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Gale A. Brewer, Borough President

December 22, 2014

**Recommendation on ULURP Application No. C 130066 ZSM – 498 Broome Street
By Goose Mountain NYC, LLC**

PROPOSED ACTION

Goose Mountain NYC LLC (“the applicant”) seeks a special permit pursuant to Section 74-711 of the New York City Zoning Resolution (“ZR”) to modify use regulation 42-10 to allow residential use (Use Group 2) on the second through fifth floors of an existing building and to legalize the enlargement of the building by the addition of a sixth floor penthouse for additional residential use (Use Group 2) at 498 Broome Street (Block 487, 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;¹
- 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 District²; and
- 3) the maximum number of permitted dwelling units is as set forth in ZR § 15-111.³

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.

PROJECT DESCRIPTION

The applicant has restored the building in a manner that the LPC has determined to be appropriate to the

¹ The LPC issued a report on August 20, 2012.

² The LPC issued a Certificate of Appropriateness on August 20, 2012.

³ Pursuant to ZR § 15-111, up to seven dwelling units would be permitted in the building. As proposed, this building will have four dwelling units. This is less than the maximum number of dwelling units.

building and to the SoHo-Cast Iron Historic District. According to the applicant, the building had been allowed to seriously deteriorate under previous ownership. The project incorporated a restoration of the building's three exposed façades, including the storefront, and significant work on architectural details as well as the roof. In addition, the applicant stated that the building had significant structural issues that were addressed as part of the restoration work. The restoration work was completed pursuant to a restrictive declaration between LPC and the applicant, which also ensures the continued maintenance of the building.

In addition, the applicant enlarged the existing five-story building by adding a sixth floor penthouse. The penthouse on top of the fifth floor is set back 33 feet from the street line and, according to the Certificate of Appropriateness from LPC, was to be constructed with a brick which would blend in with the existing side wall.

Following the restoration and expansion of the building, the applicant seeks to convert the existing vacant space on floors two through five to, and allow the newly constructed penthouse to be used as, residential use (Use Group 2). According to the applicant, floors two through five were occupied approximately three years ago by the former owner as an artist studio but never officially listed as JLWQA; the owner had lived there for decades and had never been certified by the New York City Department of Cultural Affairs (see below).

Area Context

The project site is located in the SoHo-Cast Iron Historic District in Manhattan, in an M1-5A zoning district. M1-5A districts permit a maximum floor area ratio (FAR) of 5.0, with 6.5 FAR for community facility use. Buildings are allowed a front wall height of the lesser of 85 feet or six stories, after which buildings must setback 20 feet from a narrow street. 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.⁴ 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 in buildings constructed prior to December 15, 1961, to be used by “Certified Artists.”⁵

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 several years, it appears that the nature of certified and approved 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 beginning in 2011 with Application No. C 120039 ZSM, 70 Greene Street, residential conversions have come at the expense of existing JLWQA units. Prior to that, LUCATS shows that all special permits to create new UG2 floor area came as a result of either new construction or substantial reconstruction of vacant properties. 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.

⁴ Restrictions to specific commercial use groups within M1-5A zoning districts are enumerated in ZR § 42-14D.

⁵ 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>.

Since the beginning of 2014, only two other applicants have sought to convert JMWQA into UG2. In one application, C 140114 ZSM, also known as 37 Great Jones Street, the Borough President recommended approval until new information appeared that the formerly vacant JMWQA 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 the recommendation of approval. The application was ultimately withdrawn. Just last month, in application C 140353 ZSM, also known as 102 Greene Street, the Borough President recommended that the application for residential conversion be denied with conditions as the two JMWQA units proposed for conversion were occupied as of the time of the initial filing of the application.

COMMUNITY BOARD RECOMMENDATION

At its Full Board meeting on November 20, 2014 Manhattan Community Board 2 (“CB2”) recommended an approval with conditions of this application by a unanimous vote of 49 in favor and none opposed. CB2 wrote that the loss of JMWQA was akin to losing affordable housing units and the loss of affordable artist housing would negatively impact the character of the district. CB2 voted to approve the application with the conditions that CPC prescribe conditions that compensate for the loss of JMWQA units and that at least one such unit be maintained.

BOROUGH PRESIDENT’S COMMENTS

The establishment of Joint Live-Work Quarters for Artists 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 JMWQA units makes them less attractive to buyers than residential units of comparable size that are not bound by vocational restrictions.⁶ For this reason JMWQA units are viewed by CB2 and many others as what had been historically affordable housing for artists. By the same token, property owners see JMWQA units as an impediment to achieving what they feel to be the full value of their buildings.

