



OFFICE OF THE PRESIDENT  
BOROUGH OF MANHATTAN  
THE CITY OF NEW YORK

1 Centre Street, 19th floor, New York, NY 10007  
(212) 669-8300 p (212) 669-4306 f  
431 West 125th Street, New York, NY 10027  
(212) 531-1609 p (212) 531-4615 f  
[www.manhattanbp.nyc.gov](http://www.manhattanbp.nyc.gov)

**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, LLC<sup>1</sup> (“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;<sup>2</sup>
- 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;<sup>3</sup>
- 3) The maximum number of permitted dwelling units is as set forth in ZR § 15-111.<sup>4</sup>

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.

---

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

<sup>2</sup> The LPC issued a report, MOU 17-2978 on June 17, 2015.

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

<sup>4</sup> 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-19<sup>th</sup> to early 20<sup>th</sup> 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, JLVQA 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) process<sup>5</sup> 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-five<sup>6</sup> of these proposals since taking office. To add to my frustration, I am opining on an application for

---

<sup>5</sup> 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).

<sup>6</sup> 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.”<sup>7</sup> 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

---

<sup>7</sup> 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