 100 feet between Norfolk Street and midway between Clinton Avenue and Attorney Street.

The Lower East Side neighborhood is somewhat of an eclectic neighborhood. There are a number of economically diverse commercial corridors including the former Bargain District with an abundance of upscale restaurants, boutiques, specialty shops, and lounges and the Delancey Street commercial corridor with discounted shops. There is an increase in residential development throughout the neighborhood, including within the proposed rezoning area, and a wealth of nightlife destinations.

In 2010, demolition and construction work at 265 East Houston Street destabilized the building at 255 East Houston Street and resulted in a vacate order of the property that was used by Action for Progress day care center for approximately forty years. The applicant informed our office that the day care center decided to move to a smaller space on Suffolk Street to better suit their needs. The applicant also informed our office that the space was advertised for community facility use for several years and had two leases fall through: Blue Man Group and the Cooke Center School.

In December 2011, the applicant proposed a similar project proposal for a smaller commercial overlay but with medical office use on the ground floor and affordable housing offsite. The

applicant stated CB3 supported but wanted the affordable units on site and reports in local papers[2] state the community wanted input from neighbors about the proposed overlay. The applicant argues that a community facility space is no longer a viable option on this block but such use existed for decades and even the nearly completed neighboring building will have a community facility use on the ground floor. Since the day care center vacated the premises, 255 East Houston has remained blighted, covered in graffiti and scaffolding with open violations from the Department of Buildings.

Technically, a commercial overlay is appropriate on a wide street but we have to think of the neighborhood context and these 2 ½ blocks are a gateway to a more residential neighborhood. Although there are many existing non-conforming commercial uses along East Houston Street, these blocks were specifically designated for contextual residential use under the 2008 East Village / Lower East Side Rezoning. The 2008 rezoning reinforced the use of the avenues for mix retail and residential by extending the C2-5 commercial overlay over four blocks along 2nd Avenue and concentrating new residential development with an incentive for affordable housing on wider streets. Applying the proposed C2-5 commercial overlay, to facilitate the construction of a 13-story mixed income residential building, would go against what the community envisioned for their neighborhood, what the community still supports and what the city supported. With the recent loss of Rivington House, it is important to preserve as much designated community facility uses in the neighborhood particularly when there is already a proliferation of commercial uses throughout the district.

**BOROUGH PRESIDENT'S RECOMMENDATION**

Therefore, the Manhattan Borough President recommends disapproval of ULURP application No. C 160317 ZMM.

Gale A. Brewer
Manhattan Borough President

[2] Elie. "Rezoning Sought for East Houston Parcel; New Development Proposed" *Bowery Boogie*. 6 December 2011. Web. May 2016.