



CITY PLANNING COMMISSION

January 26, 2011 / Calendar No. 11

C 080361 ZSM

IN THE MATTER OF an application submitted by Mocal Enterprises, Inc. 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 regulations of Section 15-021(c), 42-00 and 42-133(a) to allow residential uses (Use Group 2) on floors 6 through 16 plus a penthouse in an existing building designed for non-residential use and erected prior to December 15, 1961, on property located at 1182 Broadway (Block 830, Lot 26) in an M1-6 District located within the rectangle formed by West 23rd Street, Fifth Avenue, West 31st Street and Eighth Avenue, and within the Madison Square North Historic District, Borough of Manhattan, Community District 5.

The application for the special permit was filed by Mocal Enterprises, Inc. on April 2, 2008, and was revised on December 18, 2008, June 4, 2010 and September 16, 2010, to facilitate the partial residential conversion of floors six through 16, plus the penthouse, of an existing 16-story and penthouse building located at 1182 Broadway (Block 830, Lot 26), within the Madison Square North Historic District in Community District 5, Manhattan.

BACKGROUND

The applicant, Mocal Enterprises, Inc., is seeking the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution (ZR) to facilitate the conversion of commercial space at 1183 Broadway (Block 830, Lot 26) to 44 dwelling units. Commonly known as the Centurian Building, 1182 Broadway is a sixteen-story commercial building located on the east side of Broadway between West 28th Street and West 29th Street, within the Madison Square North Historic District. The building is located within an M1-6 zoning district, which allows for manufacturing and commercial uses as-of-right.

The subject building was constructed in 1908-10 as a 15-story, Beaux-Arts-style, masonry and brick store-and-office building, to the design of architect William L. Rouse. According to the designation report for the Madison Square North Historic District, the building at the time of its construction was the most elaborate structure of its type on Broadway north of 23rd Street. The building's style, scale, design and materials are characteristic of the special historical and architectural qualities of the Historic District. There have been relatively few alterations to its exterior since its construction, and the building is a contributing building within the District.

The area surrounding 1182 Broadway reflects a mix of uses and building forms, including low-density commercial structures, high-rise contemporary hotel buildings, former store-and-loft buildings converted to residences, hotels and modern office structures. Sometimes referred to as the “Wholesale District”, the area is known for a high concentration of ground-floor retail and wholesale establishments selling a range of goods such as clothing, fashion accessories, hair and hair products, jewelry and cosmetics, primarily between West 26th Street and West 31st Street between Fifth Avenue and Seventh Avenue. More recently, four hotels have been planned, constructed or converted from existing buildings within 400 feet of the subject building, including the Ace Hotel, immediately adjacent to the north at the corner of Broadway and West 29th Street. Also, a number of new restaurants/retail stores have opened along or just off of Broadway. Upper floor uses elsewhere in the M1-6 zoning district include legal non-conforming residential, commercial and some light manufacturing.

The subject zoning lot is located within an M1-6 zoning district. Pursuant to Section 42-00, residential uses are not permitted as-of-right in M1-6 zoning districts. The M1-6 zoning designation allows manufacturing and commercial uses as-of-right. Additionally, the building is located within the rectangle bounded by West 23rd Street to the south, West 31st Street to the north, Fifth Avenue to the east and Eighth Avenue to the west, in which the creation of new residential units is prohibited by Sections 15-021(c) and 42-133(a) of the Zoning Resolution, unless such units existed prior to 1980 and an application to legalize such units has been filed prior to 1980. Residential uses in the M1-6 district are either non-conforming uses in place before 1961, or conversions through discretionary actions. In 1997, portions of the subject building were illegally converted to residential use, and on March 9, 2010, the Department of Buildings issued a partial vacate order requiring all residential tenants to immediately leave the building, and the remaining commercial tenants to leave the building at midnight each night. No residential tenants remain, and only one commercial tenant, who leaves the building by midnight each night, remains.

The applicant therefore seeks a waiver of the use requirements, to permit the partial residential conversion of the building on floors six through 16, plus the penthouse, which would result in the creation of 44 new dwelling units, occupying approximately 52,040 square feet. Except for portions of the ground floor lobby, the applicant proposes to maintain as-of-right commercial

uses in and below the building's fifth floor. The ground floor would have approximately 3,271 square feet of restaurant or retail space and separate entrances and elevators for the commercial and residential uses above. The proposal would not increase the floor area of the existing building and would not affect the building's existing bulk, height or setback conditions.

