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Gale A. Brewer, Borough President

April 30, 2015

**Recommendation on ULURP Application No. C 150146 ZSM – 41 Great Jones Street
By 41 Great Jones Holdings, LLC**

PROPOSED ACTION

41 Great Jones Holdings, LLC¹ (“the applicant”) seeks a special permit pursuant to Section 74-711 of the Zoning Resolution (“ZR”) to modify use regulations of § 42-10 to allow Use Group 2 (residential use) on the cellar, ground floor, second through fifth floors, and proposed sixth floor of an existing five story building at 41 Great Jones Street (Block 530, Lot 27) in an M1-5B zoning district within the NoHo Historic District Extension of Manhattan Community District 2.

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. the LPC has issued a report stating that the applicant will establish a continuing maintenance program for the preservation of the subject building or buildings and that such use or bulk modifications, or restorative work required under this continuing maintenance program 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 District³; 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

¹ 41 Great Jones Holdings, LLC is a New York Foreign Limited Liability Company represented by David Blumenfeld of Blumenfeld Development Group, Ltd.

² The LPC issued a report on March 5, 2014.

³ The LPC issued a Certificate of Appropriateness on March 5, 2014.

⁴ Pursuant to ZR § 15-111, up to 18 dwelling units would be permitted at this site. As proposed, this building will have three dwelling units.

- 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.

PROJECT DESCRIPTION

The applicant seeks a special permit pursuant to ZR § 74-711 to permit a conversion from Use Group 6 (commercial office) to Use Group 2 (residential) within an existing building. The project would allow the conversion of a currently vacant five story commercial office building to a residential use. The project will consist of three residential units: a triplex occupying the cellar, ground floor and second floors with access to the rear yard; a duplex on the third and fourth floors; and a duplex on the fifth and proposed as-of-right sixth floor rooftop addition with terrace.

The project site's lot area is approximately 2,700 square feet and is located on the south side of Great Jones Street between Lafayette and Bowery Streets. The project site is located within an M1-5B district which permits light manufacturing, commercial and community facility uses; joint-live working quarters are permitted as a light manufacturing use. The manufacturing and commercial maximum floor area ratio (FAR) is 5.0 and the community facility FAR is 6.5. Buildings are allowed a front wall height of 85 feet or 6 stories, after which buildings must setback 20 feet and provide a required rear yard of 20 feet for interior lots. Residential use is not permitted as of right.

Area Context

The project site is located in a M1-5B zoning district in the NoHo Historic District Extension in Community District 2, Manhattan. The NoHo Historic District Extension was designated by the LPC in 2008 in an effort to extend the protection of the distinctive historic commercial and manufacturing district developed in the 19th and early 20th centuries. The NoHo District Extension consists of fifty-six buildings dominated by mid-rise store-and-loft, institutional and civic buildings and encompasses Bond Street, Great Jones and East 4th Streets between Lafayette and Bowery Streets, as well as the northeast corner of Bleecker and Lafayette Streets. The project area is also adjacent to the NoHo Historic District, designated in 1999, which includes buildings constructed between 1850 and 1910 and was historically the retail and wholesale dry goods commercial center. To the south of the site is the NoHo East Historic District, designated in 2003, which includes residential, commercial and institutional buildings built in the mid-19th Century.

The neighborhood generally consists of two to thirteen story loft buildings that typically contain ground floor retail, industrial uses, or a mix of commercial and residential uses. Other zoning districts within a 600 foot radius include C6-1, C6-2, C6-3, R8B, and the Special Little Italy District. While residential use is not allowed as of right, joint live/work quarters for artists (JLWQA) are a permitted conforming use within the greater NoHo and SoHo neighborhoods. In addition, any ground floor retail that does exist was generally granted by special permit – ground floor retail is not allowed in the M1-5B and M1-5A districts below the level of the second story.

The area is served by the No. 6 subway line, with an entrance located two blocks south of the site at Bleecker and Lafayette Streets. The B/D/F/M subway lines entrance is three blocks south on East Houston Street at Lafayette Street and the M5 bus line is located west of the site along Broadway. Citibike bicycle stations are located one block west, northeast and southeast of site.

Background

41 Great Jones was designed by the architecture firm Herter Brothers in the Romanesque Revival style between 1889-1890 for garment manufacturing during a time when the area was becoming more commercial and buildings were being converted to commercial use⁵. The building was home to garment, hat manufacturers, basket, caster and wheel companies until after World War II when the space became occupied by Acme Sandblasting Company. In 1989, the building owner obtained a Certificate of Occupancy (“CofO”) for joint live/work quarters for artists for the third and fifth floors and Use Group 17 (manufacturing) for the cellar, first, second and fourth floors. According to the applicant, the third and fifth floors have held commercial leases since 2004 after the JLWQA units were vacated and, according to counsel for the applicant, legally converted to commercial use. The applicant purchased the building in 2013, at which time the second through fifth floors were occupied by a conforming use (Use Group 6) until their leases expired between October 2014 and February 2015.

