



CITY PLANNING COMMISSION

February 11, 2004/Calendar No. 23

C 030420 ZSM

IN THE MATTER OF an application submitted by Intell SoHo 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 allow the modification of the use regulations of Section 42-14(D)(2)(a) to permit retail uses (Use Group 6 uses) in the cellar, ground floor and mezzanine of an existing 5-story building occupying more than 3,600 square feet of lot area on property located at 470 Broome Street (Block 486, Lot 32), in an M1-5A District, within the SoHo-Cast Iron Historic District, Community District 2, Borough of Manhattan.

The application for the special permit was filed by Intell SoHo LLC on April 1, 2003, to permit the modification of the use regulations of Sections 42-14D(2) (a) of the Zoning Resolution to permit Use Group 6 below the floor level of the second story of a building located in an M1-5A zoning district in the southern portion of SoHo in Manhattan.

BACKGROUND

470 Broome Street is a five-story loft building located at the northwest corner of Broome and Greene streets. The structure is built on a 5,000 square foot lot and has lot coverage of 4,930 square feet and a total floor area of 24,121 square feet. A portion of the ground floor is occupied by a Use Group 6 - commercial use. The remaining portion of the ground floor and cellar levels are vacant. The upper floors are occupied by as-of-right Joint Living-Work Quarters for Artists (JLWQAs) and offices.

The applicant proposes to convert the ground floor, mezzanine and cellar levels of the building to retail (Use Group 6) use, and to legalize the existing Use Group 6 use on the ground floor.

This application requests a modification of the M1-5A use regulations to allow approximately

4,359 square feet of retail (Use Group 6) use on the ground floor and mezzanine levels, and 4,505 square feet of retail (Use Group 6) use in the cellar level of 470 Broome Street. A total of 8,864 square feet of retail use is proposed.

According to the use regulations for an M1-5A district, in buildings with lot coverage in excess of 3,600 square feet, uses below the second story are limited to wholesale, business service, warehouse and light industrial uses (Use Groups 7, 9, 11, 16, 17A, 17B, 17C and 17E). The requirements may be modified by special permit of the City Planning Commission pursuant to Section 74-781 that 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 mandated use at fair market rentals for a minimum of one year for buildings exceeding 3,600 square feet of lot coverage.

The surrounding SoHo neighborhood is generally developed with four to six-story loft buildings primarily containing JLWQAs on the upper floors and retail, gallery and restaurant uses on the ground floor.

ENVIRONMENTAL REVIEW

This application (C 030420 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 030420 ZSM) was certified as complete by the Department of City Planning on October 7, 2003, 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 November 13, 2003, and on November 20, 2003, by a vote of 30 to 0 with 0 abstentions, adopted a resolution recommending approval of the application with the following condition, "that the Certificate of Occupancy for this building is properly amended to reflect the existing uses."

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation on December 3, 2003 approving the application with the following conditions, "that the Certificate of Occupancy accurately reflect the usage allowed by the special permit."

City Planning Commission Public Hearing

On December 17, 2003 (Calendar No. 8), the City Planning Commission scheduled January 7, 2004, for a public hearing on this application (C 030420 ZSM). The hearing was duly held on

January 7, 2004 (Calendar No. 12). There was one speaker in favor of the application and none in opposition.

The attorney for the project described the location of the building and the subject proposal, and stated that the application met the requisite findings.

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 030420 ZSM) pursuant to Section 74-781 of the Zoning Resolution modifies the use regulations of Sections 42-14D(2)(b) and allows Use Group 6 (retail) uses on the ground floor, mezzanine and cellar levels of the subject building.

The applicant has made the necessary good faith marketing effort for a period of more than one year. Such efforts included signing agreements with two real estate brokers familiar with marketing space in SoHo; and publishing weekly ads in The New York Times, The Village Voice, The Villager, and The Downtown Express beginning December 2001. The ads are continuing during the review of the application. 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.

The Commission believes that the rental rate of \$75 per square foot to be a fair market rent for a conforming use at this location. 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.

The Commission notes the condition raised by Community Board 2 and the Borough President that the Certificate of Occupancy for the building is amended to reflect the Use Group 6 use. The applicant has notified Department staff that pending approval of the application, that the Certificate of Occupancy would be amended following the close of the ULURP review process.

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 200 of the New York City Charter, that based on the environmental determination, and the consideration and finding described in this report, the application of Intell SoHo LLC for the grant of special permit pursuant to Section 74-781 of the Zoning Resolution to allow the modification of the use regulations of Section 42-14(D)(2)(a) to permit retail uses (Use Group 6 uses) in the cellar, ground floor and mezzanine of an existing 5-story building occupying more than 3,600 square feet of lot area on property located at 470 Broome Street (Block 486, Lot 32), in an M1-5A District, within the SoHo-Cast Iron Historic District is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 030420 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 John Furth Peachy, Architect, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Drawing Title</u>	<u>Dated</u>
A1	Cellar Floor Plan	4/14/00
A2	First Floor Plan	4/14/00

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 030420 ZSM), duly adopted by the City Planning Commission on February 11, 2004 (Calendar No. 23), 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, IRWIN G. CANTOR, P.E., ANGELA R. CAVALUZZI, R.A.,
RICHARD W. EADDY, ALEXANDER GARVIN, JANE D. GOL, CHRISTOPHER KUI,
JOHN MEROLO, KAREN A. PHILLIPS, Commissioners**