



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

January 21, 2009

Recommendation on
ULURP Application Nos. C 140055 ZSM and C 140056 ZSM – 688 Broadway
by Downtown RE Holdings LLC

PROPOSED ACTION

Downtown RE Holdings LLC¹ (“the applicant”) seeks a **special permit** pursuant to Section 74-712 of the New York City Zoning Resolution (“ZR”) to facilitate the development of a 12-story mixed-use building on a vacant lot located at 688 Broadway in the NoHo neighborhood of Manhattan Community District 2. The proposed special permit would modify use and bulk regulations of §§ 42-00 (General Provisions), 42-14(D)(2)(a) and 43-43 (Maximum height of front wall and required front setbacks) in an M1-5B district

In order to grant the use modifications pursuant to ZR § 74-712(a), the City Planning Commission (“CPC”) must find (i) that the residential development of the project complies with the minimum requirements for rear yards and distance between legally required windows, walls, or lot lines pertaining to R8 districts (§§ 23-86 and 23-47); (ii) that the total FAR be limited to 5.0; (iii) that the minimum floor area for each dwelling unit is 1,200 square feet; (iv) that all signs conform to sign regulations (§ 32-60) pertaining to C2 zoning districts; and (v) that eating and drinking establishments (Use Groups 6A and 12A) of any size are not permitted. CPC shall further find that the proposed use modifications (i) have minimal adverse effects on conforming uses in the surrounding area; (ii) are compatible with the character of the surrounding area; and in the case of residential developments (iii) result in a development that is compatible with the scale of the surrounding area.

Further, in order to grant the bulk modifications to special permit § 74-712(b), CPC must find that the proposed development (1) shall not adversely affect surrounding structures or open space in terms of scale, location and access to light and air; and (2) relate harmoniously to buildings in the Historic

¹ Downtown RE Holdings LLC is a subsidiary of DJS Real Estate Development LLC which is managed by David Schwartz

District as evidenced by a Certificate of Appropriateness from the Landmarks Preservation Commission (“LPC”).²

PROJECT DESCRIPTION

The proposed mixed-use development will contain 14 dwelling units on floors 2 through 12, with ground floor and cellar retail space and accessory residential space. The proposed building would occupy a long-vacant lot in the NoHo Historic that is currently occupied by an outdoor market.

Neighborhood Context

The NoHo neighborhood surrounding the proposed development consists primarily of 8- to 15-story buildings with no setbacks. Most of the area is within the NoHo Historic District. Originally a manufacturing area, most of the buildings in the district were built in the late nineteenth and early twentieth centuries. Most of these industrial buildings have been converted to residential uses on the upper floors. Because of the area’s zoning designation, many of these dwelling units are Joint Live Work Quarters for Artists (“JLWQA”), though some function as traditional residential units. The majority of the district’s buildings have retail uses on the ground floors. New York University owns a number of properties in the area, with the bulk of their Washington Square campus lying immediately to the west of the proposed development.

The project site and the areas directly north and south of the proposed development are zoned M1-5B, which permits most industrial and several commercial uses as of right. Notably, commercial Use Group 6, which permits retail and art galleries, is not allowed under the M1-5B designation. JLWQA are permitted in existing buildings erected prior to 1961, provided the lot coverage for such buildings does not exceed 5,000 square feet. In M1-5B districts new developments and enlargements are permitted a maximum floor area ratio (“FAR”) of 5.0 and must set back 15 feet from the lot line after a street wall of 85 feet.

Across Broadway from the proposed development is a C6-2 district stretching from West Houston Street to Waverly Place. C6-2 districts permit residential, commercial, and community facility uses up to 6.0 FAR. As with M1-5B districts, new developments are permitted a street wall height of 85 feet after which buildings must adhere to a sky exposure plane. Directly across the street from the proposed development are three buildings at 12, 6, and 15 stories.

