



## **CITY PLANNING COMMISSION**

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October 11, 2006/Calendar No. 9

C 050466 ZSM

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IN THE MATTER OF an application submitted by 145-147 Mulberry Realty Co., LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-782 of the Zoning Resolution to modify the use regulations of Section 15-021(e) to allow residential use on floors two through six of an existing 6-story building on property located at 145-147 Mulberry Street (Block 236, Lot 22), in a C6-2G District within the Special Little Italy District (Area A-1), Borough of Manhattan, Community District 2.

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The application for the special permit was filed by 145-147 Mulberry Street, LLC on May 17, 2005, to permit the modification of the use regulations of Section 15-021(e) to allow residential use on the second through sixth floors of an existing six-story building located in a C6-2G zoning district within the boundaries of the Special Little Italy District in the Little Italy neighborhood in Manhattan.

### **BACKGROUND**

145-147 Mulberry Street is a six-story structure, located on the west side of Mulberry Street, midblock between Hester and Grand streets. The ground floor of 145-147 Mulberry Street is occupied by an as-of-right commercial use and the upper floors are vacant. The applicant proposes to convert the upper floors of the building to five residential dwelling units.

According to the regulations contained in Section 15-021, in a C6-2G District, residential conversions of manufacturing and commercial buildings erected prior to December, 1961 are not allowed. The requirements may be modified by City Planning Commission special permit pursuant to Section 74-782 which requires the Commission to make certain findings, including a finding that the applicant has made a good faith effort to rent such space to a conforming use for a minimum of one year. The C6-2G designation was mapped in 1984 to protect the garment industry located in the Chinatown area from displacement by as-of-right residential conversions.

145-147 Mulberry Street is located within the boundaries of the Special Little Italy District. The surrounding neighborhood is primarily developed with five-story buildings containing residential use on the upper floors and retail use or eating and drinking establishments on the ground floors. The Chinatown area, primarily to the east and southeast of the site, contains residential and manufacturing uses.

The building is on a zoning lot of 4,866 square feet and has a total floor area of 28,252 square feet. The building would contain a total of 23,701 square feet of residential use and 4,551 square feet of commercial use.

The upper floors of the building have been vacant for at least six years with garment manufacturers as the last occupants of the spaces. Two floors were vacated because less expensive space was available in New Jersey and Long Island City. Another floor was vacated after the manufacturer went out of business. The remaining two floors were vacated as a result of the tenants being shut down due to criminal activity or labor violations.

## **ENVIRONMENTAL REVIEW**

This application (C 050466 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.

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

## **UNIFORM LAND USE REVIEW**

This application (C 050466 ZSM) was certified as complete by the Department of City Planning on May 22, 2006, and was duly referred to Community Board 2 and the Borough President, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules.

### **Community Board Public Hearing**

Community Board 2 held a public hearing on this application on July 13, 2006, and on July 20, 2006, by a vote of 35 to 0 with 0 abstentions, adopted a resolution recommending approval of the application with the following condition:

THEREFORE BE IT RESOLVED, that CB#2, Man. has no strong objection to the change of use to residential at 145-147 Mulberry St. provided that the City Planning Commission is willing to accept the advertising as being adequate to satisfy the findings required for the Special Permit.

### **Borough President Recommendation**

This application was considered by the Borough President, who issued a recommendation on August 31, 2006 approving the application with the following condition:

- that the Department of City Planning take steps to ensure that Zoning Resolution §74-782(c) is met more completely and that data regarding the industrial sector in the area is provided to the ULURP decision-makers for their consideration, and possible further comment.

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

On August 23, 2006 (Calendar No. 1), the City Planning Commission scheduled September 13, 2006 for a public hearing on this application (C 050466 ZSM). The hearing was duly held on September 13, 2006 (Calendar No. 15). There were four speakers in favor of the application and none in opposition.

