



IN THE MATTER OF an application submitted by Square-Churchill Mercer LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify:

1. the bulk regulations of Section 43-17 to allow a building containing joint living-work quarters for artists to be enlarged; and
2. the use regulations of Section 42-14(D)(2)(b) to allow retail use (Use Group 6) on portions of the ground floor and cellar;

of an existing five-story building and proposed penthouse enlargement, on property located at 5-7 Mercer Street (Block 230, Lot 42), in an M1-5B zoning district, within the SoHo Cast-Iron Historic District, Borough of Manhattan, Community District 2.

This application for a special permit pursuant to Section 74-711 of the Zoning Resolution (ZR) was filed on November 27, 2019 by Square-Churchill Mercer LLC. The applicant requests a modification of the bulk regulations of ZR Section 43-17 to allow a building containing joint living-work quarters for artists (JLWQA) to be enlarged and the use regulations of ZR Section 42-14(D)(2)(b) to permit Use Group 6 retail uses below the level of the second story of an existing building located at 5 Mercer Street (Block 230, Lot 42), within an M1-5B zoning district, in the SoHo-Cast Iron Historic District Extension of Manhattan Community District 2.

BACKGROUND

5 Mercer Street is located on the west side of Mercer Street between Canal Street and Grand Street. The 5,000-square-foot zoning lot is improved with a five-story building with a built floor area of 23,802 zoning square feet and a floor area ratio (FAR) of 4.76. The building rises to a total height of 78 feet 8 inches at the street wall without setback. The building on the site was originally constructed in 1861 and used primarily for warehousing and other manufacturing uses. The ground floor and cellar have been occupied by Use Group 6 retail uses out of conformance with the ZR since at least 2009. The building was registered with the New York City Loft Board in 1983. There are currently seven interim multiple dwelling (IMD) units undergoing legalization under the jurisdiction of the Loft Board: one on the second floor, two on the third floor, two on

the fourth floor, and two on the fifth floor. In addition, there is a commercial unit on the second floor occupied by an office use. On February 13, 2019, the building was issued a temporary Certificate of Occupancy permitting seven JLWQA units on floors two through five and one commercial unit on the second floor. Upon issuance of a permanent Certificate of Occupancy for occupancy of the IMD units as JLWQA units, the building would be removed from the Loft Board's jurisdiction and six of the JLWQA units would thereafter be subject to rent regulation; one of the fifth-floor JLWQA units was the subject of a sale of rights and is market rate.

5 Mercer Street is located within an M1-5B zoning district, which allows commercial uses and light manufacturing uses up to an FAR of 5.0, and community facility uses up to an FAR of 6.5. For buildings in an M1-5B zoning district, the space below the floor level of the second story may only be occupied by Use Group 7 (home maintenance and repair), 9 (business services), 11 (custom manufacturing), 16 (semi-industrial), or 17A, 17B, 17C, and 17E (light industrial) uses. Retail uses (Use Group 6) are not permitted below the floor level of the second story. Except for certain exemptions, JLWQA units must be occupied and used by certified artists and their families. Residential uses are not permitted as-of-right. In M1-5B zoning districts, pursuant to ZR Section 43-17, a building containing JLWQA units may not be enlarged as-of-right.

Once characterized primarily by manufacturing and heavy commercial uses, the surrounding SoHo neighborhood has evolved into a mixed-use district. Buildings within the vicinity of the project site are typically mixed-use loft buildings ranging from four to 12 stories in height, with a variety of uses, including ground-floor retail, eating and drinking establishments, commercial offices, JLWQA units, IMD units, or Use Group 2 residential units. First floor Use Group 6 retail uses exist throughout the area and are permitted through several mechanisms, including special permits by the City Planning Commission (CPC), variances by the Board of Standards and Appeals and legally non-conforming exempted uses. Some are in buildings with small footprints (less than 3,600 square feet) and are therefore permitted as-of-right in M1-5A districts.