The continued use of special permits to eliminate JMWQA 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 notes that the immediately adjacent building at 500 Broome Street has a Certificate of Occupancy for JMWQA as does 494 Broome Street, located two buildings east of the applicant’s property. Greater amount of oversight over existing and future JMWQA 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.

CB2 in its recommendation equates JMWQA units as a form of affordable housing and asks that the community be compensated for the loss of this type of affordable housing and that one JMWQA unit be maintained 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

⁶ “In a Changed SoHo, Legal Pentimento” by Nadine Brozan. The New York Times. June 8, 2003

create a program whereby developers of small buildings could mitigate the loss of affordable housing by seeding an affordable housing fund.

The Borough President continues to believe that the SoHo community should not be forced to choose between historic preservation and affordable housing for artists, as both are essential to the character of the neighborhood. 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 believe 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.

However, the current application differs from the application at 102 Greene Street considered last month. Here, the JLWQA unit has not been inhabited for approximately three years. Indeed, for decades it has not been a rental property but rather an owner occupied building with the owner, who was not certified as an artist, apparently using it as studio space. Finally, according to the applicant, it was during the owner/artist's period of ownership that the building deteriorated to such an extent. These factors, in the absence of the specific problems with this application discussed in the following paragraphs, potentially mitigate against disapproval of the application. Nevertheless, the Manhattan Borough President believes that continued elimination of JLWQA and approval of residential use by special permit can and will have adverse impacts on the uses and character of SoHo. Thus, the Manhattan Borough President requests that the applicant work with the Community Board and CPC to mitigate against these adverse impacts. This office is ready to work with everyone involved 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.

The application for 498 Broome Street appears to have some problems, most of which stem from the proposed enlargement of the building, which has already been constructed by the applicant. In the application materials, the penthouse enlargement is described as a proposed action because any new floor area would need to conform with the M1-5A zoning of the lot. The only reference in the application materials to the already-built enlargement appears in the Environmental Quality Review materials which states that the building has been enlarged to five stories and a penthouse, pursuant to Department of Buildings ("DOB") and LPC approval.

The Borough President's Office visited the site to confirm and photograph the existence of the penthouse addition. Staff of the Borough President also reviewed DOB permit application no. 121059861, which self-certified approval "to obtain new certificate of occupancy for mixed use building." The adjoining ZD1 Zoning Diagram for job 121059861 (Scan Code SC141487494) provides a site plan, section diagram, and axonometric diagram that depict a five story building. The Schedule A, however, shows a five story building with an additional penthouse floor. This schedule shows floors two through five and the penthouse addition with proposed JLWQA (Use Group 17D) additions. This office could not locate the permit approval for the construction of the penthouse addition.

In the Certificate of Appropriateness, the directions concerning the penthouse addition appear to be conflicting. The second paragraph of the Certificate of Appropriateness states that the addition, as approved, "would be clad in beige stucco." Two paragraphs later the Certificate states that the addition would be "clad with a brick which blends with the existing eastern side wall, causing it to recede from view." The applicant has clad the penthouse addition with a beige stucco, which, when viewed from the street, is clearly distinct from the brick of the existing building and does not appear to blend with the side facade. Clarification of the Certificate of Appropriateness should be sought, and the enlargement should be re-clad in a brick that matches the existing building, if this was the intent of the LPC.

Lastly, the floor area calculations and the zoning calculations do not match. Page Z-001.00 shows a total proposed zoning floor area of 7,450. In the Zoning Analysis on page Z-002.00, the applicant states that proposed zoning floor area would be 7,440. The Description of Proposal describes the proposed building as utilizing 7,498 square feet of floor area, just two square feet short of the maximum allowable amount. Additionally, the mechanical rooms that are supposedly exempt from the zoning calculations also contain what appears to be space for a washer and dryer, appliances that should not be exempted from floor area calculations.

BOROUGH PRESIDENT’S RECOMMENDATION

Therefore, the Manhattan Borough President recommends conditional approval of ULURP Application No. C 130066 ZSM, to grant a Special Permit pursuant to ZR § 74-711, contingent on the applicant:

- 1. Maintaining a JLWQA unit in the building or providing some form of studio, work or show space for artists in the building;**
- 2. Demonstrating that all necessary building permits were appropriately applied for and obtained;**
- 3. Clarifying the requirements of the LPC’s Certificate of Appropriateness regarding the exterior materials on the penthouse and making any necessary changes; and**
- 4. Reviewing the application with CPC to ensure its accuracy.**

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