



## **CITY PLANNING COMMISSION**

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February 18, 2015/Calendar No. 15

N 140142 ZAM

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**IN THE MATTER OF** an application submitted by Workspace, Inc. for the grant of an authorization pursuant to Section 42-142 of the Zoning Resolution to modify the requirements of Section 42-14(D)(1) to allow joint living-work quarters for artists on portions of the ground floors of two existing 6-story buildings, on property located at 106-112 Spring Street & 91-93 Mercer Street (Block 485, Lots 21 & 22), in an M1-5A District, within the SoHo Cast-Iron Historic District, Community District 2, Borough of Manhattan.

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**WHEREAS**, the City Planning Commission received an application (N 140142 ZAM) dated October 17, 2013, from Workspace, Inc. requesting an authorization pursuant to Section 42-142 of the Zoning Resolution to modify the requirements of Section 42-14(D)(1) to allow Joint Living Work Quarters for Artists (JLWQA) units on portions of the ground floors of two existing 6-story buildings, on property located at 106-112 Spring Street & 91-93 Mercer Street (Block 485, Lots 21 & 22), in an M1-5A District, within the SoHo Cast-Iron Historic District, in Manhattan Community District 2; and

**WHEREAS**, the applicant received approval from the Landmarks Preservation Commission for the proposed conversion of the ground floor and cellar space from retail to JLWQA and related storage use and received a Certificate of No Effect. In granting the Certificate of No Effect, the LPC did not require any additional restorative work and believes that the proposed change in use for the ground floor and cellar spaces are consistent with its prior approvals and that granting of this request will contribute to a preservation purpose; and

**WHEREAS**, this application (N 140142 ZAM) 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. The designated CEQR number is 14DCP053M; and

**WHEREAS**, after a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on November 3, 2014; and

**WHEREAS**, this application (N 140142 ZAM) was referred to Community Board 2 by the Department of City Planning on November 3, 2014 in accordance with the procedures for non-ULURP matters; and

**WHEREAS**, Community Board 2 supports this application and chose not to hold a public hearing; and

**WHEREAS**, 106 -112 Spring Street is located at the southwest corner of Spring and Mercer streets. The zoning lot comprises two buildings on two tax lots (Block 485, Tax Lots 21 and 22) and has approximately 70 feet of frontage on Spring Street and 125 feet of frontage along Mercer Street. The zoning lot has 10,381 square feet of lot area; and

**WHEREAS**, on the zoning lot, Tax Lot 21 is developed with a six-story loft-style mixed-use building having 32,088 square feet of floor area; this building is developed with ten (10) as-of-right Joint Living Work Quarters for Arts units and Use Group 6 retail space on the ground floor and cellar that was granted by a City Planning Commission special permit pursuant to Z.R. Section 74-711 in 2003 (C 020675 ZSM). Tax Lot 22 is also developed with a six-story loft-style mixed-use building with 27,500 square feet of floor area. This building has ground floor and cellar Use Group 6 retail space, which was granted by the aforementioned special permit in 2003 and ten (10) JLWQA units on its upper floors. In total, the zoning has lot has 8,275 square feet of ground floor retail space; 5,104 square feet of cellar retail space; 20 JLWQA units; 59,588 square feet of floor area and is built to a 5.7 FAR; and

**WHEREAS**, the project site is located within an M1-5A zoning district, which permits light industrial and most commercial uses as-of-right up to 5.0 FAR and community facility uses up to 6.5 FAR. However, Use Group 6 uses, including all retail, office uses and art galleries, are not

permitted below the second floor of any building situated on a zoning lot having more than 3,600 square feet of lot area. This site is greater than 3,600 square feet, so Section 42-142D(1)(d) is the relevant provision. Joint Living Work Quarters for Artist (JLWQA) units (Use Group 17) are not permitted below the second floor in existing buildings occupying more than 3,600 square feet of lot area and erected prior to 1961; and

**WHEREAS**, the applicant requests the grant of a City Planning Commission authorization under Section 42-142 to modify applicable requirements to Section 42-14 (Use Group 17) to convert the cellar and ground floor space in both buildings comprising the zoning lot, from their existing Use Group 6 retail use to Joint Living Work Quarters for Artist space. Three (3) JLWQA units would be facilitated by the requested action; two (2) units would be on Tax Lot 21 and the third JLWQA unit would be placed on Tax Lot 22; and