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. To grant the special permit the Commission must make the findings detailed in Section 74-711.

Section 74-711 also requires a report from the Landmarks Preservation Commission (LPC) stating that a program has been established for continuing maintenance that will result in the preservation of the subject building or buildings and that such use or bulk modifications, or restorative work required under the continuing maintenance program, contributes to a preservation purpose.

On January 18, 2008, the Landmarks Preservation Commission issued a Certificate of Appropriateness. On January 18, 2008, the LPC issued a report stating that a program for continuing maintenance has been established for 1182 Broadway (Block 830, Lot 26) and a restrictive declaration will be filed against the property. The continuing maintenance program for 1182 Broadway includes restorative work to the building's front facade and early 1900s storefront infill, including all of the original four 35-foot-tall columns at the base.

ENVIRONMENTAL REVIEW

This application (C 080361 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 09DCP082M. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on September 27, 2010.

UNIFORM LAND USE REVIEW

This application (C 080361 ZSM) was certified as complete by the Department of City Planning on September 27, 2010, and was duly referred to Community Board 5 and the Borough President, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules.

Community Board Public Hearing

Community Board 5 held a public hearing on this application on October 14, 2010, and on that date, by a vote of 21 to 16 with one abstention, adopted a resolution recommending disapproval of the application, expressing concern over the “long term effects of the loss of Class B office space in the district”, specifically describing such space as compatible with the surrounding Flatiron and Garment Center neighborhoods. The Board expressed additional concern over the continuation of “individual use changes and conversions” throughout the neighborhood and encouraged the City Planning Commission to conduct an area-wide study to determine whether large-scale zoning changes might be more appropriate.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation approving the application on November 29, 2010.

City Planning Commission Public Hearing

On December 1, 2010 (Calendar No. 2), the City Planning Commission scheduled December 15, 2010, for a public hearing on this application (C 080361 ZSM). The hearing was duly held on December 15, 2010 (Calendar No. 15). There were four speakers in favor of the application and one speaker in opposition.

Two of the applicant’s attorneys, a representative of the owner, and a representative from the Borough President’s office spoke in favor of the application. An attorney for the project reviewed some of the building’s recent history, including the owners’ actions, which caused the underlying illegal occupancy and subsequent need for the proposed application. The speaker stated his belief that the application did meet the findings of the special permit with regard to the proposed use modification, and noted that the Community Board did not take issue with the applicant’s statement of findings. Specifically addressing the findings, the speaker noted that tenants and visitors would access the residential portion of the building by way of dedicated

elevators separate from those serving the commercial portions of the building, and that there were no manufacturing uses within the vicinity that would be adversely affected by the grant of the special permit.

The representative of the owner noted that a positive relationship exists between the ownership and residential tenants. The speaker also noted that the area surrounding the subject building had changed considerably in recent years and that shifts in land use patterns resulting in wider residential uses provided a rationale for residential use within the building.

A representative of the Manhattan Borough President reiterated the Borough President's approval of the application.

A representative of Community Board 5 spoke in opposition, re-iterating the Board's disapproval of the application. The speaker noted that a concern over the continuing loss of lower-cost office space across the city. The speaker also noted that the Board had been impressed with the applicants' forthrightness and earnestness in attempting to rectify the illegal condition he had created. The speaker nevertheless emphasized the Board's concerns over the apparent unregulated transformation of the affected neighborhood from a commercial and manufacturing area to a more residential one and recommended that the Commission consider a future study of the existing land use trends and in the area.

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 080361 ZSM) pursuant to Section 74-711 of the Zoning Resolution modifies the use regulations of Sections 15-021(c), 42-00 and 42-133(a). The special permit will allow residential use on the 6th through 16th floors plus the penthouse of 1182 Broadway, an existing building designed for non-residential use and erected prior to December 15, 1961, and located within the rectangle formed by West 23rd Street, Fifth Avenue, West 31st Street and Eighth Avenue, in an M1-6 zoning district.

