



IN THE MATTER OF an application submitted by 40 Wooster Restoration, 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 the use regulations of Section 42-10 to allow residential uses (Use Group 2 uses) on portions of the cellar and ground floor, the 2nd - 6th floors and the proposed 1-story penthouse, and the use regulations of Section 42-14(D)(2)(b) to allow retail uses (Use Group 6 uses) on portions of the ground floor and cellar of an existing 6-story building, on property located at 40 Wooster Street (Block 475, Lot 34), in an M1-5B District, Borough of Manhattan, Community District 2.

This application was filed by 40 Wooster Restoration, LLC on May 19, 2016 for a special permit pursuant to Section 74-711 of the Zoning Resolution to allow Use Group 2 residential uses on portions of the cellar and ground floor, the 2nd through 6th floors and the proposed 1-story rooftop addition, and to allow Use Group 6 retail uses on portions of the ground floor and cellar of an existing 6-story building located at 40 Wooster Street (Block 475, Lot 34), in the Manhattan neighborhood of SoHo, Borough of Manhattan.

BACKGROUND

40 Wooster Street is located mid-block on the east side of Wooster Street between Broome and Grand Streets. The zoning lot measures approximately 2,553 square feet in lot area, and is improved with an existing 6-story building containing about 13,849 square feet of floor area for a floor area ratio (FAR) of 5.4. Built in 1895-1896 as a loft structure, according to the applicant the building has been occupied by various non-residential uses over the years. The applicant acquired the property in April 2014, when the building was partially vacant. Currently, the building houses several commercial offices on the 2nd, 5th and 6th floors, and is vacant on rest of the floors.

40 Wooster Street is located within an M1-5B zoning district, which allows up to 5.0 FAR for commercial uses and light manufacturing uses and 6.5 for community facility uses. Use Group 17D Joint Living-Work Quarters for Artists (JLWQA) are allowed as-of-right in buildings that pre-date 1961 and have a lot coverage of less than 5,000 square feet (3,600 square feet on

Broadway). For buildings in an M1-5B district, residential use (Use Group 2) is not permitted as-of-right; the space below the floor level of the second story can only be occupied by Use Group 7, 9, 11, 16, 17A, 17B, 17C, and 17E uses.

Once a primarily manufacturing district, over the years the surrounding SoHo neighborhood has evolved into a mixed-use district. Buildings in the immediate vicinity of the site generally range from five to seven stories. Many of them are cast-iron loft buildings that contain retail, eating and drinking, commercial art galleries, boutique clothing or furniture stores/showrooms on the ground floor, and commercial offices as well as various types of dwelling units on the upper floors. There are also several vacant sites and sites under construction in the surrounding area.

The applicant proposes to use 1,833 square feet of zoning floor area on the ground floor and 1,224 square feet of gross floor area in the cellar for Use Group 6 retail uses. The applicant also intends to convert 11,569 square feet of zoning floor area on portions of the ground floor, 2nd through 6th floors and the proposed rooftop addition to Use Group 2 residential use (four residential units). 810 square feet of gross floor area in the cellar would be used for accessory residential storage. As proposed, the building would retain its existing base height of about 84 feet. At this elevation, the 10-foot high rooftop addition would set back about 34 feet from the street line and create a total building height of approximately 94 feet, which is within the permitted zoning bulk envelope. The proposed project would have a total of 13,403 square feet of zoning floor area and an FAR of 5.2. The proposed development also includes restoration of the exterior masonry, cast-iron and metals; restoration or replacement of exterior windows and doors; and cleanup of the existing concrete sidewalk flags.

On June 17, 2015, the Landmarks Preservation Commission (LPC) approved the proposed as-of-right rooftop additions (Certificate of Appropriateness 17-2964), and issued a report (LPC-168529, MOU 17-2978) stating that a program has been established for continuing maintenance, and that the proposed restorative work required under the program contributes to a preservation purpose.

To facilitate the proposed development, the applicant requests the grant of a City Planning Commission (Commission) special permit pursuant to ZR 74-711 to modify the use regulations of Sections 42-10 and 42-14D(2)(b) of the Zoning Resolution.