The applicant proposes to construct a 1,384-square-foot, sixth-floor penthouse addition to the building, which would be set back approximately 48 feet from the street wall within the

permitted bulk envelope created by the sky exposure plane, which would result in a total zoning square footage of 24,802 square feet (4.94 FAR), within the 5.0 maximum FAR permitted for commercial and manufacturing uses in the M1-5B zoning district. While the penthouse addition would include 1,384 square foot of zoning floor area, this expansion would result in a net increase of 888 square feet (0.18 FAR) to the building, as the fifth-floor mezzanine would be reduced by 496 square feet to accommodate the expansion. Additionally, the building's height would be increased by seven feet, eight inches, for a total building height of 86 feet, four inches. The proposed sixth-floor penthouse addition would be appurtenant to one of the existing fifth-floor JLWQA units. Therefore, there would be no net increase in the number of JLWQA units.

The applicant also proposes to legalize the two existing, non-conforming retail clothing stores on the ground floor and cellar. Together, the two retail units occupy approximately 4,700 zoning square feet on the ground floor (0.94 FAR) and 4,798 gross square feet in the cellar, for a total retail floor area of approximately 9,498 square feet. No new construction is proposed for the ground floor or cellar.

On March 30, 2018, the Landmarks Preservation Commission (LPC) issued a report (LPC-19-23413) stating that a program has been established for continuing maintenance, and that the proposed restorative work required under the program contributes to a preservation purpose. At the same time, the LPC issued a Certificate of Appropriateness (LPC-19-23412) for the proposed penthouse addition and associated restorative work.

ENVIRONMENTAL REVIEW

This application (C 200205 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 is the City Planning Commission and the designated CEQR number is 20DCP079M.

After a study of the potential environmental impacts of the proposed action, a Negative

Declaration was issued on October 19, 2020.

WATERFRONT REVITALIZATION PROGRAM

This application (C 200205 ZSM) was reviewed pursuant to the New York State Waterfront Revitalization and Coastal Resources Act of 1981 (New York State Executive Law, Section 910 et seq.) for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New York City Council on October 30, 2013 and by the New York State Department of State on February 3, 2016. The designated WRP number is 17-129. This action was determined to be consistent with the policies of the New York City WRP by the City Coastal Commission.

UNIFORM LAND USE REVIEW

This application (C 200205 ZSM) was certified as complete by the Department of City Planning on October 19, 2020 and duly referred to Manhattan Community Board 2 and the Manhattan Borough President in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Public Hearing

Manhattan Community Board 2 held a public hearing on this application (C 200205 ZSM) on November 23, 2020 and by a vote of 46 in favor, none opposed, and none abstaining, adopted a resolution to approve the request to modify the use regulations of Section 42-14(D)(2)(b) to allow retail use (Use Group 6) on portions of the ground floor and cellar with the following conditions:

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

The Community Board voted to disapprove the request to modify the bulk regulations of ZR Section 43-17 to allow a building containing JLWQA units to be enlarged until the applicant agrees to meet the following conditions:

- “1. The legalization of all the units under the Loft Law.
2. All zoning violations have been cured.
3. The building has received a final Certificate of Occupancy.”

Borough President Recommendation

This application (C 200205 ZSM) was considered by the Manhattan Borough President, who, on December 22, 2020, issued a recommendation to disapprove the application until the applicant agrees to meet the following conditions:

- “1. Obtain a final Certificate of Appropriateness by the Landmarks Preservation Commission.
2. Resolve all open violations.
3. Obtain a final Certificate of Occupancy from the Department of Buildings.
4. Resolve the status of the fifth-floor unit.”

City Planning Commission Public Hearing

On January 6, 2021 (Calendar No. 7) the City Planning Commission scheduled January 20, 2021 for a public hearing on this application (C 200205 ZSM). The hearing was duly held on January 20, 2021 (Calendar No. 30). Three speakers testified in favor of the application and one in opposition.

