



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

Gale A. Brewer, Borough President

December 22, 2020

**Recommendation on ULURP Application N 200205 ZSM
5 Mercer St. by Square-Churchill Mercer LLC**

PROPOSED ACTIONS

Square-Churchill Mercer LLC (the “Applicant”) is seeking a special permit pursuant to New York City Zoning Resolution (“ZR”) §74-711 for the (1) modification of the use requirements to allow Use Group 6 retail use on the ground floor and cellar, and (2) to modify bulk regulations to allow the enlargement of a building containing Joint Live Work Quarters for Artists (JLWQA) situated on the property at 5 Mercer Street (the “Site”). The Site is located in the SoHo neighborhood of Manhattan Community District 2.

ZR § 74-711 pertains to zoning lots containing a landmark designated by the Landmarks Preservation Commission (“LPC”) and zoning lots with existing buildings located within Historic Districts designated by the LPC. ZR § 74-711(a) lists a number of conditions that need to be met in order for the City Planning Commission to grant modifications of the use and bulk regulations. These conditions are:

(i) Program for Continued Maintenance

Any application pursuant to this Section shall include a report from the LPC stating that a program has been established for continuing maintenance that will result in the preservation of the subject building or buildings, and that such use or bulk modifications, or restorative work required under the continuing maintenance program, contributes to a preservation purpose;

(ii) LPC Certificate of Appropriateness

Any application pursuant to this Section shall include a Certificate of Appropriateness, other permit, or report from the LPC stating that such bulk modifications relate harmoniously to the subject landmark building or buildings in the Historic District, as applicable; and

(iii) Number of Permitted Dwelling Units

The maximum number of dwelling units shall be as set forth in ZR § 15-111 (number of permitted dwelling units).

BACKGROUND

Area Context

The Project Site is located in Manhattan Community District 2 within the SoHo-Cast Iron Historic District and in a M1-5B zoning district. In 1973, the SoHo Historic District was designated by the Landmark Preservation Commission (“LPC”). The area is approximately 26 blocks and is bounded by West Houston Street, Crosby Street, Howard Street, Broadway, Canal Street and West Broadway. The neighborhood largely consists of five to eight-story buildings with residential, commercial and manufacturing uses. The immediate area surrounding the site largely consists of buildings around five to eight-stories in height, with retail on the ground floor and commercial uses on the upper floors.

Site Description

The Project Site consists of Block 230, Lot 42 and is a 5,000 square foot zoning lot with 50 linear feet of frontage on the west side of Mercer Street, 109 feet north of Canal Street. The building was originally constructed in 1861 and has a cast iron storefront and marble façade on the upper floors.

The building is a five-story former industrial building containing approximately 21,100 square feet of floor area. The ground floor and cellar is currently occupied by two non-conforming Use Group 6 commercial retail uses (a clothing, accessories and housewares store and a clothing and shoe store).

The building was registered as Interim Multiple Dwelling (“IMD”) #10287 in 1983. Floors three through five are currently occupied by six Use Group 17D JLWQAs. The second floor contains a front unit that was formerly an IMD unit before its tenant sold their loft rights, one office, and one Use Group 6 commercial art studio, pursuant to the Temporary Certificate of Occupancy No. 102792961T002 issued August 28, 2019. The Temporary Certificate of Occupancy expired on November 26, 2019.

The Applicant proposes to return the second floor front unit (the formerly IMD unit) to commercial use and to combine it with the non-IMD rear unit as a single commercial unit. The Applicant also proposes to include two JLWQA dwelling units on floors three through five. The fifth floor JLWQA unit will be combined with the proposed penthouse addition.

On March 30, 2018, the Landmarks Preservation Commission (“LPC”) issued Certificate of Appropriateness No. 19-234123 and Modification of Use No.19-23413 for the construction of the proposed rooftop addition. The Certificate of Appropriateness set forth that the approval of the addition was conditioned upon the removal of the existing fire escape at the Mercer Street façade, as well as the installation of a new fire escape in the rear façade, if required. The Applicant is required to submit two final signed and sealed Department of Building (“DOB”) filings and receive LPC approval in order to commence work.

On March 19, 2018, the LPC received final drawings and an updated Existing Conditions Report & Building Restoration Program, dated March 16, 2018. On March 30, 2018 the LPC issued a Design-Intent Only Certificate of Appropriateness No. 19-23412. No work can begin until the

final DOB filing set of drawings have been marked and approved by the LPC. The LPC found that the existing fire escape at the Mercer Street façade had been moved, and that a new replacement fire escape had yet to be installed in the rear façade. The removal of the fire escape is being challenged by the tenants and is currently docketed for an Office of Administrative Trials and Hearings (“OATH”) hearing in February or March 2021.