ENVIRONMENTAL REVIEW

This application (C 160349 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 17DCP113M. The lead is the Commission.

After a study of the potential impacts of the proposed actions in the Environmental Assessment Statement (EAS) issued on March 3, 2017, a Negative Declaration was issued on March 6, 2017. The Negative Declaration included an (E) designation (E-416) for air quality to avoid the potential for significant adverse impacts.

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

To ensure that there will be no impacts related to air quality, future residential uses must use heating and cooling systems with no venting or stacks, powered by electricity only.

With the implementation of the above (E) designation (E-416), no significant adverse impacts related to air quality would occur.

UNIFORM LAND USE REVIEW

This application (C 160349 ZSM) was certified as complete by the Department of City Planning on March 6, 2017, and was duly referred to Manhattan Community Board 2 and 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 2 held a public hearing on this application on April 12, 2017, and on April 20, 2017, by a vote of 33 in favor, one opposed and with no abstentions, adopted a resolution recommending disapproval of the application with the following conditions:

1. “No eating and drinking establishments; and
2. All leases for ground floor retail space must stipulate that the tenant host, free of charge, not-for-profit cultural uses that are open to the public, available a minimum of four times per month, and this must be enforced by the applicant.”

Borough President Recommendation

The application was considered by the Borough President, who issued a recommendation on June 9, 2017 to approve the application provided that the applicant adheres to the conditions listed in Community Board 2’s resolution, works with the not-for-profit theater group IndieSpace, and reaches out to the Department of Cultural Affairs (DCLA) and NYC Economic Development Corporation’s (NYCEDC’s) Made in NY program for potential cultural and creative organizations for the ground floor space.

City Planning Commission Public Hearing

On June 7, 2017 (Calendar No. 1), the Commission scheduled June 21, 2017, for a public hearing on this application (C 160349 ZSM). The hearing was duly held on June 21, 2017 (Calendar No. 27). One person spoke in favor of the application.

The applicant’s land use counsel described the proposed project and the land use action, stating that the proposed project would meet the findings of the special permit and enhance the historic character of Wooster Street. He also stated that the applicant would adhere to Community Board 2’s conditions, precluding eating and drinking establishments and working with a not-for-profit theater group to explore after-hours use of the ground floor and cellar space. There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the grant of this special permit (C 160349 ZSM) is appropriate.

The special permit to modify the use regulations of Sections 42-10 and 42-14(D)(2)(b) would facilitate the conversion of an existing commercial building plus rooftop addition located at 40 Wooster Street into a mixed-use building with ground floor retail and residential above.

The Commission believes that the modification of use regulations to allow Use Group 6 retail use and Use Group 2 residential use in the building would not adversely affect any conforming uses within the building, as the building has been underutilized and partially vacant for several years. The Commission also notes that the building historically housed only non-residential uses, and that the proposed use modification would not result in the displacement of existing JLWQA or any protected dwelling units.

The Commission also believes that such use modification would have minimal adverse effects on the conforming uses in the surrounding area. The Commission recognizes that over the years, the surrounding SoHo neighborhood has evolved from a primarily manufacturing district to a mixed-use area with a dynamic mix of retail, office, a variety of dwellings, including JLWQAs, residential lofts and Use Group 2 residences, and few remaining manufacturing uses. The buildings on Wooster Street between Grand and Broome Streets typically contain commercial uses on the ground floor, and loft units, JLWQA and residential uses on the upper floors. Within the immediate vicinity of the project site at 27 Wooster Street and 52 Wooster Street, two residential buildings with ground floor retail were erected recently. The Commission therefore believes that the ground floor Use Group 6 retail use and the upper floor Use Group 2 residential use proposed for the building are analogous to the uses occupying most of the surrounding buildings along Wooster Street, and that the proposed mixed-use project is consistent with the prevailing land use pattern found in the surrounding area.

