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Gale A. Brewer, Borough President

November 25, 2014

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

PROPOSED ACTION

102 Greene Owner LLC¹ (“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 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 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.

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

⁵C 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.

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 conditional disapproval 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.

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