The Director of Land Use for the Borough President reiterated the Borough President's support for the application and explained the reasons for his condition. He noted that while finding (c) of Section 74-782 states that the "vacancy rate for the industrial space in the area shall be one evidentiary element to prove the availability of the alternative space" to meet the needs of the commercial and manufacturing uses in the area, this vacancy rate is not available. He expressed concern about the ability of any applicant being able to meet the findings for the special permit since the vacancy rate cited by the Zoning Resolution is not available, and stated the need for some other indicator or rate relating to the availability of industrial space. In closing, he suggested that if a quantifiable rate was not available then a qualifiable rate should be considered.

The Borough President's representative also spoke of the need to consider the linguistic diversity of the subject community when planning and conducting marketing campaigns to lease space pursuant to the special permit being requested.

The attorney for the applicant described the location of the building as being on the spine of Little Italy and in the center of the yearly San Gennaro Festival. The attorney stated that the building has been vacant since 1999. The speaker described that the applicant had begun the

renovation and as-of-right conversion of the building for commercial use but was unable to complete the conversion since lending institutions had no faith that the building could be successfully occupied by commercial uses. The speaker noted that the building is one of two non-residential buildings on the block.

The owner of the building stated that her family had owned the property since the 1950s. She stated that they had been unsuccessfully trying to rent the space for as-of-right uses prior to the decision to convert the building to residential use.

The Chair of Community Board 2's Land Use Committee read the board's recommendation.

There were no other speakers and the hearing was closed.

## **CONSIDERATION**

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

The Commission notes that the applicant has made the necessary good faith marketing effort for a period of more than one year. Such efforts included signing an exclusive agency agreement in April 1996 with a real estate broker familiar with marketing commercial and office space; and publishing weekly advertisements in The New York Times and the Village Voice. The advertisements in The New York Times began in August 2001, with weekly placements starting in July 2002; and the advertisements in the Village Voice appeared on a weekly basis from June 2003. Weekly advertisements in both newspapers are continuing during the review of the application. Additional efforts included sending a letter and flyer describing the space to an

extensive list of prospective conforming users; listing the property with a computer listing service; informing the listing departments of 200 other brokers affiliated with major New York City commercial brokerage firms of the availability of the space; and notifying local and citywide industry groups of the availability of the space, including the Industrial Space Bank at the New York City Economic Development Corporation. A sign advertising the availability of the space has hung on the Mulberry Street facade of the building since September 2003. In addition, following certification, the space began to be listed in two Chinese-language newspapers. Such marketing efforts proved unsuccessful as they did not succeed in obtaining a conforming use. No city, state or federal economic development programs that the building and the applicant qualified for were available to assist in the successful marketing of the upper floors for industrial and commercial tenancies.

The Commission notes that the location of the building on Mulberry Street has hampered the applicant's ability to lease the building's upper floors for conforming commercial or manufacturing uses. The Commission is aware that Mulberry Street serves as the commercial spine of the Little Italy area and is the core of the Little Italy neighborhood. The Commission notes that the subject sidewalk as well as neighboring sidewalks on Mulberry Street are lined with outdoor seating for the restaurants on the street. In addition, the Commission notes that the street is occupied by the San Gennaro festival for approximately two weeks each September. The Commission believes that these factors reduce the desirability of the building's upper floor space for the types of conforming commercial uses, such as showrooms or offices, which have moved into the upper floors of similar former-industrial buildings in nearby areas zoned for manufacturing use such as SoHo, NoHo and Tribeca.

The Commission notes that the small floor plates of each of the upper floors and the lack of a loading dock reduce the building's desirability for use by manufacturing uses. The Commission believes that these factors in conjunction with the inability to lease these floors for a conforming use indicate that the conversion would not hurt the industrial sector of the City's economy.

Further, the Commission notes that although residential use is the predominant upper floor use on the blocks immediately surrounding 145-147 Mulberry Street, upper floor spaces are available for lease by conforming industrial and commercial uses elsewhere in CD2, in areas zoned for these uses, including in Chinatown, SoHo, and Noho. These spaces are primarily located on Broadway and on the streets and avenues to the east of Broadway. The Commission therefore believes that there is sufficient alternative space to meet the needs of commercial and manufacturing uses in the area.

