



## CITY PLANNING COMMISSION

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August 10, 2011/Calendar No. 10

C110235ZSM

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**IN THE MATTER OF** an application submitted by 30-40 Associates 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 42-14D(2)(b) to allow Use Group 6 uses (retail uses) on portions of the ground floor and cellar of an existing 5-story building, on property located at 38-40 Grand Street (Block 476, Lot 88), in an M1-5B District, Borough of Manhattan, Community District 2.

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The application was filed by 30-40 Associates Corp. on February 28, 2011, for a special permit pursuant to Section 74-781 of the Zoning Resolution to modify the use regulations of Section 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

38-40 Grand Street is a five-story residential building (Block 476, Lot 88) located on the north side of Grand Street between Thompson Street and West Broadway. The subject building occupies 1,883 square feet of lot area; 7785 square feet of floor area; and a FAR (floor area ratio) of 4.13.

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 1,791 square feet of Use Group 6 use; on the ground floor (1,305 square feet) and cellar (486 square feet) of 38-40 Grand Street. The

This application seeks to allow a total of approximately 1,791 square feet of Use Group 6 use; on the ground floor (1,305 square feet) and cellar (486 square feet) of 38-40 Grand Street. The ground floor contains two pre-existing non-conforming residential units; one of the units is occupied and the other unit is vacant. The remaining floors contain residential units.

The surrounding neighborhood is primarily characterized by four- to seven-story buildings with upper floor residential use and a mix of residential and commercial uses on the the ground floor .

### **ENVIRONMENTAL REVIEW**

This application (C 110235 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. The CEQR number is 11DCP095M.

This application was determined to be a Type II action which requires no further environmental review.

### **UNIFORM LAND USE REVIEW**

This application (C 110235 ZSM) was certified as complete by the Department of City Planning on March 28, 2011, 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 12, 2011, and on May 19, 2011, by a vote of 38 to 0 with no abstentions, adopted a resolution recommending disapproval of the application unless the applicant agrees to ban an eating and drinking establishment at this location.

### **Borough President Recommendation**

This application was considered by the Borough President, who issued a recommendation on June 27, 2011, approving the application.

### **City Planning Commission Public Hearing**

On June 22, 2011 (Calendar No. 14) the City Planning Commission scheduled July 13, 2011, for a public hearing on this application (C 110235 ZSM). The hearing was duly held on July 13, 2011 (Calendar No. 27).

There were two speakers in favor of the application, and none opposed. The applicant briefly described the proposed project and then described the good faith marketing efforts taken as part of the proposal. 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 110235 ZSM) pursuant to Section 74-781 of the Zoning Resolution would modify the use regulations of Section 42-14D(2)(b) and allow Use Group 6 uses on the ground floor and cellar level of the subject building.

The Commission believes the applicant has made the necessary good faith marketing effort for a period of more than six months. Such efforts included signing an agreement with a real estate broker at the end of 2008 familiar with marketing space in SoHo; and publishing weekly ads in the New York Press and the New York Post beginning January 2009. Additional efforts included notifying local and citywide industry groups of the availability of the spaces, as well as the New York City Economic Development Corporation. Such marketing efforts proved unsuccessful as they did not succeed in obtaining a conforming use.

Approval of the special permit application (C 110235 ZSM) pursuant to Section 74-781 of the Zoning Resolution would modify the use regulations of Section 42-14D(2)(b) and allow Use Group 6 uses on the ground floor and cellar level of the subject building.

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 201 of the New York City Charter, that based on the environmental determination, consideration and finding described in this report, the application of 30-40 Associates Corp. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a for the grant of a special permit pursuant to Section 74-781 of the Zoning Resolution to modify the use regulation of Section 42-14D(2)(b) to allow Use Group 6 uses (retail uses) on portions of the ground floor and cellar of an existing five-story building on property located at 38-40 Grand Street (Block 476, Lot 88), in an

M1-5B District within the SoHo-Cast Iron Historic 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 110235 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 PJARCHITECTS, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
A-001.00	Plot Plan & Zoning Analysis	2.23.11
A-201.00	Proposed Plans Cellar & 1 <sup>st</sup> Floor	2.23.11

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 110235 ZSM), duly adopted by the City Planning Commission on August 10, 2011, (Calender No. 10) 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**  
**ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,**  
**ALFRED C. CERULLO, III, BETTY Y. CHEN, MARIA M. DEL TORO,**  
**SHIRLEY A. MCRAE, KAREN A. PHILLIPS, Commissioners**