The Commission acknowledges the applicant's commitments to Community Board 2 and the Borough President to reach out to DCLA and NYCEDC's Made in NY program for potential

cultural and creative tenants, to work with a not-for-profit theater group to explore potential after-hours use of the ground floor space free of charge, and to preclude eating and drinking establishments. The Commission recognizes, however, that they are not conditions of this action.

The Commission is also in receipt of a report dated June 17, 2015 (LPC-168529, MOU 17-2978) from the LPC stating that it has reviewed the proposal and that a program has been established for continuing maintenance that will result in the preservation of the subject building, and that the required restoration work under the continuing maintenance program contributes to a preservation purpose. The continuing maintenance program is contained within a restrictive declaration entered into in connection with this application. The Commission believes that the redevelopment and improvement of this building, to be facilitated by this special permit, will enhance the architectural and historic built fabric of Wooster Street and the SoHo Cast-Iron Historic District.

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) [This finding is not applicable; no bulk modification is being requested]
- (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 40 Wooster Restoration, 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 the use regulations of Section 42-

10 to allow residential uses (Use Group 2 uses) on portions of the cellar and ground floor, the 2nd - 6th floors and the proposed 1-story penthouse, and the use regulations of Section 42-14(D)(2)(b) to allow retail uses (Use Group 6 uses) on portions of the ground floor and cellar of an existing 6-story building, on property located at 40 Wooster Street (Block 475, Lot 34), in an M1-5B District, Borough of Manhattan, Community District 2 as follows:

1. The property that is the subject of this application (C 160349 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 Melamed Architect PC, filed with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
CPC-2	Zoning Analysis	01.23.2017
CPC-3	Site Plan	01.23.2017
CPC-4	Proposed Cellar Floor Plan	01.23.2017
CPC-5	Proposed First Floor Plan	01.23.2017
CPC-6	Proposed Second Floor Plan	01.23.2017
CPC-7	Proposed Third Floor Plan	01.23.2017
CPC-8	Proposed Fourth Floor Plan	01.23.2017
CPC-9	Proposed Fifth Floor Plan	01.23.2017
CPC-10	Proposed Sixth Floor Plan	01.23.2017
CPC-11	Proposed Roof Floor Plan	01.23.2017
CPC-15	Waiver Section: Section A-A	01.23.2017
CPC-16	Waiver Section: Section B-B	01.23.2017

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, sublessee or occupant.
6. Development pursuant to this resolution shall be allowed only after the restrictive declaration dated July 19, 2017, executed by Wooster Street Restoration, 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, New York County.
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 or breach of any of the conditions as stated above, may constitute grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, renewal or extension 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 160349 ZSM), duly adopted by the City Planning Commission on July 26, 2017 (Calendar No. 10), 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.

MARISA LAGO, *Chair*

KENNETH J. KNUCKLES, *Esq.*, *Vice-Chairman*

RAYANN BESSER, IRWIN G. CANTOR, P.E., ALFRED C. CERULLO, III,

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CHERYL COHEN EFFRON, HOPE KNIGHT, ANNA HAYES LEVIN,

ORLANDO MARIN, LARISA ORTIZ, *Commissioners*

Terri Cude, *Chair*
Dan Miller, *First Vice Chair*
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Bob Gormley, *District Manager*



Antony Wong, *Treasurer*
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COMMUNITY BOARD NO. 2, MANHATTAN

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May 10, 2017

Marisa Lago, *Chair*
City Planning Commission
22 Reade Street
New York, NY 10007

Dear Ms. Lago:

At its Full Board meeting on April 20, 2017, CB#2, Manhattan (CB2, Man.), adopted the following resolution:

40 Wooster Street (between Grand and Broome Streets). CPC 160349. The applicant requests a special permit 74-711 to permit conversion of a building from commercial use to residential occupancy on floors 2-6 and retail use on the ground floor, cellar and sub cellar.