Directly adjacent to the proposed development are the Silk Building, at 692 Broadway,³ and the two-story Zacky’s clothing store, a non-contributing building to the historic district at 686 Broadway. The Silk Building was constructed in 1912 as a 12-story commercial and manufacturing building. Situated on a 15,272 square foot lot, the building occupies the entire south side of this block of East 4th Street, from Broadway to Lafayette Street. In 1982 the building was converted to retail on the ground level, commercial and manufacturing uses on floors two through six, and JLWQA on floors seven through twelve.⁴ Because M1-5B districts allow for JLWQA only where lot coverage does not exceed 5,000 square feet, the Silk Building’s residential units are subject to a 1981 Board of Standards and Appeals

² The LPC issued a Certificate of Appropriateness on November 28, 2012. LPC’s determinations will not be re-examined in this application.

³ The Silk Building also goes by the address 14 East 4th Street.

⁴ Floors one through six are currently occupied by a physical culture establishment.

(“BSA”) variance. The lot coverage requirement is intended to prevent residential units in large floorplate manufacturing buildings in order to ensure all units have adequate access to light and air. The Silk Building’s variance is based on the fact that though the building has exceptionally high lot coverage, its long rectangular shape allows for all units to access light and air from its northern East 4th Street façade. The BSA decision stipulates that all units must conform to plans submitted at that time in which all units accessed light and air from either Broadway or East 4th Street.

Proposed Development Site

The proposed project sits on Block 531, Lot 4, which has an area of 8,998 square feet. The lot consists of vacant property on Broadway which is temporarily occupied by flea market vendors. At the rear of the lot, a 10 foot wide portion of Great Jones Alley connects the lot to the south to Great Jones Street. Great Jones Alley is gated and accessed by a curb cut on Great Jones Street.

Prior to 2011, Great Jones Alley was recorded as its own zoning lot, Lot 16. This lot was originally declared and recorded in 1818 by Samuel Jones, who owned the entirety of Block 531 as well as many other blocks in the vicinity, as a private passageway for the exclusive use of Samuel Jones, his heirs and assigns. Over time, the various buildings on Lot 531 were sold to other owners, but Lot 16 was never assigned to a single owner. According records at the New York City Topographical Bureau, Great Jones Alley is used in common and maintained by owners of adjoining property, with tax valuation reflected in and paid by the adjoining owners. According to the applicant, this means that the alley is jointly owned by the owners of Lots 1, 3, 4, and 15. Indeed, tax maps prior to 2011 indicate that a ten-foot portion of the alley adjacent to Lot 1 had already been incorporated into that lot. In 2011, the applicant filed a Tax Map Application with the New York City Department of finance to have the portions of the alley adjacent to the property reflected in the tax map, and subsequently purchased the ten-foot wide corridor leading to Great Jones Street from Lot 15, which is also owned by the applicant. Residents of the Silk Building dispute this classification, and, though other supporting documents have been provided, the applicant has not made clear why the Silk Building does not classify as an “adjoining property” with equal interest over the alley. Were further analysis to indicate that Great Jones Alley was improperly incorporated into Lot 4, the lot would have an area of 7,085 square feet.

Proposed Project

The proposed 12-story development will contain 14 dwelling units on floors 2 through 12, with retail and accessory residential space on the ground floor and cellar. The building will rise to a height of 131 feet, or 11 stories, before setting back 15 feet to reach the total building height of 144 feet. The façade of the building will be composed of a multilayered surface of aluminum and glass window walls between brick piers and sidewalls. Over this surface will be a vertical screen of glazed terra cotta extrusions. This façade and building massing were approved unanimously by the LPC in November 2012. The Broadway frontage at the ground level will be dominated by the retail component, with a small residential entrance on the north side. The main residential entrance and lobby is proposed to be accessed through Great Jones Alley, which will be improved with historically contextual Belgian block pavers and granite sidewalk slabs, as well as improved lighting and a new gate. The rear of the building will set back after the first floor, creating both shared and private terraces on the second level. Additionally, there will be private balconies in the rear of the building on floors seven through eleven.