The applicant’s representative spoke in support of the application and discussed how they believed the application met the findings of ZR Section 74-711, noting that ground-floor retail uses are widely distributed throughout SoHo and in the immediate vicinity. They cited the Envision SoHo/NoHo report as evidence of broad support among local stakeholders for allowing a wider range of commercial uses as of right throughout the M1-5A/M1-5B zoning districts. In response to the Community Board and Manhattan Borough President’s conditions, the applicant’s representative stated that tenancy and rent rights are protected under the Loft Law and that the tenants have been notified of all legalization work and have not objected to such work. The applicant’s representative further stated that, given the uncertainty surrounding brick-and-mortar retail in the current economic climate, it is necessary for the applicant to retain the

option of combining the two retail spaces and to consider all allowable uses in order to attract viable tenants. In particular, the applicant's representative noted that the Envision SoHo/NoHo report emphasizes the relative scarcity of eating and drinking establishments in neighborhood. The applicant's representative further stated that upon approval of the special permit, the open violation for operating a Use Group 6 retail establishment out of conformance with zoning would be resolved. Subsequent to the completion of the façade restoration work and sixth-floor penthouse addition, a permanent Certificate of Occupancy would be sought.

The architects for the project spoke in favor of the historic restoration work that would be undertaken as a result of this application. They stated that the restoration and conservation of the exterior would be remarkable given the unique character of the marble façade.

A representative of Manhattan Community Board 2 spoke in opposition to the application. The speaker testified that the Community Board's recommendation to disapprove the application was based on the deleterious effect of potential nuisances on the surrounding residents, particularly noise, trash, and traffic. The speaker noted that the Community Board is generally supportive of ground-floor retail uses and small eating and drinking establishments, so long as residents' quality of life concerns are respected.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the grant of this special permit (C 200205 ZSM) is appropriate.

5 Mercer Street is five-story, cast-iron building that currently contains retail use on the ground and cellar floors. There is one Use Group 6 commercial office unit on the second floor. There are seven IMD units on floors two through five that are undergoing legalization as JLWQA. All of these units are currently occupied.

The requested action will permit the modification of both the bulk regulations of ZR Section 43-

17 to allow the building to be enlarged with a sixth-floor penthouse and of the use regulations of ZR Section 42-14(D)(2)(b) to allow the building's ground and cellar floors to continue to be used for retail use (Use Group 6). The enlarged building will have a total floor area of 24,802 square feet (4.94 FAR), which is within the 5.0 maximum FAR permitted for commercial and manufacturing uses within the M1-5B zoning district.

The Commission recognizes that over the past 40 years the surrounding SoHo neighborhood has evolved from a primarily manufacturing district to a mixed-use area with a dynamic mix of retail uses, office uses, residential uses and few remaining manufacturing and light industrial uses. Most of the buildings in the area – primarily five- to 12-story loft-style industrial buildings - contain ground-floor retail uses with residential, JLWQA space, or office uses above. Therefore, the Commission believes that the proposed enlargement of a JLWQA unit and legalization of Use Group 6 retail use is consistent with the prevailing land use pattern found on neighboring blocks. Additionally, the proposed actions will not adversely affect any conforming uses within the building, as the building will continue to be occupied by JLWQA use on the upper floors.

The Commission notes that the restrictions imposed by the existing M1-5B zoning on ground-floor retail uses represent a significant barrier to businesses and contribute to high retail vacancies and lack of storefront diversity. The Commission believes that a diversity of amenities, including eating and drinking establishments, are necessary components of vibrant, mixed-use districts that better sustain the daytime working and shopping populations. The Commission further notes that the Department of City Planning has been working with the Borough President's office and the local Councilmember's office to engage local stakeholders in a dialogue about broader planning and zoning issues in SoHo and NoHo. The Commission encourages an updated zoning framework for SoHo and NoHo that better reflects the mixed-use nature of the neighborhoods, allows for a broader range of commercial uses as of right, and helps to reduce zoning barriers for businesses.

The Commission notes receipt of a report from the LPC (LPC-19-23413) dated March 30, 2018, stating that it has reviewed the proposal and that the proposed enlargement relates harmoniously

to the subject building. The LPC report also notes that the proposed penthouse would not be visible at street level and that a continuing maintenance program has been established that will contribute to a preservation purpose and help return the building closer to its original appearance, reinforce the architectural and historic character of the building, streetscape, and SoHo-Cast Iron Historic District, and will bring the building up to a sound first-class condition and aid in its long-term preservation.