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**COMMUNITY BOARD No. 2, MANHATTAN**

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May 23, 2011

Amanda Burden, *Chair*  
Department of City Planning  
22 Reade Street  
New York, New York 10007

Dear Chair Burden:

At its Full Board meeting on May 19, 2011, CB#2, Manhattan (CB#2-Man.), adopted the following resolution:

**38-40 Grand Street, City Planning Commission Special Permit Application pursuant to Section 74-781 to convert portions of the ground floor and cellar of a 5-story building to Use Group 6 retail (Eating & Drinking Establishment) in an M1-5B zoning district.**

**WHEREAS**, There are other Use Group 6 store fronts on this block, And,

**WHEREAS**, There are many Use Group 2 residential apartments on this block and in this building, And,

**WHEREAS**, CB#2, Man. has had numerous complaints about the over saturation of Eating and Drinking Establishments in this area, And

**WHEREAS**, The surrounding blocks have a very active night life that keeps residents awake at night, And,

**WHEREAS**, At the time of the public hearing the applicant was asked to agree to ban an eating and drinking establishment at this location, however, the applicant was unable to give an answer at that time;

**THEREFORE BE IT RESOLVED**, that CB#2, Man. recommends denial of this application unless the applicant agrees to ban an eating and drinking establishment at this location, And,

**THEREFORE BE IT FURTHER RESOLVED**, that CB#2, Man. does not object to other Use Group 6 uses at this location.

Vote: Unanimous, with 38 Board members in favor.



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



Jo Hamilton, Chair  
Community Board #2, Manhattan



David Reck, Chair  
Zoning and Housing Committee  
Community Board #2, Manhattan

JH/fa

cc: Hon. Jerrold L. Nadler, Congressman  
Hon. Thomas K. Duane, NY State Senator  
Hon. Daniel Squadron, NY State Senator  
Hon. Deborah J. Glick, Assembly Member  
Hon. Scott M. Stringer, Man. Borough President  
Hon. Christine C. Quinn, Council Speaker  
Lolita Jackson, Manhattan Director, CAU  
Vivian Awner, Community Board Liaison, Dept. of City Planning  
Land Use Review Unit, Dept. of City Planning  
Jeff Mulligan, Executive Director, Board of Standards & Appeals  
Derek Lee, Man. Borough Commissioner, NYC Department of Buildings

**OFFICE OF THE PRESIDENT  
BOROUGH OF MANHATTAN**



**SCOTT M. STRINGER**  
BOROUGH PRESIDENT

June 27, 2011

**Recommendation on ULURP Application No. C 110235 ZSM – 38-40 Grand Street by 30-40 Associates Corp.**

**PROPOSED ACTION**

30-40 Associates Corp.<sup>1</sup> seeks approval for a **special permit pursuant to Section 74-781 of the Zoning Resolution** (“ZR”) to modify the use regulations of ZR § 42-14(D)(2)(b) to allow Use Group 6 (retail and service establishments) uses on the ground floor and a portion of the cellar level of an existing building located at 38-40 Grand Street (Block 476, Lot 88). The proposed project site is located within an M1-5B zoning district in Manhattan Community District 2.

In order to grant the special permit, the City Planning Commission (“the Commission”) must find 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 rate. Such efforts shall include but not be limited to, advertising in local and citywide press, listing the space with brokers, and notifying industry groups. Such efforts shall have been actively pursued for a period of no less than twelve months for buildings over 3,600 square feet, prior to the date of the application for a special permit.

**PROJECT DESCRIPTION**

The applicant seeks approval to permit retail and commercial uses (Use Group 6) on the ground floor and portions of the cellar of an existing five-story residential building. The building contains 7,785 SF of zoning floor area, and it is located on the north side of Grand Street between Thompson Street and West Broadway. The building previously contained a total of 20 residential units, with 4 units per floor. Three of four ground-floor residential units were vacated around 2007. One unit on the ground floor remains occupied today. The tenant’s lease is subject to rent stabilization laws and can only be vacated in accordance with the rules and regulations of the New York State Department of Housing and Community Renewal.