The proposed building will cover 27 lot line windows on the Silk Building, as well as under-window

louvers for heating, ventilation and air conditioning (“HVAC”). These lot line windows are not legally-required windows for any of the attached apartments, though the windows do constitute a large amount of the available light in these apartments. Absent the HVAC louvers on the south façade, the East 4th Street or Broadway façade of the historic building would have to be altered to allow for ventilation to these units.

Proposed Actions

The applicant seeks a special permit pursuant to ZR §§ 74-712(a) and 74-712(b). The special permit would allow residential and retail development in a manufacturing district as well as bulk modifications to waive the required 15-foot setback. In order to receive the requested special permit the applicant must show that the proposed development is in context with the surrounding community and that it will not adversely affect neighboring properties and uses. Furthermore, ZR § 74-712 requires a zoning lot that was vacant as of December 15, 2003. The proposed development will occur on a zoning lot that, as of 2003, consisted of two separate zoning lots, both of which were vacant at that time.

COMMUNITY BOARD RECOMMENDATION

At its Full Board meeting on December 19, 2013, Manhattan Community Board 2 (“CB2”) unanimously approved two resolutions: (1) recommending **conditional denial** of the two special permits; and (2) favoring accommodations for neighbors of 688 Broadway if the special permits are granted. CB2’s two resolutions and conditions are described more fully below.

In its first resolution, CB2 recommends denial of the two special permits unless: (a) the zoning calculations are based on the dimensions of the zoning lot as it was constituted on December 15, 2003; and (b) agreements are executed with the other owners of the private, commonly-owned alley running behind the properties on the block specifying work to be performed affecting the alley and responsibilities for maintenance, security, and use of the alley.

Available Floor Area

First, CB2 opposes the special permits for the development on the grounds that the zoning lot for which these special permits are sought was created after December 15, 2003. CB2 argues that “ZR § 74-712 pertains if a zoning lot ‘as of December 15, 2003 is vacant or has not more than 20 percent of the lot area occupied by existing buildings,’” and that as of 2003 the zoning lot at this location was smaller than the current zoning lot which now includes portions of a different zoning lot. Because of this, CB2 argues, the maximum floor area of a building allowed pursuant to ZR § 74-12 is less than that being sought by the applicant. The dimensions of the lot on December 15, 2003 were 54 feet by 130 feet, as opposed to the current lot size which is 54 feet by 150 feet.

Residential Use

CB2 found that, were the floor area of the building properly calculated, residential use would not be out of character with the surrounding community and would not have adverse effects on other uses. It also acknowledges that the proposed building is no larger than some other buildings in the immediate area. However, because of its interpretation of the requirements of ZR § 74-712, CB2 concludes that the anticipated size of the proposed development based upon a larger, post-December 15, 2003 zoning lot

size would make the building incompatible with the scale of the surrounding area and that the proposed development “should be assumed to adversely affect structures or open space in the vicinity in terms of scale, location and access to light and air.”

Ownership and Use of Great Jones Alley

In addition, CB2 recommends denial of the two special permits because granting them would facilitate unilateral changes to the ownership and use of the jointly owned alley. The Board questions whether the process used to divide the alley up among adjacent properties was legal and equitable.

CB2 takes issue with the proposed use of the Alley as the primary vehicular and pedestrian entrance to the residential portion of the proposed building. While acknowledging that the applicant proposes to make improvements to the alley, CB2 states that the new use of the alley will substantially increase its use and will pose a potential for nuisance from noise and fumes and conflicts with current uses.

Accommodations for Neighboring Properties

In its second resolution, CB2 encourages accommodations for the neighbors of 688 Broadway if the permits are granted. CB2: (1) urges the applicant and affected parties to communicate and make best efforts to reduce harm and specifically urges the applicant to consider inclusion of an air shaft or partial side yard serving as many windows of the Silk Building as possible and (2) urges relevant City agencies and elected officials to work with the applicant and affected parties and CB2 in an effort to achieve this outcome.