The City Planning Commission, therefore, believes that grant of the requested special permit, is appropriate.

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-711 (Landmark Preservation in all Districts) of the Zoning Resolution:

- 1) Such bulk 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 use modifications shall have minimal adverse effects on the conforming uses within the building and in the surrounding area.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the actions described herein will have no significant impact on the environment; and be it further

RESOLVED, that the City Coastal Commission finds that the actions described herein are consistent with the policies of the New York City Waterfront Revitalization Program; and be it further

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 findings described in this report, the application submitted by Square-Churchill Mercer LLC

pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify:

1. the bulk regulations of Section 43-17 to allow a building containing joint living-work quarters for artists to be enlarged; and
2. the use regulations of Section 42-14(D)(2)(b) to allow retail uses (Use Group 6) on portions of the ground floor and cellar;

of an existing five-story building and proposed penthouse enlargement, on property located at 5-7 Mercer Street (Block 230, Lot 42), in an M1-5B District, within the SoHo-Cast Iron Historic District, Borough of Manhattan, Community District 2 is approved subject to the following conditions:

1. The property that is the subject of this application (C 200205 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 Joseph Pell Lombardi Architects filed with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
CPC 01	Zoning Analysis	02/06/2020
CPC 02	Zoning Lot Site Plan	11/15/2019
CPC 03	Ground Floor Plan	11/15/2019
CPC 04	Cellar Plan	11/15/2019
CPC 09	Penthouse Plan	11/15/2019
CPC 10	Waiver Plan	11/15/2019
CPC 11	Waiver Building Section A-A	11/15/2019
CPC 12	Waiver Building Section B-B	11/15/2019

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. Development pursuant to this resolution shall be allowed only after the attached restrictive declaration dated February 12, 2021, executed by Square-Churchill Mercer LLC, the terms of which are hereby incorporated in this resolution, shall have been recorded and filed in the Office of the Register of the City of New York, County of New York.
6. 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.

7. 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 200205 ZSM), duly adopted by the City Planning Commission on February 17, 2021 (Calendar No. 9), is filed with the Office of the Speaker, City Council, and the Manhattan Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

MARISA LAGO, *Chair*

KENNETH J. KNUCKLES, ESQ., *Vice Chairman*

**DAVID BURNEY, ALLEN P. CAPPELLI, ESQ., ALFRED C. CERULLO III,
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ORLANDO MARÍN, LARISA ORTIZ, RAJ RAMPERSHAD**, *Commissioners*

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COMMUNITY BOARD NO. 2, MANHATTAN

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November 23, 2020

Marisa Lago, *Chair*
City Planning Commission
22 Reade Street
New York, NY 10007

Dear Ms. Lago:

At its Full Board meeting on November 19, 2020, CB#2, Manhattan (CB2, Man.), adopted the following resolution:

5 Mercer St. (between Canal St. and Grand St.) - DCP N200205ZSM is an application submitted by Square-Churchill Mercer LLC pursuant to Zoning Resolution 74-711 for a special permit to modify (1) the use requirements of ZR 42-14D(2)(b) to allow Use Group 6 retail use on the ground floor and cellar, and (2) the bulk requirements of ZR 43-17 to allow the enlargement of a building containing Joint Live Work Quarters for Artists (JLWQA).

Whereas:

1. The five-story, formerly industrial building is located in the M1-5B SoHo-Cast Iron Historic District.
2. The property is a 5000sf zoning lot that contains approximately 23,800sf floor area and is occupied on the ground floor and cellar by two non-conforming Use Group 6 retail uses and on floors 2-5 by one conforming Use Group 6 commercial use, plus Use Group 17D JLWQA units, also known as Interim Multiple Dwelling (IMD) units.
3. The building became protected under Article 7-C of the Multiple Dwelling Law pursuant to the 1982 version of the law, which required the existence of at least three units in the building that were residentially occupied during the original "window period" of April 1, 1980 to December 31, 1981.
4. Because the compliance process was never completed, it is still under Loft Board control.
5. At that time, there were eight IMD units covered under Article 7-C of the Multiple Dwelling Law (Loft Law): three on the second floor, two on the third floor, one on the fourth floor and two on the fifth floor.

