



CITY PLANNING COMMISSION

August 11, 2008/Calendar No. 16

C 070450 ZSM

IN THE MATTER OF an application submitted by Great Jones Realty Corp. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-781 of the Zoning Resolution to modify the use regulations of Section 42-14(D)(2)(b) to allow Use Group 6 uses (retail uses) on the ground floor and cellar of an existing three-story building on property located at 33 Great Jones Street (Block 530, Lot 24), in an M1-5B District, Borough of Manhattan, Community District 2.

The application for the special permit was filed by Great Jones Realty Corp on April 30, 2007, to permit modification of the use regulations of Sections 42-14D(2) (b) of the Zoning Resolution to permit Use Group 6 uses below the floor level of the second story of a building located in an M1-5B zoning district in the southern portion of SoHo in Manhattan.

BACKGROUND

33 Great Jones Street is a three-story building located midblock on the south side of Great Jones Street between Lafayette Street and the Bowery. The zoning lot is comprised of two buildings: the subject building and an adjacent seven-story building immediately to the east. The two structures are connected at the second and third stories. The subject building occupies 2,700 square feet of lot area and contains 8,695 square feet of floor area while the seven-story building occupies 2,421 square feet of lot area and contains 16,902 square feet of floor area. The total lot area of the zoning lot is 5,121 square feet with a built FAR (floor area ratio) of 4.99.

Pursuant to Section 42-14D(2), uses below the floor level of the second story in M1-5B Districts are restricted to Use Groups 7, 9, 11, 16, 17A, 17B, 17C, or 17E (including wholesale, warehouse and light manufacturing uses). Use groups other than those permitted may be allowed by special permit pursuant to Section 74-781 provided that the City Planning Commission finds that the owner of the space, or a predecessor in title, has made a good faith effort to rent such space to a permitted use at fair market rentals. The good faith marketing of the space shall have been pursued for a minimum of six months for buildings occupying less than 3,600 square feet of lot area.

This application seeks to allow a total of approximately 3,617 square feet of retail area; 2,559 square feet of retail space (Use Group 6) on the ground floor; and 1,058 square feet on the cellar

level of 33 Great Jones Street. The second and third floors of the subject building are occupied by conforming light manufacturing uses.

The surrounding neighborhood is primarily a mix of three- to seven-story buildings and loft structures occupied by retail uses on the ground floor and residential uses in the form of joint living-work quarters for artists on the upper floors. A number of newly constructed residential buildings built pursuant to BSA variances are located one block to the south on Bond Street.

ENVIRONMENTAL REVIEW

This application (C 070450 ZSM) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 *et seq.* and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The lead agency is the City Planning Commission. This application was determined to be a Type II action which requires no further environmental review.

UNIFORM LAND USE REVIEW

This application (C 070450 ZSM) was certified as complete by the Department of City Planning on March 24, 2008, and was duly referred to Community Board 2 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Public Hearing

Community Board 2 held a public hearing on this application on May 15, 2008, and on May 22, 2008, by a vote of 43 to 0 with 0 abstentions, adopted a resolution recommending approval of the application. However, the community board did not advertise the public hearing and was therefore noncomplying.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation on June 25, 2008, approving the application.

City Planning Commission Public Hearing

On June 18, 2008 (Calendar No. 57), the City Planning Commission scheduled July 2, 2008, for a public hearing on this application (C 070450 ZSM). The hearing was duly held on July 2, 2008 (Calendar No. 28). There was one speaker in favor of the application and none in opposition.

A representative of the Borough President reiterated the Borough President's recommendation of approval.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the grant of this special permit is appropriate.

Approval of the special permit application (C 070450 ZSM) pursuant to Section 74-781 of the Zoning Resolution would modify the use regulations of Sections 42-14D(2)(b) and allow Use Group 6 (retail) uses on the ground floor and cellar level of the subject building.

The applicant has made the necessary good faith marketing effort for a period of more than six months. Such efforts included signing an exclusive agency agreement with a real estate broker in January 2006 familiar with marketing space in SoHo; and publishing weekly ads in the Village Voice and The New York Times beginning April 2006. Additional efforts included placing an advertising sign on the subject building; and notifying local and citywide industry groups of the availability of the spaces, including the Industrial Space Bank at the New York City Economic Development Corporation. Such marketing efforts proved unsuccessful as they did not succeed in obtaining a conforming use.

The Commission believes that the applicant did make a good faith effort to lease the space to a conforming use. The Commission notes that the applicant adhered to the good faith marketing guidelines, as outlined in Section 74-781 of the Zoning Resolution, and was unable to secure a conforming tenant.

FINDINGS

The City Planning Commission hereby makes the following finding pursuant to Section 74-781 (Modifications by Special Permit of the City Planning Commission) of the Zoning Resolution:

that the owner of the space, or the predecessor in title, has made a good faith effort to rent such space to a mandated use at fair market rentals. Such efforts shall include but not be limited to: advertising in local and citywide press, listing the space with brokers, notifying the New York City Office of Economic Development, and informing local and citywide industry groups. Such efforts shall have been actively pursued for a period of no less than six months for buildings under 3,600 square feet and one year for buildings over 3,600 square feet prior to the date of the application for a special permit.

RESOLUTION

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the environmental determination, and the consideration and finding described in this report, the application of Great Jones Realty Corp for the grant of a special permit pursuant to Section 74-781 of the Zoning Resolution to modify the use regulations of Section 42-14(D)(2)(b) to allow Use Group 6 uses (retail uses) on the ground floor and cellar of an existing three-story building on property located at 33 Great Jones Street (Block 530, Lot 24), in an M1-5B District, Borough of Manhattan, Community District 2 is approved subject to the following terms and conditions:

1. The property that is the subject of this application (C 070450 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by George Martin Dirr, R.A. filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
A1	Site Plan – Attachment 2 Zoning Calculations – Attachment 4	10/18/07
A2	Existing Cellar Plan – Attachment 6	10/18/07
A3	Existing First Floor Plan – Attachment 6	10/18/07

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
4. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.
5. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted.
6. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 070450 ZSM), duly adopted by the City Planning Commission on August 11, 2008 (Calendar No. 16), is filed with the Office of the Speaker, City Council, and the

Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

AMANDA M. BURDEN, FAICP, Chair
KENNETH J. KNUCKLES, Esq., Vice Chairman

ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E., ANGELA R. CAVALUZZI, AIA,
ALFRED C. CERULLO, III, MARIA M. DEL TORO, RICHARD W. EADDY,
NATHAN LEVENTHAL, SHIRLEY A. MCRAE, KAREN A. PHILLIPS, Commissioners