In response to questions raised by the Community Board and the Borough President, the applicant provided the Community Board, Borough President and CPC with a memo setting forth its position that the third, fourth and fifth floors were not subject to rent stabilization. According to applicant’s counsel, in the early 1980s the building was registered with the New York City Loft Board to lawfully convert the third, fourth and fifth floors to residential use pursuant to the Loft Law (Article 7C of the Multiple Dwelling Law). The fourth floor was abandoned by the resident during the process and returned to commercial use. In 1989, a certificate of occupancy was issued listing the third and fifth floors as JLWQA and the building left the Loft Board’s jurisdiction. In 1991, these two units were registered with the New York State Department of Housing and Community Renewal (“DHCR”) pursuant to the Loft Law and several registrations were filed, although none after 2003. According to applicant’s counsel, in 2004 the third floor residents sold their rights and improvements to the owner; the fifth floor resident was a relative of the owner and vacated the apartment. According to counsel to the applicant, the Loft Law only confers rent stabilization on the resident subject to the loft law and not on the unit and also contemplates the purchase of improvements to the owner as a means of removing from rent regulation a unit that would otherwise be subject to it by virtue of the Loft Law. Thus, the applicant concludes that the units are no longer rent regulated and were most recently occupied as valid commercial units.

Proposed Actions

The applicant seeks a special permit pursuant to ZR § 74-711 to modify use regulations in order to permit residential use of a 5-story commercial use building. A restrictive declaration will be

⁵ NoHo Historic District Extension Designation Report
<http://www.nyc.gov/html/lpc/downloads/pdf/reports/NOHOExtensionReport.pdf>

filed to set forth a continuing maintenance program for the building façade to ensure preservation of the building and fulfillment of the preservation purpose as condition of approval by the LPC.

As described in the application materials, Certificate of Appropriateness, Certificate of No Effect, and LPC report, the proposed scope of work is for restoration work on the front and rear building façades. This includes restoration of the fire escapes at the front façade, cleaning of brick and stone bands, repointing and patching, cleaning and painting of historic balcony rails, new metal cornice, replacement of non-historic doors and windows, extension of rear parapet, and the excavation of the non-complying shed in rear yard. In addition, the applicant proposes the installation of two ADA concrete ramps to the building entrance and removal of historic fire escape ladders. The applicant will add an elevator and a one-story rooftop addition which will serve as a terrace and the rear yard will be excavated to be leveled with the cellar of the building.

COMMUNITY BOARD RECOMMENDATION

At its Full Board meeting on March 19, 2015, Manhattan Community Board 2 (“CB2”) recommended disapproval with conditions of this application. CB2 requested documentation indicating the third through fifth floors are eligible for market rate residential apartments following the legalization process of the Loft Law. At the time the recommendation was submitted, the Board had not been provided with this information. CB2 wrote that the loss of JLWQA units is akin to losing affordable housing units and would negatively impact the mixed-used character of the district. CB2 voted to deny the application unless the applicant agreed to preserve two full floors of the building as JLWQA units.

BOROUGH PRESIDENT’S COMMENTS

Recommendations from this office over the last year have repeatedly raised concerns over the continued use of special permits to eliminate conforming uses in favor of residential use in the SoHo and NoHo historic districts. Once again, an application has been certified and is under review in which the applicant notes the transformation of the neighborhood from light industrial and manufacturing uses to residential use and uses the granting of prior special permits and variances for that conversion as means to justify additional waivers.

The applicant states in the findings that the use group conversion will have minimal adverse effects on the building and surrounding area because the area is drastically shifting from a light industrial neighborhood to more residential one. It goes on to identify two sites where the Board of Standards and Appeals (BSA) granted variances to a non-conforming use based upon hardship at 45 Great Jones Street and 25 Great Jones Street. In addition, the applicant points to one approved special permit pursuant to ZR 74-711 for the Skidmore House development site, 2 Cooper Square, which was previously a parking lot adjacent to Skidmore House. In that case, a special permit for a residential building with ground floor commercial space was approved for construction. The project block consists of additional M1-5B non-conforming Use Group 2 luxury and co-op residential buildings: 25 Great Jones Street, 27-29 Great Jones Street, 37 Great

Jones Street,⁶ 39 Great Jones Street, 43 Great Jones Street and 48 Great Jones Street. However, the aggregate nonconformity of a neighborhood should not be justification for additional nonconformity without comprehensive study.