Whereas:

1. The proposed action would permit the conversion of a six-story building from existing commercial and vacant uses to retail use (UG6) on the first floor and cellar and four units of resident use (UG2) on the second through sixth floors.
2. The development site is comprised of a single 2,553sf zoning lot within the SoHo Cast Iron Historic District with existing floor area of approximately 13,849sf and an FAR of approximately 5.40.
3. The first floor would contain 1,833sf of retail space plus 538sf of lobby entrance and elevator. There would be 1,224sf of accessory building utility and storage space in the sub-cellar and 1,374sf in the cellar. Floors 2-6 would have 10,708sf of residential floor area plus a private, 323sf rooftop sitting room for the sixth floor residence.
4. The LPC has issued a Certificate of Appropriateness for the proposed restoration work.
5. The building does not have a Certificate of Occupancy; it has been in commercial occupancy since its completion in 1896 and there are no records of any residential use of the building.
6. There are no existing manufacturing uses on the block and there are no indications that the building was ever used for manufacturing purposes.
7. According to the prior owner, there have been theatre uses in the past and there was art gallery use on some of the upper floors in the mid-1980's.

8. The first floor has been occupied by an arts-related firm that will vacate in April 2017 since September 2015. The second floor is occupied by a fitness company. Other floors contain or contained a business management company for the music industry, architect and interior design offices, and a commercial production company.
9. All of the current tenants have short-term leases.
10. The applicant is willing to agree to no eating or drinking establishments.
11. The applicant intends to add an ADA-accessible bathroom in the retail space.
12. The applicant is willing to stipulate in the leases of all retail tenants that they must agree to host not-for-profit cultural uses a minimum of four times per month in the retail space.

Therefore, CB2, Man. recommends denial of this application unless two conditions are written into the special permit:

1. No eating and drinking establishments.
2. All leases for ground floor retail space must stipulate that the tenant host, free of charge, not-for-profit cultural uses that are open to the public, available a minimum of four times per month, and this must be enforced by the applicant.

Vote: Passed, with 33 Board members in favor, and 1 in opposition (D. Diether).

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

Sincerely,



Terri Cude, Chair
Community Board #2, Manhattan



Anita Brandt, Chair
Land Use & Business Development Committee
Community Board #2, Manhattan

TC/fa

c: Hon. Jerrold L. Nadler, Congressman
Hon. Deborah Glick, Assembly Member
Hon. Daniel Squadron, NY State Senator
Hon. Gale A. Brewer, Manhattan Borough President
Hon. Margaret Chin, Council Member
Sylvia Li, Dept. of City Planning



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Gale A. Brewer, Borough President

June 9, 2017

**Recommendation on ULURP Application C 160349 ZSM – 40 Wooster Street
By 40 Wooster Restoration, LLC**

PROPOSED ACTION

40 Wooster Restoration, LLC¹ (“the applicant”) seeks a special permit pursuant to Section 74-711 of the Zoning Resolution (“ZR”) to modify the use regulations of Section 42-10 and 42-14D(2)(b) to allow retail use on the ground floor, cellar and sub-cellar and residential uses on the second through sixth floors of an existing 6-story building located at 40 Wooster Street (Block 475, Lot 34) in an M1-5B district within the SoHo-Cast Iron Historic District, in Community Board 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
- 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;
- 2) Such modifications shall have minimal adverse effects on the conforming uses within the building and in the surrounding area.

¹ 40 Wooster Restoration, LLC is represented by Ran Eliasaf, the owner of the subject building at 40 Wooster Street.

² The LPC issued a report, MOU 17-2978 on June 17, 2015.

³ The LPC issued the Certificate of No Effect (#17-2966) and the Certificate of Appropriateness (COFA #17-2964) on June 17, 2015.

⁴ The applicant proposes 4 residential units; this is below the maximum permitted number of 14 dwelling units for this site as set forth in Section 15-111.

PROJECT DESCRIPTION

The applicant seeks a special permit pursuant to ZR § 74-711 to allow commercial retail (Use Group 6) on the ground floor, portions of the cellar and sub-cellar and residential use (Use Group 2) on a portion of the ground floor, and on the second through sixth floors of an existing six-story brick and terra cotta building. The project site's lot area is 2,553 square feet, built with 13,849 square feet of floor area and a floor area ratio (FAR) of 5.40.