The area is well-served by public transportation with the N/Q/R/W subway lines running along Broadway with stations at Prince Street and Canal Street; and the A/C/E subway lines running along Sixth Avenue, with stations at Spring Street and Canal Street. One block west of Sixth Avenue, the 1/2/3 subway lines run along Varick Street, with stations at Houston Street and Canal Street; and two blocks east of Broadway, the 4/5/6 subway lines run along Lafayette Street, with stations at Bleecker Street (one block north of Houston Street), Spring Street and Canal Street. Multiple bus lines run along Broadway (southbound), Sixth Avenue (northbound) and Houston Street (eastbound and westbound).

Project Description

The Applicant proposes to add a 1,384 square foot penthouse to the building which will be an addition to the existing fifth floor rear JLWQA unit. The penthouse addition will fit within the allowable sky exposure plane. The existing building contains a total of 23,802 square feet of floor area and has a height of 78 feet and 8 inches. The addition of the penthouse will enlarge the building by 888 square feet to 24,690 square feet of floor area and will increase the building height by 7 feet 8 inches to 86 feet 4 inches. The proposed building will have a Floor Area Ratio (“FAR”) of 4.94, which is less than the maximum 5.0 FAR required in an M1-5B zoning district.

The Applicant also proposes to legalize the existing, non-conforming Use Group 6 retail uses on the ground floor and cellar. There will be no increase in the floor area of the ground floor or the cellar.

COMMUNITY BOARD RECOMMENDATION

On November 19, 2020, at its full board meeting, Manhattan Community Board 2 voted to recommend denial of this application with modifications. 46 board members voted in favor of disapproval and no board members opposed the motion.

With respect to the special permit to allow Use Group 6 use on the ground floor, Manhattan Community Board 2 stated that the proposed change of use would not be harmful to neighborhood character if the following conditions were included:

- Permanent separation of the two retail spaces;
- No eating and drinking establishments on the ground floor; and
- Tenants’ rights and safety are protected during any construction.

Manhattan Community Board 2 recognizes that the attorney for the Applicant and the attorney for the tenants cannot agree on the status of the fifth-floor unit that is intended to be combined with the proposed penthouse. The Applicant’s attorney contends that the unit, having been subject to a sale of rights, is a market rate apartment. The tenants’ attorney contends that the sale

of rights does not necessarily effectuate deregulation of the unit.

Manhattan Community Board 2 recommended denial of the proposed penthouse unless the owner agrees to legalize all other IMD units at the site and the status of the fifth floor unit and the JLWQA units are resolved. The Board also set as a condition that the owner cure all the open violations, and obtain a final Certificate of Occupancy.

BOROUGH PRESIDENT’S COMMENTS

I have repeatedly raised concerns over the continued use of special permits to eliminate conforming uses in the SoHo and NoHo historic districts. However each application is analyzed for its own merits and the project’s impact upon neighborhood character. This special permit would facilitate the legalization of the existing, non-conforming Use Group 6 retail uses on the ground floor and cellar. As there will be no increase in the floor area of the ground floor or the floor space of the cellar, such a change in use would not be of great impact to the neighborhood.

Additionally, the Applicant wishes to construct a penthouse extension to the existing fifth floor rear JLWQA unit and this extension will not be an additional, separate unit. While the penthouse construction will bring the building to a total of 4.94 FAR, less than the 5.0 maximum FAR allowable for the area, I have a number of concerns regarding the building’s open violations and the status of the building’s units.

A Design-Intent Only Certificate of Appropriateness No. 19-23412 was granted by the LPC. However, no work can begin until the set of drawings have been marked and approved by LPC. Additionally, the LPC conditioned their approval upon the removal of the fire escape at the Mercer Street façade that is currently being challenged by the building’s tenants and is docketed for an OATH hearing in February or March 2021. I recommend that the Applicant work to receive a final LPC Certificate of Appropriateness, cure the OATH violation, and be granted a final Certificate of Occupancy before this application be approved for an enlargement.

Furthermore, the attorney for the Applicant and the attorney for the tenants cannot agree on the status of the fifth-floor unit that is to be combined with the proposed penthouse. The Applicant’s attorney contends that the fifth floor unit, having been subject to a sale of rights, is a market rate apartment. The tenants’ attorney contends that the sale of rights does not necessarily effectuate deregulation of the unit. I recommend that the Applicant resolve the status of the fifth-floor unit before this application moves forward.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends disapproval of ULURP Application No. N 200205 ZSM with the following conditions:

1. That the Applicant obtain a final Certificate of Appropriateness by the Landmarks Preservation Commission;
2. That the Applicant resolve all open violations;

3. That the Applicant obtain a final Certificate of Occupancy from the Department of Buildings; and
4. That the Applicant resolves the status of the fifth-floor unit.

A handwritten signature in black ink that reads "Gale A. Brewer". The signature is written in a cursive style with a large, looped initial "G".

Gale A. Brewer
Manhattan Borough President