



CITY PLANNING COMMISSION

February 3, 2021/Calendar No. 17

C 200169 ZSM

IN THE MATTER OF an application submitted by 65 Spring Realty, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-781 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 portions of the ground floor and cellar of an existing five-story building, on property located at 65 Spring Street (Block 496, Lot 35), in an M1-5B District, SoHo Cast-Iron Historic District Extension, Borough of Manhattan, Community District 2.

This application for a zoning special permit pursuant to Section 74-781 of the Zoning Resolution (ZR) was filed on October 29, 2019. The applicant, 65 Spring Realty LLC, requests modification of the use regulations of ZR Section 42-14(D)(2)(b) to permit retail uses below the level of the second story of an existing building located at 65 Spring Street, Manhattan Community District 2.

BACKGROUND

This application for a special permit pursuant to ZR Section 74-781 would allow retail uses (Use Group 6) on portions of the ground floor and cellar of an existing five-story building located at the development site (Block 496, Lot 35). The upper floors of the building will continue to be occupied by Use Group 2 residential uses, which have been occupied as such since the building was constructed in the mid-19th Century. 65 Spring Street is located on the north side of Spring Street on the block bounded by Lafayette Street to the east, Prince Street to the north, and Crosby Street to the west. The development site is located within an M1-5B zoning district and the SoHo-Cast Iron District Extension.

The development site is 25-foot-wide, approximately 77-foot-deep, irregularly shaped lot located on the north side of Spring Street between Crosby Street and Lafayette Street, and is improved with a five-story, 52-foot-tall mixed residential and commercial building. The 1,945-square-foot lot has a 15-foot rear yard. There are eight residential units in total on floors two to five. The first

floor and cellar contain two pre-existing, legally non-conforming retail storefronts containing a clothing store and an eyewear store. A Department of Housing and Buildings I-card – a record documenting the required building improvements of tenements and multiple dwellings utilized before the adoption of certificates of occupancy - issued on March 11, 1942 shows that the ground floor was occupied by a restaurant and candy shop. Therefore, the application pertains only to the proposed expansion of the existing building.

The building contains 7,751 square feet of zoning floor area with a floor area ratio (FAR) of 3.98. The building has 1,377 square feet on the first floor and 6,200 square feet of total residential floor area (eight residential units) on the upper floors. The cellar contains 1,329 square feet of accessory space for the first-floor retail uses and 221 square feet of mechanical space (total 1,550 gross square feet). The building does not have an elevator. Although the development site does not front on Lafayette Street, there is access from Lafayette Street to the rear yard of the development site via a narrow prescriptive easement over the adjoining lot to the east (Block 496, Lot 34), which is not controlled by the applicant.

Once characterized primarily by manufacturing and heavy commercial uses, the surrounding SoHo neighborhood has evolved into a vibrant mixed-use district. Buildings within the vicinity of the development site are typically mixed-use loft buildings generally ranging from three to 12 stories in height, with a variety of uses, including ground floor retail establishments, restaurants, bars, offices, Joint Living-Work Quarters for Artists (JLWQA), and Use Group 2 residential units. Ground-floor local service and retail establishments, including cafes, boutiques, and variety stores, are ubiquitous on this block and the blockface directly opposite the development site. Within the Special Little Italy District located immediately to the east across Lafayette Street, retail uses are allowed as of right pursuant to the underlying C6 zoning district regulations.

The development site is located in an M1-5B zoning district, which allows a maximum floor area

ratio (FAR) of 5.0 for commercial and light manufacturing uses, and 6.5 for community facility uses. The M1-5B district limits uses in the space below the floor level of the second story to those listed in Use Groups 7, 9, 11, 16, 17A/B/C/F, which include uses such as repair shops, print stores, jewelry manufacturing, and other light manufacturing uses.