The second resolution states that the proposed development will block 27 lot line windows on the south side of the adjacent Silk Building and render 27 HVAC units useless. It also notes that 18 rooms in the Silk Building would lose access to light and air and that residents of the Silk Building had set forth concerns about construction undermining the foundation of their building. The resolution goes on to state that the applicant presented a modified foundation plan that appeared to address concerns over the foundation.

BOROUGH PRESIDENT’S COMMENTS

The applicant is proposing to construct a new residential building on a lot in the NoHo neighborhood that has been vacant for many years. The addition of this building to the historic district will fill a gap in the streetwall, helping to preserve the character of the surrounding neighborhood. The special permit pursuant to ZR § 74-712 was created to develop remaining vacant lots such as this one within historic districts.

Special Permit for Use Modification

ZR § 74-712(a) provides for a special permit in a historic district in an M1-5B district to allow residential development and commercial uses below the second floor where five specific conditions are met and where findings are made that the modifications have minimal adverse effects on conforming uses in the surrounding area and are compatible with the character of the neighborhood.

The proposed residential units are consistent with nearby uses, and will unlikely have adverse impacts

on conforming commercial and JLWQA uses in the surrounding area. The proposed 3,970 square foot retail space is compatible with the typical ground-floor usage prevalent in the neighborhood—along this section of Broadway nearly every building is occupied by ground floor retail, and the proposed commercial space is smaller than many neighboring stores. The few apartments in the proposed development, twelve units, are unlikely to adversely affect the surrounding uses. Additionally, the proposed development meets all requirements for rear yards, minimum distance between windows and walls or lot lines, minimum floor area for each dwelling unit, signage, and the prohibition on eating and drinking establishments.

CB2 raised concerns over the use of Great Jones Alley as the primary vehicular and pedestrian entrance to the residential component of the proposed building, as the increased use of the alley could potentially create a nuisance from noise and fumes. Given the small number of apartments in the proposed development, and the fact that the Broadway entrance will be closer to the elevator serving the building's residences, however, it appears unlikely that these impacts would be significant. In addition, the developer is proposing to rehabilitate, maintain, and secure this historic alley, one of only a small number remaining in the entire city.

Some community members have raised concerns over whether sections of Great Jones Alley, included in the zoning lot, can be used to generate floor area for this development. Section 74-712 provides that it applies to “a zoning lot that as of December 15, 2003 is vacant” or has minor improvements or is only partially occupied as set forth in such section. The zoning lot in question is the product of the merger of a smaller zoning lot that existed as of December 15, 2003 and a portion of the Great Jones Alley that was acquired by the developer in 2011. At the time of its acquisition, those portions of Great Jones Alley acquired by the developer were part of separate zoning lot which was undeveloped.

In the past, CPC has interpreted this provision to allow the calculation of floor area to be based upon the post-December 15, 2003 merger of two lots each of which was vacant or partially occupied. This interpretation has been used very recently in the case of 300 Lafayette (C 140093 ZSM), in which the CPC approved a § 74-712 permit for a development over three zoning lots, each of which was vacant or partially developed as of 2003.⁵ The intent of the 2003 date appears to have been in large part to prevent developers from demolishing buildings in order to create vacant lots eligible for a special permit. This is sound policy. However, the wording of the text is not completely clear. CPC should carefully consider its interpretation to ensure that developers cannot use this provision to cobble together undeveloped portions of lots after the December 15, 2003 date (or graft such portions onto a larger lot that was undeveloped) in order to create a larger “undeveloped” lot.

In this case, both Lot 4 (the lot on which the proposed building is to be built) and the portion of the alley acquired by the developer in 2011, formerly Lot 16, were both undeveloped as of December 15, 2003 thereby fitting into a reasonable interpretation of the text that would allow them to be used together for the purpose of the FAR calculations for the special permit.