The Commission believes that the conversion to residential use of floors six through sixteen and the penthouse will have a minimal adverse effect on the conforming uses in the building. The Commission notes that a dedicated residential entrance would be created, separate from the commercial entrance, so that residential and commercial tenants would not mix. When the building was constructed, this portion of Manhattan reflected a range of uses, including hotel, commercial store-and-loft space and residential uses. In addition to the number of pre-existing, legal, non-conforming residential uses in the area, recent trends over the last ten to fifteen years have brought about significant change to the predominant use patterns, with more hotels being built and converted, as well as a number of new high-rise residential buildings constructed along Sixth Avenue, approximately one block away from the subject building. The proposed mixed-use occupancy of the building would be consistent with established land use trends in the surrounding portion of the Madison Square neighborhood.

The Commission notes that the Community Board had no objection to the proposed preservation plan and that its concerns in general did not refer to the applicants' statement of the findings necessary for issuance of the special permit. The Commission acknowledges that the inventory of Class B and Class C office space throughout the city as well as within the area around the subject building could merit further analysis but is beyond the scope of this application. However, the Commission noted that the Department would undertake an initial review of the existing land use patterns and trends to determine whether further analysis of the underlying zoning is warranted.

The Commission believes that the approved use modification will facilitate the restoration and preservation of 1182 Broadway and, thereby, enhance the architectural and historical built fabric of the Madison Square North Historic District. The Commission notes that pursuant to the restrictive declaration signed by Mocal Enterprises, Inc. as declarant, a regular maintenance and inspection program has been established, as required under Section 74-711. The program ensures that the building is kept in sound condition and will include an inspection of the building every three years by a preservation architect whose credentials must be approved by the LPC. The program will be administered and monitored by the LPC. The declaration binds the declarant and all heirs, successors and assigns of the declarant, and is to be recorded at the City Register's Office.

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 201 of the New York City Charter, that based on the environmental determination, consideration and findings described in this report, the application submitted by Mocal Enterprises, Inc. for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to permit the modification of the use regulations of Sections 15-021(c), 42-00 and 42-133(a) to allow residential uses (Use Group 2) on floors 6 through 16 plus a penthouse in an existing building designed for non-residential use and erected prior to December 15, 1961, on property located at 1182 Broadway (Block 830, Lot 26) in an M1-6 District located within the rectangle formed by West 23rd Street, Fifth Avenue, West 31st Street and Eighth Avenue, and within the Madison Square North Historic District, Borough of Manhattan, Community District 5 is approved, subject to the following terms and conditions:

- 1. The property that is the subject of this application (C 080361 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 Robert D. Ascione, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
CP-0	Plot Plan, Zoning Analysis	September 15, 2010
CP-2	Location Plan, Zoning Calculations and Notes	September 15, 2010

CP-4	Plan – 1 st Floor and Mezzanine	August 15, 2010
CP-7	Proposed Residential Plan 6 th through 14 th Floor	August 15, 2010
CP-8	Proposed Residential – 15 th Floor	August 15, 2010
CP-9	Proposed Residential – 16 th Floor	August 15, 2010
CP-10	Proposed Residential Penthouse and Roof Plan	September 15, 2010

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 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.
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. Development pursuant to this resolution shall be allowed only after the attached restrictive declaration dated January 24, 2011, executed by Mocal Enterprises, Inc., 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.

7. 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.

8. 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 080361 ZSM), duly adopted by the City Planning Commission on January 26, 2011 (Calendar No. 11), 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, FAICP, Chair
RAYANN BESSER, ALFRED C. CERULLO, III, BETTY Y. CHEN,
MARIA M. DEL TORO, RICHARD W. EADDY, NATHAN LEVENTHAL,
ANNA HAYES LEVIN, SHIRLEY A. MCRAE, KAREN A. PHILLIPS, Commissioners

MANHATTAN COMMUNITY BOARD FIVE

Vikki Barbero, Chair

450 Seventh Avenue, Suite 2109
New York, NY 10123-2199
212.465.0907 f-212.465.1628

Wally Rubin, District Manager

October 15, 2010

Hon. Amanda Burden
Chair
Department of City Planning
22 Reade Street, Room 2E
New York, NY 10007

Re: ULURP # 080361 ZSM, 1182 Broadway (between West 28th and 29th Streets)

Dear Chair Burden:

At the regularly scheduled monthly meeting of Community Board Five on Thursday, October 14, 2010, the Board passed the following resolution by a vote of 21 in favor, 16 opposed, 1 abstaining:

WHEREAS, The Applicant's building is located at 1182 Broadway (the "Building") between 28th and 29th Streets, and has filed an application pursuant to Section 74-711 of the Zoning Resolution to modify the use of floors 6 through 16 of an existing 16-story building in the Madison Square North Historic District from commercial/manufacturing use to residential use; and

WHEREAS, The building is currently located in an M1-6 district that allows commercial and manufacturing uses, but not residential use; and

WHEREAS, The building was erected in 1910 and was purchased by the current owners in 1977; and

WHEREAS, From 1977 until 1997 the building was maintained and leased solely as commercial space in accordance with the building's zoning; and

WHEREAS, In 1997, floors 6 through 16 of the Building were converted to residential use in contravention of the Zoning Resolution; and

WHEREAS, In March 2010, DOB issued a vacate order because the Applicant informed City Planning that the building was occupied residentially and lacked a second means of egress and City Planning then informed DOB of same; and

WHEREAS, CB5 appreciates the efforts of the Applicant and its counsel for taking the appropriate steps to rectify a use in violation of the Zoning Resolution and encourages all landlords to voluntarily come forward to rectify known misapplications of the Zoning Resolution; and

WHEREAS, In order to approve a 74-711 change of use, the Applicant submitted a preservation plan for the building, and the Applicant received a Certificate of Appropriateness from the Landmark Preservation Commission, and

WHEREAS, CB5's objection to the project does not relate to the Applicant's preservation plan; and

WHEREAS, Although the Applicant stated that the 4,371 sq. ft. floor plates were too small for commercial uses, they currently have three commercial tenants, identified as a real estate firm, a trading firm, and a consulting firm, occupying parts of the bottom five floors; and

WHEREAS, CB5 believes that the building is suitable for commercial use because all floors have the same floor plates and therefore the higher floors can be used in the same manner as the lower floors; and

WHEREAS, Although the current economic downturn has affected the New York real estate market and reduced the demand for Class-B office space, CB5 is very concerned about the long term effects of the loss of Class-B office space in the district; and

WHEREAS, CB5 encourages the preservation of low cost office space for the development of small businesses and non-profits in order to maintain economic diversity in Manhattan's midtown commercial district; and

WHEREAS, Although CB5 recognizes that the proposed conversion will be mixed use, which CB5 generally finds is a positive contribution to street life and neighborhood viability, the overall project decreases the usable stock of Class-B office stock in the neighborhood, one that is historically commercial and adjacent to the commercial Flatiron and Garment Center neighborhoods; and

WHEREAS, Although CB5 agrees with the Applicant that the building could function well as a residential building because of the upper floor access to light and air, CB5 finds that preservation of commercial and manufacturing use in the neighborhood is a necessary use and more appropriate for the neighborhood; and

WHEREAS, CB5 is concerned with individual use changes and conversions in the neighborhood immediately north of Madison Square Park; and

WHEREAS, CB5 recognizes that the area immediately north of Madison Square Park is undergoing rapid changes with the opening of many new hotels and increased nightlife and street activity, and encourages the City Planning Commission to engage in a study of the neighborhood to determine if there is a need for any potential large-scale zoning changes; therefore be it

RESOLVED, That Community Board Five **recommends denial** of ULURP # 080361 ZSM, 1182 Broadway, application for a special permit pursuant to Section 74-711 of the ZR to modify the use provisions of Sections 15-021(c), 42-00 and 42-133(a) to allow residential use in floors 6 through 16 plus penthouse of an existing building located in an M1-6 zoning district in the Madison Square North Historic District in Manhattan.

Thank you for the opportunity to comment on this matter.

Sincerely,



Vikki Barbero
Chair

Kevin Finnegan
Chair, Land Use and Zoning Committee

**Borough President
Recommendation**

City Planning Commission
22 Reade Street, New York, NY 10007
Fax # (212) 720-3356

INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representative as indicated on the Notice of Certification.

Application #: C 080361 ZSM

Docket Description:

C 080361 ZSM – IN THE MATTER OF an application submitted by Mocal Enterprises Inc. 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 regulations of ZR §§ 15-021(c), 42-00, and 42-133(a) to allow residential uses (Use Group 2) on floors six through sixteen plus the penthouse level of an existing, partially vacant building located at 1182 Broadway (Block 830, Lot 26). The building is located in an M1-6 zoning district and is within the Madison Square North Historic District in Manhattan Community District 5.