As previously stated in the last two Borough President recommendations for special permits pursuant to ZR §74-711 at 102 Greene Street and 498 Broome Street in SoHo, this special permit was not created as a way to holistically change a neighborhood's character. While the Department of City Planning has committed to a future study of the zoning of SoHo and the use of special permits to add residential buildings to the neighborhood, based on the latest crop of applications the Borough President believes that NoHo should be added to this study. It is troubling that given the seemingly increasing procession of applications for these special permits there is the potential for the situation on the ground to become such that the recommendations from any study would come too late to stop a *de facto* rezoning to residential by special permit.

One of the major limitations of reviewing applications on a case-by-case basis, is it requires the commission to analyze a unique set of facts for each application, where really the commission should be reviewing whether residential is an appropriate use for this neighborhood. Because of the complicated zoning history of this neighborhood, each building contains a convoluted fact pattern and it is difficult to discern whether rent stabilization or artist use restrictions actually apply. As previously stated, if a unit is JLWQA, then the loss of this artist housing could impact the surrounding uses and character of the neighborhood. If a unit is subject to rent stabilization, the City should be aware of this to be able to judge the cumulative impact of the loss of such units and determine whether programs are required to address this. And, if there are units that are not being used as the law requires, it is important that the public know this critical information when taking into account any environmental analysis on potential impacts to land use, zoning and public policy considerations and the conforming uses of a neighborhood when analyzing neighborhood character. This disclosure is critical if the Community Board, Borough President, and City Planning Commission are to properly analyze a change of use on the existing uses in a building and in the surrounding buildings.

In this case, it is not clear that floors three and five are not still subject to rent stabilization as the applicant claims. According to this office's understanding of the Loft Board's position, the occupancy of a rent stabilized unit by a relative of an owner and such occupant's subsequent vacancy is not a qualifying event that would remove a unit from rent stabilization. Moreover, the Loft Board interprets the Rent Stabilization Laws as providing protection to units (not just occupants) in loft buildings that move from the jurisdiction of the Loft Board to that of the DHCR. Thus, in the opinion of the Loft Board, the third and fifth floors are still subject to rent stabilization. Were that to be the case, this building would have been a building with one floor of Use Group 9/Use Group 6 (art studio/gallery), three floors of Use Group 6 (office space) and two JLWQA floors. This building would have been emblematic of the type of building for which NoHo is known and this use would be the type of use that should be preserved.

⁶ Apartment listings have been posted online for 37 Great Jones Street which appear to be advertising an unlawful use given the history of this property. While the owner previously applied for a special permit to allow Use Group 2 on floors two through six, accessory residential uses on portions of the ground and cellar floors and Use Group 6 below the second story on the ground floor and cellar in 2014, that application was withdrawn prior to approval.

Regarding the preservation of a landmark, which is the key justification for the change to residential use, the findings state the applicant is required to enter a restrictive covenant for the maintenance program of the proposed development. The LPC report states the restoration work to the fire escapes will not affect the historic fabric nor detract from any significant architectural features of the site. The report states “that removal of the fire escape ladders and the non-decorative fire escape landing at the 2nd floor will eliminate the hazard created once the fire-escape becomes no longer a means of egress.” The report does not state how this change will add to the historical fabric and streetscape of the neighborhood. However, it would appear that the removal of the fire escape ladders will actually eliminate a unifying design aspect of the district in favor of solidifying the former landings as a residential amenity for tenants. Though the LPC has already approved this feature, the CPC should carefully evaluate whether the conversion of a fire escape to a residential balcony truly serves a preservation purpose, and whether a non-residential use in the building would allow for the fire escapes to be more fully preserved.

The zoning of SoHo and NoHo should be reviewed holistically and the Department of City Planning should refrain from certifying applications for special permits pursuant to ZR § 74-711 for use changes until such review is undertaken. By allowing such certifications to continue, each application requires analysis by the Loft Board, DHCR, and other agencies on the lawful uses of the units in a subject building, despite the fact the analysis of these permits should theoretically be conducted based on their preservation purposes. If these applications are to continue, though, DCP must ensure that any environmental analysis and permit findings consider such lawful uses and indicate where such uses differ from those permitted uses. In this particular application, the applicant has not sufficiently justified the appropriateness of residential use with any argument other than “other buildings are also non-conforming,” and has not sufficiently showed that the residential use is *furthering* the preservation of this building. Although the building is being restored through this residential conversion, a commercial restoration would more fully be able to honor the history of this building and district.

BOROUGH PRESIDENT’S RECOMMENDATION

Therefore, the Manhattan Borough President recommends disapproval of ULURP Application No. C 150146 ZSM.



Gale A. Brewer
Manhattan Borough President