The applicant proposes to expand the ground floor by approximately 15 feet to the rear property line and add an exit stairwell, increasing the floor area on the first floor by 344 square feet, from 1,377 square feet to 1,721 square feet. The cellar would be expanded by 375 square feet, from 1,550 square feet to 1,925 square feet. The renovation would allow for the construction of two ADA-accessible bathrooms on the first floor, one for each retail unit, and a stairway between the cellar to the rear yard. The total additional floor area that is subject to the special permit would be 719 square feet. The total zoning square footage of the building would increase from 7,751 square feet (3.98 FAR) to 8,095 square feet (4.16 FAR).

The proposed Use Group 6 retail uses on the ground floor and cellar are not permitted as-of-right. ZR Section 74-781 requires the applicant to undertake and document a six-month or one-year marketing effort to rent the subject space to a conforming use at fair market rent prior to filing the land use application. Such efforts include, but are not limited to advertising in local and citywide press, listing the space with brokers, and informing local and citywide industry groups. Prior to the date of application for a special permit, these efforts are required to be 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. The building at 65 Spring Street occupies less than 3,600 square feet of lot area and therefore was required to be marketed for six months.

From April 2018 to June 2019, a marketing period beyond the required six months, the applicant advertised the availability of space for wholesale, service, light manufacturing, and other

conforming uses allowed by ZR Section 42-10 at \$80 per square foot (\$28,320 per annum)¹ for the 344-square-foot, first-floor expansion. The 375 square feet of cellar space was included at no additional cost. The applicant's marketing efforts included placing weekly advertisements in two print periodicals – one local and one city-wide; listing the space online with two brokerages, including a firm specializing in industrial leasing; and mailing information to various industry groups. According to the applicant, despite these efforts, there has been no success securing as-of-right uses for the space as of the date of the application's filing. Four inquiries from interested parties were documented: one was seeking space for a non-conforming use; two determined that the space was too small for their purposes; and a fourth prospective tenant seeking a short-term lease was unwilling to provide evidence of financial solvency and thus not considered creditworthy.

ENVIRONMENTAL REVIEW

This application (C 200169 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 designated CEQR number is 20DCP061M.

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

UNIFORM LAND USE REVIEW

This application (C 200169 ZSM) was certified as complete by the Department of City Planning on November 2, 2020 and duly referred to Manhattan Community Board 2 and the Manhattan

¹Due to a typographical error, the advertisement erroneously listed the space as 354 square feet, rather than 344. Therefore, based on the \$80/SF figure, the annual rent should have been listed as \$27,520, a difference of \$800. DCP Counsel's Office has determined this to be a *de minimis* adjustment.

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 200169 ZSM) on November 19, 2020 and by a vote of 46 in favor, none opposed, and none abstaining, adopted a resolution to disapprove the application, unless the applicant agreed to meet certain conditions. The Community Board's recommendation included the following:

“Therefore be it resolved that CB2 recommends denial due to the flawed requirements of the ‘good faith marketing effort’ program, though we do not believe that the proposed use would harm neighborhood character if the following stipulations were included:

1. No eating and drinking establishments.
2. Keep the two stores separate per LPC.
3. A Tenant Protection Plan is submitted to DOB that includes maintaining residential emergency egress and managing trash.
4. A plan for safe excavation and protection of the adjoining building.
5. Documentation for a legal easement is in place.
6. No mechanical equipment is put on the roof of the extension and the venting of the extension should be moved as far away as possible so that it does not disturb the residential neighbors.

Be it further resolved that CB2 once again strongly calls on DCP to provide better guidance and supervision to applicants with respect to market conditions, marketing plans, and range of possible uses, including:

1. Updating the list of recommended places to advertise.
2. Updating the list of recommended industry groups to contact and specifying the contents and purpose of the letter that applicants must write to them.

3. Revising the recommended price per square foot to adequately reflect the prevailing market conditions for the site of each application.
4. Eliminating the square foot charge for cellar and sub-cellar space for conforming uses.

Be it finally resolved that CB2, which represents the community and has intimate knowledge of its neighborhoods and market conditions, be permitted to review such marketing plans and guidelines at the beginning, rather than at the end, of the process.”