COMMUNITY BOARD NO: 5

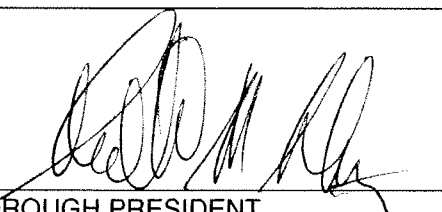
BOROUGH: Manhattan

RECOMMENDATION

- APPROVE
- APPROVE WITH MODIFICATIONS/CONDITIONS (List below)
- DISAPPROVE
- DISAPPROVE WITH MODIFICATIONS/CONDITONS (Listed below)

EXPLANATION OF RECOMMENDATION – MODIFICATION/CONDITIONS (Attach additional sheets if necessary)

See Attached


BOROUGH PRESIDENT

11/29/10
DATE



THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

SCOTT M. STRINGER
BOROUGH PRESIDENT

November 29, 2010

Recommendation on
ULURP Application No. C 080361 ZSM – 1182 Broadway
by Mocal Enterprises, Inc.

PROPOSED ACTIONS

Mocal Enterprises Inc.¹ seeks a **special permit pursuant to Section 74-711 of the New York City Zoning Resolution** (“ZR”) to modify the use regulations of ZR §§ 15-021(c) (Special Use Regulations), 42-00 (General Provisions), 42-133(a) (Provisions for Dwelling Units in Certain M1-5 or M1-6 Districts) to allow residential uses (Use Group 2) on floors six through sixteen plus the penthouse level of an existing, partially vacant building located at 1182 Broadway (Block 830, Lot 26). The building is located in an M1-6 zoning district and is within the Madison Square North Historic District in Manhattan Community District 5.

ZR § 74-711 addresses requests for special permits to modify use and bulk regulations of zoning lots that contain landmarks or are within Historic Districts as designated by the Landmarks Preservation Commission (“LPC”). In order for the City Planning Commission (“CPC”) to grant a use modification pursuant to ZR § 74-711, the applicant must first meet the following conditions: 1) the LPC has issued a report that states that the applicant will establish a continuing maintenance program for the preservation of the building and that such modification or restorative work will contribute to a preservation purpose;² and 2) the maximum number of permitted dwelling units is as set forth in ZR § 15-111. Further, CPC must find that such use modifications shall have minimal adverse effects on the conforming uses within the building and in the surrounding area.

¹ The principal owner of Mocal Enterprises, Inc. is Calvin C. Haddad.

² The LPC issued such a report on January 18, 2008 regarding the applicant’s request for use modification. Further, the LPC issued a Certificate of No Effect on January 10, 2008, regarding the applicant’s request for a use modification and a Certificate of Appropriateness for the external renovations on January 18, 2008. LPC’s determinations have not been re-examined in this recommendation.



PROJECT DESCRIPTION

The applicant seeks approval of a special permit pursuant to ZR § 74-711 to convert commercial office space into residential dwelling units in an M1-6 zoning district. The subject building, also known as the Centurian Building, is located on a 5,125-SF lot on the east side of Broadway between West 28th and West 29th streets. The building has a maximum building height of approximately 217 feet and a built FAR of 15 (75,528 SF of floor area). The building was completed in 1910 in the Beaux Arts style and was designed by William Rouse. Its style, scale, materials, and details make it a contributing building in the Madison Square North Historic District.³

The building is located in an M1-6 zoning district, which is generally bounded by West 31st Street, West 23rd Street, Fifth Avenue, and Avenue of the Americas. This zoning district permits commercial and light manufacturing uses; however, residential uses are not permitted as of right. The adjacent zoning districts in the surrounding area include C5-2 (to the east), C6-3A and C6-4M (to the south), C6-4 and C6-6 (to the north), and C6-4X (to the west). These commercial zoning districts are all mixed-use districts and permit residential use.