Since 2007, the owner retained possession of the vacant ground-floor units and began interior

<sup>1</sup>The corporation’s principal owner is Antonio Vendome.

construction work.<sup>2</sup> If the special permit is approved, the applicant will renovate the vacated units for commercial use. The remaining occupied unit will only be incorporated into the commercial space if the unit is vacated. The applicant anticipates occupying the subject space with an eating and drinking establishment that would occupy 1,305 SF on the ground floor with 486 SF of accessory space in the cellar level.

The building is located within an M1-5B zoning district, which contains use restrictions for spaces below the second story of any building. In this zoning district, only Use Groups 7, 9, 11, 16, 17A, 17B, 17C or 17E (generally wholesale, warehousing, and light manufacturing uses) are permitted as of right below the second story. Use Group 6 uses, which include retail and service establishments that serve local shopping needs, are not permitted.

The surrounding area consists of mixed-use buildings with local retail or commercial establishments on the ground floor and residential units on the upper floors. The south side of the street, directly across from the project site, contains a mix of uses including commercial buildings, a parking lot, and a mixed-use building.

### **COMMUNITY BOARD'S RECOMMENDATION**

At its Full Board meeting on May 19, 2011, by unanimous vote of 38 in favor, Manhattan Community Board 2 recommended conditional disapproval of this application, provided that the proposed Use Group 6 use for the subject space not be an eating and drinking establishment.

The Community Board's recommendation stated that the Community Board did not object to Use Group 6 uses at this location, but did object to an eating and drinking establishment. The Community Board has been concerned about an over-saturation of eating and drinking establishments in this area. The Board notes the high concentration of this use has produced late night activities and high noise levels that are not compatible with the predominately residential uses in the area.

### **BOROUGH PRESIDENT'S COMMENTS**

Manhattan's SoHo neighborhood has undergone significant transition where areas that were once characterized by their manufacturing uses now contain greater residential and commercial uses. As uses in the neighborhood continue to reflect a greater mixed-use character, it is important that the Commission monitors these changes and their effects carefully to ensure that as-of-right uses be given priority in order to maintain the integrity of the neighborhood's zoning.

The special permit pursuant to ZR § 74-781 allows certain use modifications in buildings located within M1-5A and M1-5B districts. The modification is permitted only when the Commission has found that a good-faith effort was made to rent such space for a mandated use at fair market rate, and that the application has met the finding. Since the subject building is over 3,600 SF, the applicant was required to market the space for one year.

<sup>2</sup>The owner had started construction work to combine three vacant units on the ground floor, which was not permitted by the Department of Buildings. The owner is taking corrective measures to allow for the alteration. In the event that this special permit is not granted, the owner will continue to use the ground floor for residential use.

The applicant's good faith marketing campaign to rent the subject space for a conforming commercial/manufacturing use at fair market rate began in January 2009 and ended in January 2010. The applicant hired a local broker that led marketing efforts and, during the one-year period, placed advertisements for the subject space with *The New York Post* and *The New York Press*. Additionally, the applicant notified the New York City Economic Development Corporation and local and citywide groups of the available space. The industry groups included the Association of Commercial Property Owners, the Garment Industry Development Corporation, and the Chinese-American Planning Council. The applicant also kept a call log during the one-year marketing period that indicates that even with the aforementioned marketing efforts, the applicant was unsuccessful in finding a conforming use tenant.

The community board has expressed valid concerns regarding the potential impacts of uses permitted through special permits on existing uses within the neighborhood. Though legitimate concerns, these are not directly related to the findings of the requested special permit. The special permit process allows a use modification only when the Commission has found that the application meets certain findings – that the property owner has made a good faith effort to rent such space to a permitted use at fair market rate. However, if the requested special permit is granted, the applicant should work with the community to ensure that potential impacts are minimized. In addition, the applicant should work with the tenants to ensure that construction activity associated with the renovation is minimally disruptive.

#### **BOROUGH PRESIDENT'S RECOMMENDATION**

The application for a use modification to allow Use Group 6 on the ground floor and cellar of an existing five-story building at 38-40 Grand Street meets the required finding for the requested special permit, namely that the owner of the space, or a predecessor in title, has made a good faith effort to rent such space to a mandated use at fair market rate.

**Therefore, the Manhattan Borough President recommends approval of ULURP Application No. C 110235 ZSM, to grant a Special Permit pursuant to ZR § 74-781.**

Manhattan Borough President



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Scott M. Stringer