As mentioned above, there is some question about the process by which the applicant incorporated portions of the jointly owned alley into their zoning lot. If there is disputed ownership of the alley, this

⁵ The 300 Lafayette ULURP also included a text amendment to alter lot coverage requirements, as one of the included zoning lots had greater than the maximum 20 percent lot coverage. This text amendment does not change the underlying concept that multiple zoning lots can be used for a § 74-712 special permit.

issue should be resolved. It is not, however, a land use issue that can be addressed in ULURP. If the applicant does not indeed own the lot from which they intend to use floor area they cannot use that floor area. The Borough President's office has not, however, heard from other parties who shared ownership of the alley that the ownership is disputed.

Special Permit for Bulk Modification

Special permits for bulk modification pursuant to ZR § 74-712(b) may be provided upon finding that the modification does not adversely affect structures or open space in the vicinity in terms of scale, location and access to light and air, and are in harmony with buildings in the historic district as evidenced by a Certificate of Appropriateness from the LPC.

In this case the proposed development was unanimously approved by the LPC and represents a significant improvement over a vacant lot. The proposed design will align the building's front façade with the facades of adjacent properties, which mirrors the architectural style and character of the historic district, whereas a setback at a lower level would be inconsistent. The design of the building is contemporary yet nods to historic context through the use of historically contextual materials.

The proposed modification will cover one lot line window of the neighboring Silk Building that would likely remain uncovered in the as-of-right development scenario, but leaves a row of six lot line windows in the Silk Building uncovered that could otherwise be block. Thus, in terms of the findings for the special permit, the bulk modification has a beneficial effect on air and light.

Other Considerations

Finally, the CPC may prescribe appropriate additional conditions and safeguards in order to enhance the character of the development and to minimize adverse effects on the character of the surrounding area. While the bulk waiver sought by the applicant is likely to produce fewer adverse consequences for the Silk Building than certain as-of-right scenarios, and acknowledging that the residents of the Silk building may not be legally entitled to rely on lot line windows for light and air, requiring the removal of HVAC systems from the lot line windows could present significant challenges to the landmark Silk Building. The removal of these HVAC systems could require their replacement under other windows fronting on Broadway or East 4th Street, which would require lengthy LPC approvals and would adversely affect the context of the historic district.

The applicant has proposed creating a slot along the northern wall of its building and installing piping from the apartments losing lot line windows to a new HVAC system on the roof of the Silk Building, to be installed by the residents of that building. Because these are condominium units, the Silk Building is not prepared to undergo these renovations as one unit and it is unclear whether there could be a single unit on the roof or whether multiple units would be the best approach. The applicant should work with the Silk Building residents to facilitate the best and most efficient way to accomplish this HVAC work and the bricking in of windows for the residents of the 12 affected units without impacting the residents of other units or inequitably burdening these particular owners.

Finally, CB2 noted that Silk Building residents have expressed concerns over the developer's proposed plans for foundation work that could potentially undermine the Silk Building's century-old foundation. At CB2's public Land Use Committee meeting the developer presented an alternative plan to ensure no

construction impacts to the structural integrity of the Silk Building. The developer has committed to extensive monitoring, including vibration sensors within the Silk Building. The applicant should continue to work with residents of the Silk Building to ensure that the construction work is done conscientiously and with minimal adverse effects.

BOROUGH PRESIDENT’S RECOMMENDATION

The proposed project would fill a long-standing gap in the NoHo historic district with a building that is contemporary yet historically contextual. The proposed use and bulk modifications are appropriate in the neighborhood and the building has been designed so as to minimally affect neighboring properties. Furthermore, the applicant proposes to rehabilitate and add a new use to a historic alley that has long been underutilized and unimproved. The proposed building does cover windows used by artists and families in the neighboring Silk Building and this impact should be addressed. The applicant, however, has committed to significantly invest in making sure that all effected rooms have access to ventilation so that these rooms can continue to be used.

Therefore, the Manhattan Borough President recommends conditional approval of ULURP Application Nos. C 140055 ZSM and C 140056 ZSM, to grant a Special Permit pursuant to ZR § 74-72, contingent on the applicant continuing to work with the effected residents of the neighboring Silk Building and following through on their construction and financial commitments necessary to help mitigate any adverse effects.



Gale A. Brewer
Manhattan Borough President