The applicant proposes a new total FAR of 5.24 and 13,402.5 square feet of floor area within the existing building. The proposal calls for demolishing the existing stair and elevator bulkheads and installing new mechanical equipment and a new bulkhead on the roof. The converted floor area includes 1,833 square feet of retail and 538 square feet for a lobby entrance on the first floor; 1,224 square feet of accessory building utility and storage space in the sub-cellar; 1,374 square feet in the cellar, and 10,708 square feet for four units of residential use on the second through sixth floors, and 323 square feet for a private rooftop terrace for the sixth floor unit.

The project site is located within an M1-5B zoning district which permits light manufacturing, commercial and community facility uses; joint-live work quarters for artists (JLWQA) are permitted as a light manufacturing use. Use Groups 7, 9, 11, 16, 17A, 17B, 17C and 17E are permitted below the second story as-of-right. The manufacturing and commercial maximum FAR is 5.0 and the community facility FAR is 6.5.

The special permit pursuant to ZR § 74-711 requires the applicant enter into a Restrictive Declaration with the LPC and establish a continuing maintenance program for the preservation of the building.

Background

The existing building was constructed as a store in 1896 by Buchman and Deisler. According to the application materials, the building has continuously been occupied by commercial tenants since it was constructed and when the applicant purchased the building in April 2014, it was fifty percent occupied by tenants with short term leases. The most recent uses of the building were commercial uses which included: a storage and building utility use in the cellar and sub-cellar; Fitzgerald Fine Arts was on the first floor but vacated April 15, 2017; Exhale Enterprises Inc. is on the second floor and the lease will expire on December 31, 2017; the third and fourth floor are currently vacant but were occupied by a management business for the music industry and architecture offices; Kara Mann Design, LLC occupies the fifth floor and the lease expires on June 30, 2018; and Morton Jankel Zander, Inc. occupies the sixth floor and the lease expires on July 31, 2017. The building does not have a Certificate of Occupancy and no records were found to indicate occupancy by interim multiple dwelling ("IMD") or rent-stabilized tenants.

On June 17, 2015 the Landmarks Preservation Commission (LPC) approved work to restore the building to a sound, first class condition, including restorative work at the front, rear and lot line façades, fire escape and sidewalk. The approved work also includes: replacing the modern storefront infill at the first floor of the west façade with new painted wood infill and glass; removing the non-original aluminum and glass doors and transom and non-original metal and glass roll down door and man door with wood and glass doors to match the original; replacing

window sashes and restoring the wood windows also at the west façade; replacing windows throughout the south and east façades; patching, repointing and replacing deteriorated masonry units; cleaning the façades and sidewalk, scraping and repainting metalwork on façades and the fire escape; and relocating the elevator bulkhead. The LPC found that the construction of the new mechanical bulkhead would not eliminate or alter any significant architecture features of the building, would be minimally visible from the street, and would be within the character of rooftop accretions throughout the historic district.

Area Context

The project site is located in a M1-5B zoning district in the SoHo-Cast Iron Historic District in Community District 2, Manhattan. The SoHo-Cast Iron Historic District was designated by the LPC in 1973 as an effort to preserve the city's cultural and historic heritage of the brick, stone, mixed iron and masonry commercial construction of the post-Civil War period. The SoHo-Cast Iron Historic District consists of 26 blocks containing 500 buildings and is the largest concentration of full and partial cast-iron façades in the world. The district is bounded by West Houston Street, Crosby Street, Howard Street, Broadway, Canal Street and West Broadway. The project area is also north of the Tribeca East Historic District, designated in 1992, which includes ornate store and loft buildings developed in the mid-19th to early 20th century that were historically the commercial and industrial center of the city.

The project site is bounded by Prince Street to the north, Crosby Street to the east, Canal Street to the south and Thompson Street to the west. The block consists primarily of 6-story cast-iron buildings which contain commercial, office, JMWQA and residential land uses; multi-family residential buildings are present on the south side of the block along Grand Street and the majority of the buildings have retail frontage. Buildings on the block include an eating and drinking establishment, art studios, a theater, theater rehearsal space, an art gallery, and two retail stores. There is also a vacant lot on the south corner of the block at Wooster Street and Grand Street.