Borough President Recommendation

This application (C 200169 ZSM) was considered by the Manhattan Borough President, who, on December 22, 2020, issued a recommendation to approve the application with the following conditions:

1. The Applicant completes the required good faith marketing effort and reassess the appropriate advertised dollar per square foot rate; and
2. The Applicant resolves all open violations and provides a plan for the safe excavation of the site and structural protections for the building and the building next door.

City Planning Commission Public Hearing

On December 16, 2020 (Calendar No. 6) the City Planning Commission scheduled January 6, 2021 for a public hearing on this application (C 200169 ZSM). The hearing was duly held on January 6, 2021 (Calendar No. 26). Two speakers testified in favor of the application and one in opposition.

The applicant’s representatives spoke in support of the application, stating that, despite the greater than year-long marketing effort, the applicant was unable to secure a tenant for a conforming use. The applicant’s representative noted that adding two ADA-accessible bathrooms would make the retail units more attractive to a greater diversity of commercial users. In response to the six conditions outlined in the Community Board’s recommendation, the

applicant's representative stated that they could not consent to a prohibition on eating and drinking uses on the ground floor, as it is currently an as-of-right use. The applicant's representative further stated that the applicant has no plans to combine the two ground-floor commercial units, but reserves the right to do so with necessary Landmarks Preservation Commission approval. The applicant's representative stated that a safe, reliable means of emergency egress to Lafayette Street would be maintained.

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 perceived flaws in the execution of the good faith marketing program. The speaker questioned the need to construct two ADA-accessible bathrooms, as they felt it would create a favorable condition for an eating and drinking establishment – a use that the Community Board finds objectionable due to perceived quality of life concerns such as noise and trash. The speaker noted that the advertised space had not yet been constructed. The speaker declared that the proposed use would not harm neighborhood character if the applicant agreed to the conditions outlined in the Community Board's recommendation. The speaker further opined that the size of the advertised space is not conducive to a manufacturing or other conforming use.

There were no other speakers, and the hearing was closed.

CONSIDERATION

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

The applicant seeks the grant of a special permit pursuant to ZR Section 74-781 to modify the use regulations of Section 42-14D (2)(b) to allow Use Group 6 retail uses below the level of the second story of a mixed-use building located at 65 Spring Street.

The Commission believes that the applicant has made the required good-faith marketing effort

for a period of over six months. The Commission notes that the applicant placed weekly advertisements in two local and citywide newspapers, listed the space with a brokerage firm, and informed nine local and citywide industry groups and relevant city agencies, including the NYC Economic Development Corporation, SoHo Broadway Initiative, Pratt Center for Community Development, Lower Manhattan Development Corporation, Workers United, the Manufacturers Association, the Chinese American Planning Council, the Printing Industries Alliance, and the Inside 3D Printing Conference and Expo by mail. Beyond requirements of the zoning, the applicant also listed the space on two websites dedicated to marketing the ground floor and cellar spaces. Such marketing efforts proved unsuccessful, as the applicant did not succeed in securing a conforming tenant.

The Commission observes that at 719 square feet, the majority of which will be devoted to bathrooms, the subject space is likely too small for many manufacturing and industrial users. While applicable to new buildings, the good faith marketing provision in ZR Section 74-781, when it was established nearly five decades ago, sought to allow the conversion of former industrial space to commercial uses if such spaces were found to be no longer attractive or suitable for manufacturing and related businesses. The Commission notes that the good faith marketing requirements represent an outdated obstacle to a modest enlargement to a pre-existing, legally nonconforming retail use and the addition of ADA-accessible facilities. The Commission further notes that the Department of City Planning has been working with the Borough President's office and the Council Member's office to engage local stakeholders in a dialogue about broader planning and zoning issues in SoHo and NoHo. The Commission encourages the Department of City Planning to develop a more rational 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 believes that the applicant made 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 outlined in ZR Section 74-781 and was unable to secure a conforming tenant. The Commission, therefore, believes that the grant of the requested special permit is appropriate.

