



CITY PLANNING COMMISSION

December 19, 2007/Calendar No. 16

C 070400 ZSM

IN THE MATTER OF an application submitted by AS Realty Partners 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 42-14(D)(1)(b) to allow Joint Living Work Quarters for Artists (JLWQA) on the 2nd through 10th floors of an existing 7-story building with a lot coverage greater than 5000 square feet, and proposed to be re-configured to 10-stories, on property located at 200 Lafayette Street a.k.a. 420 Broome Street (Block 482, Lot 37), in an M1-5B District, Borough of Manhattan, Community District 2.

The application for the special permit was filed by AS Realty Partners on March 23, 2007, to permit the modification of the use regulations of Section 42-14(D)(1)(b) to allow Joint Living Work Quarters for Artists (JLWQA) on the second through tenth floors of an existing seven-story building with a lot coverage greater than 5,000 square feet, and proposed to be re-configured to 10-stories, located in an M1-5B zoning district.

BACKGROUND

200 Lafayette Street is a seven-story structure, located on the northwest corner of Lafayette and Broome streets. The ground floor of 200 Lafayette Street is occupied by two non-conforming commercial uses and one printing establishment which is a permitted use on any floor of a building in an M1-5B district. The upper six floors of the building are vacant. The applicant proposes to construct a penthouse and subsequently convert the upper floors of the building and the penthouse to 40 units of JLWQA (Use Group 17D).

The building has lot coverage of approximately 13,700 square feet. According to the use regulations for an M1-5B district, buildings with lot coverage in excess of 5,000 square feet may be converted to JLWQAs only by special permit of the City Planning Commission pursuant to Section 74-782 which requires the Commission to find that the owner of the space, or a

predecessor in title, has made a good faith effort to rent such space to a conforming use at fair market rentals for a minimum of one year.

The surrounding neighborhood is primarily a mix of five- to seven-story commercial buildings and loft structures occupied by retail uses on the ground floor and residential uses in the form of JLWQAs on the upper floors. A newly constructed eleven-story residential building built pursuant to a BSA variance is immediately adjacent to the building on Lafayette Street.

The building contains 93,585 square feet of floor area and has a FAR of 6.71. Floor area in the building will be reconfigured so that three new floors can be added. Upon completion, the building will have 93,585 square feet of floor area.

The upper floors of the building have been vacant for at least five years with garment manufacturers as the last occupants of the spaces. A number of the former tenants went out of business and others have relocated to Brooklyn.

ENVIRONMENTAL REVIEW

This application (C 070400 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 070400 ZSM) was certified as complete by the Department of City Planning on August 20, 2007, 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 September 6, 2007, and on September 20, 2007, by a vote of 45 to 0 with 0 abstentions, adopted a resolution recommending approval of the application with the following condition:

that the applicant include a gallery space for local artists on the ground floor of the building.

Borough President Recommendation

The Borough President issued a recommendation on November 1, 2007, approving the application.

City Planning Commission Public Hearing

On October 31, 2007 (Calendar No. 7), the City Planning Commission scheduled November 14, 2007 for a public hearing on this application (C 070400 ZSM). The hearing was duly held on November 14, 2007 (Calendar No. 26). There were two speakers in favor of the application and none in opposition.

A representative of the Borough President reiterated the Borough President's support for the application. The speaker 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. The speaker requested that the Department amend the zoning text to request an alternative to the vacancy rate so that the finding could be met.

The applicant's attorney also appeared in favor.

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. Advertisements appeared in The New York Times beginning on February 16, 2005, with weekly placements starting on March 30, 2005, with the exception of a two-month period from September 7, 2005 to December 8, 2005. Advertisements were also placed in the Village Voice on a weekly basis beginning with the March 30-April 5, 2005 issue with the exception of the issues from September 7-13, 2005 to December 14-20, 2005. Weekly advertisements in both newspapers are continuing during the review of the application. In addition, advertisements began to appear in two Chinese-language newspapers, the Sing Tao Daily and the World Journal, beginning on January 31, 2007.

In addition to employing the real estate broker and building management company engaged in the leasing of the building since 1980, the property was listed with nine brokers familiar with leasing space in the area. Additional efforts included 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. 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 of the building's four elevators, only the freight elevator is currently operable, and that elevator requires mechanical repairs. Further, the other three elevators are located in shafts that are too small to accommodate an elevator that would comply with the requirements for persons with disabilities. In addition, while the spaces were offered to tenants seeking less than a full floor, the layout of the building is not well designed for small space users as the building's full floor spaces are divided by a single masonry wall running perpendicular to Broome Street. Three of the elevators and stairways are located at the north-and southeastern corners of the building, with the fourth elevator and set of stairs located in the center of the building's Broome Street frontage. The Commission believes that the existing conditions and layout of the building 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 200 Lafayette Street, upper floor spaces are available for

lease by conforming industrial and commercial uses elsewhere in Community District 2, 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 40 units of JLWQAs would not place a burden on the neighborhood. The Commission notes that buildings with JLWQAs or other forms of dwelling units on the upper floors and commercial uses on the ground floor is the predominant use in the vicinity of the building, including the newly constructed 11-story residential building immediately adjacent on Lafayette Street. The Commission believes that the units resulting from this conversion will continue existing land use trends in this area and will not burden the surrounding neighborhood. In addition, the Commission notes that the dwelling units will be in compliance with applicable standards for such units.

In response to the condition of the Community Board that the applicant include a gallery space for artists on the ground floor of the building, the Commission notes that the applicant has indicated that they are willing to work to find a local art gallery to occupy the ground floor space.

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 the SoHo area. However, the Commission notes that a text amendment would be necessary to change or

eliminate this finding. The Commission believes that the applicant has demonstrated 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, M1-5B, 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 AS Realty Partners for the grant of special permit pursuant to Section 74-782 of the Zoning Resolution to modify the use regulations of Section 42-14(D)(1)(b) to allow Joint Living Work Quarters for Artists (JLWQA) on the 2nd through 10th floors of an existing 7-story building with a lot coverage greater than 5000 square feet, and proposed to be re-configured to 10-stories, on property located at 200 Lafayette Street a.k.a. 420 Broome Street (Block 482, Lot 37), in an M1-5B District, Borough of Manhattan, Community District 2 is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 070400 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 Bialosky + Partners Architects, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z.3	Zoning Analysis	5.30.07
C.1	Proposed Site Plan	5.30.07
P.O	Proposed Cellar Floor Plan	5.30.07
P.1	Proposed 1 st Floor Plan	5.30.07
P.2-3	Proposed 2 nd thru 3 rd Floor Plan	5.30.07
P.4-7	Proposed 4 th thru 7 th Floor Plan	5.30.07
P.8	Proposed 8 th Floor Plan	5.30.07
P.9	Proposed 9 th Floor Plan	5.30.07

P.10	Proposed 10 th Floor Plan	5.30.07
P-11	Proposed Roof Plan	5.30.07

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
4. 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 070400 ZSM), duly adopted by the City Planning Commission on December 19, 2007 (Calendar No. 16), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

AMANDA M. BURDEN, AICP, Chair
KENNETH J. KNUCKLES, ESQ., Vice Chairman

ANGELA M. BATTAGLIA, ANGELA CAVALUZZI, R.A., ALFRED C. CERULLO, III,
RICHARD W. EADDY, NATHAN LEVENTHAL, JOHN MEROLO, KAREN A. PHILLIPS,
DOLLY WILLIAMS, Commissioners

MARIA M. DEL TORO, Commissioner, ABSTAINING.