Most of the surrounding area also falls within the M1-5B zoning district but west of the site is a M1-5A zoning district which begins north of the site at Broome Street and extends at the midblock of West Broadway and Wooster Street extending just past West Broadway and south to Canal Street. The project site is served by the A/C/E subway line located along Avenue of the Americas approximately three blocks west of the site, with the nearest entrance at the intersection of Canal Street and Thompson Street. The M55 bus line is accessible on Avenue of the Americas at Broome Street and multiple bus lines on Broadway: X1, X10, X12, X17, X27, and X28. A Citibike bicycle station is located one block south of the site at Grand Street and Greene Street.

Proposed Actions

The applicant seeks a special permit pursuant to ZR § 74-711 to modify use regulations to permit residential use (UG2) on portions of the ground floor and second through sixth floors with retail use (UG6) on portions of the ground floor, cellar, and sub-cellar. A restrictive declaration will be recorded which sets forth a continuing maintenance plan for the building to ensure the preservation of the building and the fulfillment of the preservation purpose as a condition of approval for this special permit.

As described in the application materials, LPC’s Certificate of Appropriateness, Certificate of No Effect, and the June 17, 2015 LPC report, the proposed scope of work will ensure the building is maintained in a sound, first-class condition and reinforce the architectural and historic character of the building streetscape and the historic district.

COMMUNITY BOARD RECOMMENDATION

On April 20, 2017, by a vote of 33 in favor, 1 in opposition, and 0 abstentions, Manhattan Community Board 2 (“CB2”) recommended approval of the application under two conditions: 1) no eating and drinking establishment at the property and, 2) that the ground floor retail tenant hosts a not-for-profit cultural use, for free and open to the public, for a minimum of four times per month. CB2’s resolution further states that the applicant agreed to these conditions.

BOROUGH PRESIDENT’S COMMENTS

The special permit pursuant to ZR § 74-711 is a preservation tool to modify use or bulk restrictions of the Zoning Resolution that was enacted in order to make the ownership and preservation of historic buildings less financially burdensome. In order to grant the waivers associated with this special permit as a condition of approval, the applicant must ensure the property will be properly rehabilitated and maintained in perpetuity. The applicant for this special permit has proposed significant restoration of the building and the Landmarks Preservation Commission (LPC) believes the maintenance plan is appropriate and will contribute to the special architectural and historic character of the historic district.

The additional finding, under which this special permit may be granted, is that the modification must have a minimum impact on the conforming uses within the building and within the surrounding community. I remain concerned that this finding has not been given its due merit in the past, that the city has not protected the intent of this permit, or the text adopted in SoHo/NoHo, and that we continue to rezone this neighborhood by special permit. I find the lack of enforcement of the rules on the books by the Department of Buildings disturbing—the recent flurry of enforcement activity notwithstanding—and that applicants continue to use and have applications certified, with language that cites the historic proliferation of conversions to non-conforming uses illegally and under the Board of Standard and Appeals (BSA) process⁵ where location in a historic district was, in this office’s opinion, inappropriately used as hardship, as a reason for further non-conformance.

So now, over a year and a half since I, along with Councilmember Chin, requested a study on this neighborhood we are faced with the current application. I have reviewed twenty-five⁶ of these proposals since taking office. To add to my frustration, I am opining on an application for

⁵ Some recent BSA applications seeking a change of use to retail and residential include: 39 Clarkson Street (#64-15-BZ), 31 Bond Street (#176-13-BZ) and 74 Grand Street (#318-13-BZ).