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 a 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 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 described in this report, the application (C 200169 ZSM) submitted by 65 Spring Realty LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-781 of the Zoning Resolution to modify the use regulations of Section 42-14(D)(2)(b) on portions of the ground floor and cellar of an existing five-story building on property located at 65 Spring Street (Block 496, Lot 35), in an M1-5B District, 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 200169 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 Kenneth Park

Architects filed with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-001.00	Zoning Analysis	10/07/2020
Z-002.00	Zoning Site Plan	10/07/2020
Z-003.00	Cellar Floor Plan	10/07/2020
Z-004.00	First Floor Plan	10/07/2020
Z-007.00	Waiver Section	10/07/2020

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 200169 ZSM) duly adopted by the City Planning Commission on February 3, 2021 (Calendar No. 17), 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,
JOSEPH DOUEK, RICHARD W. EADDY, HOPE KNIGHT, ANNA HAYES LEVIN,
ORLANDO MARIN, LARISA ORTIZ, RAJ RAMPERSHAD**, *Commissioners*

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Greenwich Village * Little Italy * SoHo * NoHo * Hudson Square * Chinatown * Gansevoort Market

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:

65 Spring St. (between Lafayette and Crosby Sts.) - DCP N200169ZSM is a private application by 65 Spring Realty, LLC requesting a special permit pursuant to ZR Section 74-781 to facilitate the conversion of portions of the ground floor and cellar extension of an existing building to Use Group 6 retail uses.

Whereas:

1. The site is located in an M1-5B zoning district within the SoHo-Cast Iron Historic District Extension, which prohibits cellar and ground floor retail use.
2. It is a 145-year-old, five-story, mixed residential/commercial building in which the ground floor is currently used for retail and the top four floors are residential (8 units).
3. The retail space is a legal, non-conforming use.
4. There is no Certificate of Occupancy for the site.
5. The building does not have an elevator.
6. Total lot area is 1945sf and floor area is 7751sf (FAR of 3.9).
7. Within a 600' radius of the site, there are 23 properties whose permits for cellar and/or ground floor retail have been granted, but almost half of these special permits (those granted between 1982-87) were for conversion to JLWQA per 74-782 with no mention of retail use.
8. The requested Special Permit would facilitate combination of the existing Use Group 6 storefront into larger retail space on the ground floor and cellar.
9. The owner proposes to construct an extension in the rear yards of the cellar (375sf) and ground floor (344sf), including a stairway for egress from the cellar.

10. The space that is being advertised has yet to be built. It has been advertised for a conforming use for a period of 6+ months, as is required for buildings less than 3600sf.
11. Applicant is advertising at the rate of \$80/sf, which CB2 has said repeatedly is an unrealistically high rate. CB2 is concerned as to how often DCP revises the suggested \$80 rate and how attractive and reflective of current market conditions this rate is. For example, efforts by the City to preserve the Garment District, another struggling manufacturing zone, have resulted in suggested rents of only \$35 per square foot.
12. Applicant put classified ads in only in the New York Times (which was totally illegible) and The Villager and, with one exception, sent letters to the same tired list of industry groups that CB2 has said repeatedly are outdated.
13. The Newmark ad mistakenly lists the building as a “multi-family for lease.”
14. Rent is listed as \$28,320 per year (354sf on the ground floor x \$80 per sf) so there is no charge for cellar space, but the space that is being marketed is the rear yard extension only—a tiny area that is completely separate from the existing retail spaces and a size that is hardly appropriate for manufacturing uses.
15. Advertising efforts yielded three inquiries: one for a non-nonconforming use and two who thought the space was too small.
16. The property has no direct access to Lafayette St. and is only accessible by crossing through an unbuilt area of the property next door at 63 Spring St. that is under different ownership.
17. Egress from this rear yard is obtained through a gate located on the neighbor's property on Lafayette. The gate and the short path (approx. 3-5 feet in length) at the rear of the Lafayette Street property has been used continuously since at least 1909 as shown on the I-cards for the property that the attorney referenced. As such, it constitutes a reliable, prescriptive easement.
18. Plans include two ADA-accessible bathrooms, which are not required for Use Group 6 but are required for eating and drinking spaces.
19. Residents are concerned that the required excavation work will destabilize the building, rendering it unfit for habitation, and that the construction and resulting extension will hamper emergency egress. They are also concerned about provisions for trash.
20. There are open violations on the property, having to do with egress and the location of the neighboring building's rear wall A/C units that will be relocated by the applicant.

