



CITY PLANNING COMMISSION

February 2, 2005/Calendar No. 20

C 040351 ZSM

IN THE MATTER OF an application submitted by NOH Realty Corporation pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the use requirements of Section 42-14(D)(2)(b) to allow a retail use (Use Group 6 uses) on portions of the ground floor and cellar floor of an existing 5-story building located at 541 Broadway a.k.a. 112 Mercer Street (Block 498, Lot 18), in an M1-5B District within the SoHo-Cast Iron Historic District, Borough of Manhattan, Community District 2.

The application for the special permit was filed by the NOH Realty Corporation on March 17, 2004 to allow Use Group 6 (retail) on portions of the ground floor and cellar floor of an existing five-story building at 541 Broadway.

BACKGROUND

541 Broadway is located within an M1-5B District, situated on the west side of Broadway between Spring and Prince streets and extending through the block to the east side of Mercer Street (a/k/a 112 Mercer Street). The building is also within the SoHo-Cast Iron Historic District.

The property is a five-story neo-Classical store and loft building designed by Charles Mettam and constructed in 1869. According to materials filed with the application, the Landmarks Preservation Commission (LPC) has found that the building “contributes to the special architectural and historic character of the SoHo/Cast Iron Historic District in terms of its scale, fenestration, and remaining historic details.” The building has a lot coverage of 7,500 square feet. The upper floors are occupied by Joint Living-Work Quarters for Artists pursuant to a special permit from the City Planning Commission (C 831959 ZSM). The ground floor and cellar level

of the Mercer Street side of the structure contains a total of 6,880 square feet of a pre-existing and non-conforming Use Group 6 use (retail use). The ground floor and cellar level on the Broadway side is occupied by a retail use without the necessary City Planning Commission approval.

According to the use regulations for an M1-5B district, uses below the second story are limited to wholesale, business service, warehouse and light industrial uses (Use Groups 7, 9, 11, 16, 13A, 13B, 13C and 13E). Other uses are allowed by special permit of the City Planning Commission. Section 74-711 of the Zoning Resolution allows the City Planning Commission, by special permit, to modify use and bulk regulations (except floor area) in order to further the preservation of designated landmark buildings or buildings located within historic districts.

This application requests a modification of the M1-5B use regulations to allow approximately 3,289 square feet of retail (Use Group 6) use on the ground floor, and 3,450 square feet of retail (Use Group 6) use in the cellar level of 541 Broadway. A total of 6,739 square feet of retail use is proposed. The application includes a report from the Landmarks Preservation Commission stating that a continuing maintenance program has been established that will result in the preservation of 541 Broadway, and that the proposed use modification contributes to a preservation purpose.

The surrounding SoHo neighborhood is generally developed with five- to twelve-story loft buildings along Broadway and five- and six-story lofts along nearby streets. Along Broadway, many of the upper floors contain offices, art galleries or other commercial uses, while the upper

floors of other buildings have been converted to JLWQAs. Ground floor uses in the vicinity consist of a mix of clothing stores and restaurants.

An application for this site was previously submitted (C 020122 ZSM) and subsequently withdrawn since the required restrictive declaration was incomplete at the time of the public hearing.

ENVIRONMENTAL REVIEW

This application (C 040351 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 02DCP018M. The lead is the City Planning Commission.

After a study of the potential environmental impacts of the proposed action, a Negative Declaration was issued on October 4, 2004.

UNIFORM LAND USE REVIEW

This application (C 040351 ZSM) was certified as complete by the Department of City Planning on October 4, 2004 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

On November 18, 2004, by a vote of 31 to 0 with 0 abstentions, Community Board 2 adopted a resolution recommending approval of the application.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation on November 29, 2004, approving the application.

City Planning Commission Public Hearing

On December 22, 2004 (Calendar No. 3), the City Planning Commission scheduled January 5, 2005 for a public hearing on this application (C 040351 ZSM). The hearing was duly held on January 5, 2005 (Calendar No. 11).

There were no speakers and the hearing was closed.

CONSIDERATION

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

When the building was constructed in 1869, and continuing throughout the better part of the last century, the area known as SoHo contained a mix of commercial, warehouse and industrial uses. However, over the last fifteen to twenty years many buildings in this area have been converted from manufacturing uses to JLWQAs (Use Group 17D) and Use Group 6 uses occupy much of

the ground floor frontages. The Commission recognizes that, as a mixed-use neighborhood, SoHo supports a broad range of ground floor uses, from retail businesses to those oriented towards the arts. Therefore, the Commission believes that Use Group 6 uses on the ground floor and cellar level will be consistent with established land use trends in the greater SoHo neighborhood.

The proposed use modifications will facilitate the renovation and preservation of 541 Broadway. The conversion and renovation of this building, to be accomplished as a result of this special permit, will enhance the architectural and historical built fabric of the SoHo Cast-Iron Historic District.

FINDINGS

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

- (1) not applicable
- (2) such use modifications shall have minimal adverse effects on the conforming uses within the building and in the surrounding area.

RESOLUTION

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

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the environmental determination, and the consideration and findings described in this report, the application of NOH Realty Corporation for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the requirements of Section 42-14(D)(2)(b) to allow retail use (Use Group 6 uses) on portions of the ground floor and cellar floor of an existing five-story building located at 541 Broadway a.k.a. 112 Mercer Street (Block 498, Lot 18), 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 040351 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 Martyn & Don Weston Architects, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Last Date Revised</u>
A-1	10/23/01
A-2	10/23/01

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.

2. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
3. 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 resolution 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.
4. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.
5. Development pursuant to this resolution shall be allowed only after the attached restrictive declaration dated December 1, 2004 by, executed by Noh Realty Corporation, the terms of which are hereby incorporated in this resolution, shall have been recorded and filed in the Office of the Register of the City of New York, County of New York.
6. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements,

terms or conditions of this resolution and the attached restrictive declaration 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 or of the attached restrictive declaration.

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 040351 ZSM), duly adopted by the City Planning Commission on February 2, 2005 (Calendar No. 20), 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

**ANGELA M. BATTAGLIA, IRWIN CANTOR, ANGELA R. CAVALUZZI, R.A.,
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Commissioners**