⁶ This number represents applications pursuant to ZR Section’s 74-711, 74-712, 74-781 and 74-922. Of these, thirteen (13) applications were pursuant to ZR § 74-711 special permits; eight (8) were pursuant to ZR § 74-781 with two (2) applications counted once (applicant’s withdrew their applications and resubmitted); three (3) were pursuant to § 74-712; and two (2) were pursuant to ZR § 74-922. Two of the total applications (462 Broadway and 19 East Houston Street) had two actions.

manufacturing to residential conversion, a threshold criterion for the Mandatory Inclusionary Housing (MIH) applicability for special permits, but I cannot apply the program because this conversion falls below the threshold of 12,500 square feet set by the City Planning Commission. However, at the time, precisely because of the special permit applications we were getting for loft conversions in SoHo and NoHo, I recommended that the threshold be set at 10,000 square feet. To make matters worse, in response to my concern that a 12,500 square foot trigger for the application of MIH would allow conversion of too many loft buildings to luxury condominiums without any provision for affordable housing, the Chair of the Commission and the Commissioner of HPD committed “to consider how MIH would apply to special permits in light of the continuing stream of applications seeking to increase residential capacity in certain Manhattan neighborhoods.”⁷ The SoHo/NoHo study has not progressed and neither did any consideration of applying MIH to the continuing stream of special permits in this neighborhood. This is now the second ULURP since MIH was adopted in March 2016 that would have fallen under my proposed lower trigger for MIH, and had these commitments been kept, this neighborhood which is seeing the conversion of so much space from manufacturing to luxury residential would have funds for affordable housing.

I have repeatedly expressed concerns about the cumulative effects on the character of SoHo and NoHo from the application of this and other special permits to allow change in use. These special permits are repeatedly used to turn loft buildings into luxury condominiums with ground floor retail to “subsidize” the cost of restoration. In a meeting with my office the applicant did express a desire to have an artistic related use on the ground floor to activate the street, and to be compatible with the proposed four residential units.

Even though this building has no history of JLWQA units, rent stabilized or any type of protected residential use, the most recent and present tenants have been conforming commercial tenants: an interior architecture firm; a firm that engages in commercial, film and video production; and an exercise studio that have had short term leases since before the applicant purchased the building in 2014. At least one of the firms to which we have spoken would like to remain. Class B office space is not something that can be constructed. The applicant informed my office that many of the prior commercial tenants have moved to larger spaces and that fewer artists remain in the neighborhood because of the hefty price tag for renting units. It is true that most of the surrounding buildings are now residential above the ground the floor. However, the City is trying to attract firms such as architecture and design firms that desire class B office space and we are constantly hearing that maintaining a mix of office space is important. A SoHo/NoHo study and review could and should study the effect of converting class B office space in these neighborhoods on the city’s goals of maintaining an appropriate mix of office space.

The applicant stated if he is not granted this special permit, the building will remain in its current state, “ugly”. He further stated there would be no incentive to restore the building as proposed and approved by the LPC In addition, the applicant stated that he was issued a violation by the DOB when he had a community preferred use – an art gallery – on the ground floor. The

⁷ Letter from City Planning Commission Chair and Commissioner of HPD to Manhattan Borough President dated December 10, 2015.

intention of the owner, much like many other property owners in the vicinity, has always been to convert the building to the most valuable land use: residential.

The applicant has committed to me to work with IndieSpace, a not-for-profit organization focused on securing performance space for artists, and permit them to use the ground floor space for a period of one month free-of-charge for rehearsal, poetry reading or as a meeting space for artists. The intention is to allow IndieSpace continued use of the space even if granted the special permit for a retail tenant. In addition, the applicant has agreed to reach out to the Department of Cultural Affairs and the Economic Development Corporation's Made in NY program in an effort to locate cultural and creative organizations that might be appropriate for the ground floor.

Because of the first class restoration work proposed and the fact that there was a lack of documentation regarding stabilized or loft units prior to this proposal, the applicant has met the findings of the special permit. But City Planning has work to do in keeping its commitments to me concerning special permits in SoHo and NoHo.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends approval of ULURP Application No. C 160349 ZSM provided the applicant keeps their commitment to CB2, continues to work with IndieSpace, and reaches out to DCA and EDC's Made in NY program for potential cultural and creative organizations for the ground floor space.

A handwritten signature in black ink that reads "Gale A. Brewer". The signature is written in a cursive, flowing style.

Gale A. Brewer
Manhattan Borough President