Therefore be it resolved that CB2 recommends denial due to the flawed requirements of the “good faith marketing effort” program, though we do not believe that the proposed use would harm neighborhood character if the following stipulations were included:

1. No eating and drinking establishments.
2. Keep the two stores separate per LPC.
3. A Tenant Protection Plan is submitted to DOB that includes maintaining residential emergency egress and managing trash.
4. A plan for safe excavation and protection of the adjoining building.
5. Documentation for a legal easement is in place.
6. No mechanical equipment is put on the roof of the extension and the venting of the extension should be moved as far away as possible so that it does not disturb the residential neighbors.

Be it further resolved that CB2 once again strongly calls on DCP to provide better guidance and supervision to applicants with respect to market conditions, marketing plans, and range of possible uses, including:

1. Updating the list of recommended places to advertise.
2. Updating the list of recommended industry groups to contact and specifying the contents and purpose of the letter that applicants must write to them.
3. Revising the recommended price per square foot to adequately reflect the prevailing market conditions for the site of each application.
4. Eliminating the square foot charge for cellar and sub-cellar space for conforming uses.

Be it finally resolved that CB2, which represents the community and has intimate knowledge of its neighborhoods and market conditions, be permitted to review such marketing plans and guidelines at the beginning, rather than at the end, of the process.

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, 2019

**Recommendation on ULURP Application N 200169 ZSM
65 Spring St. by 65 Spring Realty, LLC**

PROPOSED ACTIONS

65 Spring Realty, LLC (the “Applicant”) is seeking a special permit pursuant to §74-781 of the New York City Zoning Resolution (“ZR”) to permit Use Group 6 commercial uses on the ground floor and cellar of 65 Spring Street, Block 496, Lot 35 (the “Site”). The Site is located within the M1-5B zoning district and is within the SoHo-Cast Iron Historic District Extension in Manhattan Community District 2 (“CD2”). This Applicant proposes to construct an extension to expand the ground floor by 344 square feet and the cellar space by 375 square feet and seeks a special permit to allow for Use Group 6 retail in the expanded ground floor and cellar space.

ZR §74-781 permits the City Planning Commission to modify the use group requirements of buildings in M1-5A and M1-5B Districts, provided that the 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 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 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.

BACKGROUND

Area Context

The Project Site is located in Manhattan Community District 2. It is in the SoHo-Cast Iron Historic District Extension and is located in a M1-5B zoning district. In 1973, the SoHo-Cast Iron Historic District was designated by the Landmark Preservation Commission (LPC) and the Extension was approved in 2010. The area is bounded by West Houston Street, Crosby Street, Howard Street, Broadway, Canal Street and West Broadway. The neighborhood largely consists

of 5 to 8-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.

The area is served by the N/R/W/6 subway trains. The Spring Street stop on the 6 subway line is on the same block as the Site and the Prince Street stop of the N/R/W lines are within two blocks from the Site. The Broadway-Lafayette stop of the B/D/F/M subway lines is within 0.19 miles from the Site. The Bowery Street stop of the J/Z trains is located 0.26 miles from the Project Site. The M1 bus has stops at Cleveland Place and Spring Street, and at Broadway and Spring Street, both approximately one block from the Site.

Site Description

The Project Site is located on the north side of Spring Street between Crosby Street and Lafayette Street within an M1-5B zoning district. The Site was constructed around 1920 and is a five-story, altered Italianate style tenement building with ground floor storefronts. There is no Certificate of Occupancy for the Site, but it is currently occupied by a 5-story mixed use, walk-up residential and commercial building that contains a cellar level and a rear yard 15 feet deep.