**WHEREAS**, no other changes, either physical or use, are proposed. There would be no increase in building floor area on the zoning lot and no new commercial, residential or community facility spaces are proposed; and

**WHEREAS**, the surrounding area is characterized by five- to twelve –story loft-style industrial buildings that have been converted to a mix of uses. However, most of the buildings in the area contain ground floor retail uses with residential units, JLWQA units or office use located on upper floors; and

**WHEREAS**, Spring Street also has significant ground floor retail activity; however, the zoning lot has 70 feet of frontage along Spring Street, of which its retail frontage comprises approximately 40 feet, with the remaining zoning lot frontage (approximately 30 feet) used for non-retail use (i.e., entrance for the JLWQA units located on the upper floors); and

**WHEREAS**, the Commission believes that, based upon the foregoing, the application (N 140142 ZAM) should be approved insofar as the findings of ZR Section 42-142 are met and the City Planning Commission finds that such modification of use requirements shall have minimal adverse effects on the conforming uses located within the building and in the surrounding area; because the proposed use is the same as that which already exists in the buildings on the zoning lot; and the addition of three units will not interfere with their operation; and the surrounding area is mixed-use in character and the proposed use will have minimal adverse effects; and

**WHEREAS**, the Commission had questions about the proposed conversion of the ground floor and the applicant, in a letter from the applicant's tax attorney dated January 8, 2015, stated that upon approval of the requested action, "the Corporation would be able to allocate new shares (the "New Shares") to the Ground Floor Units and issue the New Shares to an unrelated purchaser, without jeopardizing its favorable status as a "cooperative housing corporation" under Section 216 of the Internal Revenue Code. This would be the most tax-efficient method to secure equity from the Ground Floor Units as no corporate tax would be imposed on the Corporation's receipt of the proceeds from the issuance of the Corporation's New Shares;" and

**WHEREAS**, the letter further states that "In contrast, by simply selling a lease on the commercial space or selling a condominium unit comprised of the commercial space would trigger a substantial amount of corporate tax;" and

**WHEREAS**, the Commission recognizes that approval of the requested action would give the applicant the ability to convert the ground floor retail space to JLWQA space, which enables them to create and sell the aforementioned additional shares with no federal tax liability. Moreover, the revenue generated from the selling of the aforementioned shares would enable the applicant have additional resources to improve and further maintain the building, which supports the preservation purpose for the building; and

**WHEREAS**, the Commission also recognizes that the requested action facilitates the creation of three (3) additional JLWQA units on a zoning lot where JLWQA units are the predominate use (i.e., 20 JLWQA units). Such use is supported by Community Board 2; and therefore be it

**RESOLVED**, the City Planning Commission, pursuant to Section 42-142 of the Zoning Resolution, hereby determines that such modification of use requirements shall have minimal adverse effects on the conforming uses located within the building and in the surrounding area; and

**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, that based on the environmental determination described in this report, the application (N 140142 ZAM) submitted by Workspace, Inc. for the grant of an authorization pursuant to Section 42-142 of the Zoning Resolution to modify the requirements of Section 42-14(D)(1) to allow joint living-work quarters for artists on portions of the ground floors of two existing 6-story buildings, on property located at 106-112 Spring Street & 91-93 Mercer Street (Block 485, Lots 21 & 22), in an M1-5A District, within the SoHo Cast-Iron Historic District, Community District 2, Borough of Manhattan, is approved

The above resolution, duly adopted by the City Planning Commission on February 18, 2015 (Calendar No. 15) in accordance with Section 42-142 of the Zoning Resolution.

**CARL WEISBROD, Chairman**

**KENNETH J. KNUCKLES, ESQ., Vice-Chairman**

**RAYANN BESSER, IRWIN G. CANTOR, P.E., ALFRED C. CERULLO, III,**

**MICHELLE R. DE LA UZ, JOSEPH I. DOUEK, RICHARD W. EADDY,**

**CHERYL COHEN EFFRON, ANNA HAYES LEVIN,**

**ORLANDO MARIN, LARISA ORTIZ, Commissioners**