The Commission believes that the increased residential activity resulting from the conversion to five residential units would not place a burden on the neighborhood. The Commission notes that buildings with residential uses on the upper floors and commercial uses on the ground floor have historically characterized significant portions of the Little Italy area. The Commission believes that the units resulting from this conversion will continue this characteristic and will not burden the Little Italy neighborhood. In addition, the Commission notes that the dwelling units will be in compliance with applicable district standards for such units. The Commission notes that the space previously used for conforming uses was vacated voluntarily.

The Commission acknowledges the comments from the Borough President regarding the lack of data and consequent difficulty in determining vacancy rates for manufacturing uses in Little Italy. However, the Commission notes that vacancy rates are only cited as one example in the list of findings in ZR Section 74-782. In reviewing this application, the Commission believes

that the applicant has sufficiently demonstrated that all seven findings for the special permit have been met, including demonstrating the availability of alternative locations for commercial uses.

## **FINDINGS**

The City Planning Commission hereby makes the following findings pursuant to Section 74-782 (Residential conversion in C6-1G, C6-2G, C6-2M, C6-4M, M1-5A, C6-2G, M1-5M and M1-6M Districts) of the Zoning Resolution:

- (a) the conversion will not harm the industrial sector of the City's economy;
- (b) the applicant for the special permit or a predecessor in title, has made a good faith effort to rent such space to a mandated use at fair market rentals. Such effort shall have been actively pursued for a minimum of one year immediately preceding the application. A good faith effort shall include, but not be limited to, advertising in local and citywide press, listing the space with brokers doing business in the industrial real estate market, notifying the New York City Office of Economic Development, and informing local and citywide industry groups. The applicant shall provide records showing the specific efforts to rent such space;
- (c) there is sufficient alternative space to meet the needs of commercial and manufacturing uses in the area. The vacancy rate for industrial space in the area shall be one evidentiary element to prove the availability of alternative space;
- (d) city, state and federal economic development programs, to the extent applicable, had been explored and found not suitable;
- (e) the commercial and industrial tenants were given the opportunity by the applicant or predecessor in title to remain in the spaces at fair market rentals, and the property owner or predecessor in title did not cause the vacating of the space for the additional conversion;
- (f) the neighborhood in which the conversion is taking place will not be excessively burdened by increased residential activity; and
- (g) all dwelling units or joint living-work quarters for artists permitted by this special permit meet the standards of the applicable district for such units or quarters.



## RESOLUTION

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the environmental determination, and the consideration and finding described in this report, the application submitted by 145-147 Mulberry Street, LLC for the grant of special permit pursuant to Section 74-782 of the Zoning Resolution to modify the use regulations of Section 15-021(e) to allow residential use on floors two through six of an existing 6-story building on property located at 145-147 Mulberry Street (Block 236, Lot 22), in a C6-2G District, within the Special Little Italy District (Area A-1), 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 050466 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 Philip Toscano Architects, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
A-02	Site Plan	2/7/06
A-04	First Floor Plan	2/7/06
A-05	Second - Sixth Floor Plan	2/7/06
A-06	Building Cross Section	2/7/06

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. In the event the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this report and the restrictive declaration described below and any subsequent modifications to either document shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.
5. 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.
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 050466 ZSM), duly adopted by the City Planning Commission on October 11, 2006 (Calendar No. 9), 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, AICP**, Chair  
**KENNETH J. KNUCKLES, Esq.**, Vice Chairman

**IRWIN CANTOR, P.E., ANGELA R. CAVALUZZI, R.A., ALFRED C. CERULLO, III,**  
**RICHARD W. EADDY, JANE D. GOL, JOHN MEROLO, DOLLY WILLIAMS,**  
Commissioners

**CHRISTOPHER KUI**, Commissioner, Recused