The lot is shallow with 25 feet of frontage on Spring Street and has an irregular lot depth of 76 feet and 6 inches on the east side of the Site and 77 feet and 10 inches on the west side. The lot area is 1,945 square feet. The current building is 7,751 square feet (3.98 FAR) containing 1,377 square feet of commercial space (0.8 FAR) and 6,200 square feet of residential space (3.188 FAR). The property has separate entrances for both retail tenants and residents. The additional entrance to the rear yard that is located on Lafayette Street has a prescriptive easement.

Project Description

The Applicant proposes to construct in the rear yard an extension of the cellar (375 square feet) and ground floor (344 square feet), including a stairway for egress from the cellar. To facilitate the extension, the Applicant is seeking a ZR §74-781 special permit to allow for the cellar and first floor to be occupied with retail space in a M1-5B district. The special permit provisions allow for a proposed change in use to Use Group 6 retail upon a showing by the Applicant that they made a good faith marketing effort to rent the space for conforming use at fair market rent, and that such efforts have been actively pursued for a period of no less than six months prior to the application for a special permit.

COMMUNITY BOARD RECOMMENDATION

On November 19, 2020 at the Full Board meeting, Community Board 2 (“CB2”) voted to recommend denial of this application unless the Applicant agreed to meet certain conditions. 46 Board members voted in favor of disapproval and no board members opposed. The conditions are as follows:

- That the Applicant exclude eating and drinking establishments in the use of the ground floor;
- That the Applicant keep the two retail storefronts separate;
- That the Applicant submit a Tenant Protection Plan to the Department of Buildings (“DOB”) that includes maintenance of residential emergency egress and trash;
- That the Applicant submit a plan the DOB for the safe excavation and the protection of the adjoining building;
- That the Applicant submit documentation showing that a legal easement is in place; and
- That the Applicant agree to put no mechanical equipment on the roof of the extension and move the venting of the extension as far away as possible from the main building so that it does not disturb the residential neighbors.

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. While this special permit would facilitate a small extension of 344 square feet and 375 square feet in the ground floor and cellar, respectively, and that such an extension would not be of great impact to the neighborhood, I am concerned that the Applicant did not complete the good faith marketing effort to rent out the space as required by ZR §74-781.

The Applicant advertised the space at the rate of \$80 per square foot, which is not reflective of current market conditions. An example of advertised rates in other manufacturing districts include the Garment District which had suggested rents of \$35 per square foot. Furthermore, the Applicant pre-maturely advertised the space as a conforming use despite the fact that the space had not been built. In one advertisement listed on the Newmark website, the space was erroneously listed as “multi-family for lease.” The advertisements in the New York Times and the Villager were considered illegible by CB2, and the advertisements only yielded three inquiries: one for a non-confirming use and two that considered the space too small. All special permit applications requesting a ZR §74-781 Use Group 6 retail change must go through a good faith marketing effort, and this application is no exception. It is clear that per square foot rate must be reassessed and that the marketed advertisements are re-evaluated.

Additionally, I am concerned about the existing tenants at the site and those living in the building next door at 63 Spring Street. There are open violations on the property that underscore issues with egress and the location of the neighboring building's rear A/C units that the Applicant is planning to relocate. A number of the building's current residents testified at CB2's public hearing on October 7, 2020 about unaddressed trash problems at the site, and brought up concerns about the building's construction and excavation impacts upon the structure next door. These open violations and residential concerns must be resolved before this application's approval.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends approval of ULURP Application No. N 200169 ZSM with the following conditions:

1. The Applicant completes the required good faith marketing effort and reassess the appropriate advertised dollar per square foot rate; and
2. The Applicant resolves all open violations and provides a plan for the safe excavation of the site and structural protections for the building and the building next door.



Gale A. Brewer
Manhattan Borough President