6. In 1997, one of the second-floor units was abandoned and became an owner-occupied commercial unit, for a total of seven covered IMD units and one non-covered commercial unit.
7. In 2008, tenants in a second-floor front unit and a fifth-floor rear unit sold their rights and became BUYR units, for a total of five covered IMD units, two non-covered IMD units and one non-covered commercial unit.
8. In 2009, the fourth-floor IMD unit was subdivided into two and registered with the Loft Board. As a result of the subdivision, there are now a total of nine units: six covered IMDs, two non-covered IMDs and one commercial unit.
9. The second floor BUYR unit will be combined with the non-IMD rear unit as a single commercial unit. The second floor will therefore contain one JLWQA unit and one commercial unit. On floors 3-5, there will be two JLWQA units on each floor.
10. With the combination, there are now once again a total of eight units: six JLWQA IMD units (one on the second floor, two on the third floor, two on the fourth floor, and one on the fifth floor), one non-covered IMD residential unit and one commercial unit.
11. The building is subject to a 2018 NYC LPC Certificate of Appropriateness for certain façade restoration work and the addition of a 1384sf penthouse (an 888sf net addition to the floor area of the building) that will become part of the fifth-floor rear (5W) JLWQA unit. (A Certificate of Appropriateness does not guarantee approval of a request for a 74-711.)
12. Allowable FAR is 5.0. With the addition of the net 888sf penthouse, total floor area will be 24,690sf (4.94 FAR).
13. The LPC conditioned its approval of the rooftop addition on the removal of the fire escape from the front of the building to the rear. That is being challenged by the tenants and is currently docketed for an OATH hearing in February or March 2021.
14. There is also an ECB zoning violation (for non-conforming ground floor UG 6 retail use) currently in the process of being heard at OATH.
15. In February 2019, DOB issued a Temporary Certificate of Occupancy, which according to the DOB website expires on November 26, 2019. It shows seven JLWQA units on floors 2-5 (six covered, one non-covered BUYR unit) and one commercial unit on the second floor.
16. The JLWQA units are currently occupied pursuant to leases and rents approved by the Loft Board. The applicant will continue to preserve the dwelling units as JLWQA.
17. The attorney for the applicant and the attorney for the tenants cannot agree on the status of the fifth-floor BUYR unit that is intended to be combined with the proposed penthouse: The applicant's attorney contends that the BUYR 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.

Therefore be it resolved, with respect to the request for a special permit to allow Use Group 6 retail on the ground floor and cellar, CB2 does not believe the proposed change of use would be harmful to neighborhood character if the following conditions are included:

1. Permanent separation of the two retail spaces.
2. No eating and drinking establishments on the ground floor.
3. Tenants' rights and safety are protected during any construction.

Be it further resolved, with respect to the request for a special permit to allow the enlargement of a building containing Joint Live Work Quarters for Artists, that given the uncertain status of the fifth-floor BUYR unit and the fact that the building has languished at the Loft Board for 35+ years, CB2 recommends denial of the approval of the construction of the penthouse until all the units have been legalized (at which point the status of the two BUYR and the JLWQA units will be resolved), the zoning violations have been cured, and the building has a final Certificate of Occupancy.

Vote: Passed unanimously with 46 Board members in favor.

Please advise us of any decision or action taken in response to this resolution.

Sincerely,



Carter Booth Chair
Community Board #2, Manhattan



Frederica Sigel, Chair
Land Use & Housing Committee
Community Board #2, Manhattan

CB/jt

- c: Hon. Jerrold Nadler, Congressman
Hon. Brian Kavanagh, State Senator
Hon. Deborah Glick, Assembly Member
Hon. Gale A. Brewer, Manhattan Borough President
Hon. Margaret Chin, City Council Member
Andrew Cantu, Dept. of City Planning



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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