In 1998, the building's owner illegally converted the floors above the second story into 55 residential units. The owner began proceedings in 2008 to legalize the building's non-conforming use, which included reporting the then illegal use condition to the Department of City Planning ("DCP"). DCP subsequently notified the Department of Buildings, which issued a partial vacate order on March 9, 2010. This order required that all residential tenants fully vacate the building and that commercial tenants leave the building by midnight each night. Currently, the building is vacant except for two commercial tenants, which are located on the seventh and eighth floors.

The applicant seeks approval of the special permit in order to legally convert floors six through sixteen and the penthouse from commercial office space into 44 residential apartments (approximately 51,682 SF of floor area). Except for the residential lobby, the applicant proposes to have as-of-right commercial office and retail uses on the lower floors of the building (ground floor through the fifth floor). The building's commercial and residential tenants would have separate entrances and elevators. In order for the building to contain legal residential use, the owner will renovate the building's interior by installing a sprinkler system and constructing a secondary means of egress.

The land uses in the surrounding neighborhood predominantly consist of wholesale retailers and commercial office space, with a few hotels and residential buildings. Within the M1-6 zoning district, the majority of buildings contain commercial office space. According to the applicant's Environmental Assessment Statement, seven buildings in the immediate vicinity hold Certificates of Occupancy for light manufacturing uses. A subsequent land use survey found that only one building contained a light manufacturing use in operation, located at 24 West 30th

³ The subject building is not an individual landmark.

Street.⁴ In addition to light manufacturing, this building has a mix of commercial and residential tenants as well.

Additionally, there are a number of residential buildings within the M1-6 zoning district, including some located on the subject block or in close proximity to the subject building. Based on the applicant's materials, these residential buildings appear to be legal non-conforming uses that pre-date the 1961 zoning regulations, comply with ZR § 15-021(c)⁵, or were granted BSA variances (such as 1200 Broadway). The area surrounding the M1-6 zoning district, particularly west of Broadway, is becoming increasingly residential as those uses are allowed as of right. In addition, there are a few nearby hotels, including the Ace Hotel (20 West 29th Street), the Senton Hotel (39 West 27th Street), and the Broadway Plaza Hotel (1155 Broadway).

COMMUNITY BOARD'S RECOMMENDATION

At its full board meeting on October 14, 2010, Community Board 5 ("CB5") recommended disapproval of this application by a vote of 21 in favor, 1 abstention, and 16 opposed.

The community board's recommendation raised concerns including, among others, that approval of the proposed action would create a precedent in the area immediately north of Madison Square Park that would lead to further conversions in the neighborhood. The recommendation also expressed concern that trends in the real estate market are reducing the commercial diversity of the neighborhood and that residential conversions may hasten this effect. Finally, the recommendation highlighted that the area immediately north of Madison Square Park is undergoing rapid changes in character and that CB5 would like to have DCP study the neighborhood to determine if there is a need for any potential large-scale zoning changes.

BOROUGH PRESIDENT'S COMMENTS

The special permit pursuant to ZR §74-711 is a powerful tool which can be used to modify many sections of the Zoning Resolution in order to make owning and maintaining historic structures less burdensome and more desirable. In return for waivers, applicants must ensure that the subject property is properly rehabilitated and maintained in perpetuity. In this case, the LPC has found that the proposed use change and the ensuing restoration of the building will contribute to a preservation purpose worthy of allowing the applicant to request this use waiver from the CPC.

Although the project site is located within a manufacturing district, the dominant surrounding use is commercial office space, which is permitted as of right. Further, the immediate vicinity and surrounding area have been increasingly populated with hotels and legal residential uses. These existing uses are unlikely to experience conflicts with the proposed residential use. Consequently, the proposed residential use should be compatible with surrounding conforming uses. Additionally, the building is anticipated to have separate entrances and elevators for the commercial and residential spaces. These measures should be sufficient to minimize potential

⁴ On November 3, 2010, the applicant performed a site survey and provided an updated, detailed list of land uses within 400 feet of the project site to the Manhattan Borough President's Office.

⁵ ZR § 15-021(c) permits residential use in dwelling units which were determined as occupied as such on September 1, 1980. This special use regulation applies to the M1-5 and M1-6 districts within the area bounded by West 23rd Street, Fifth Avenue, West 31st Street, and Eighth Avenue.

conflict between the commercial users and the residential users. Finally, the proposed use modification will result in 22 fewer units than would be allowed under ZR § 15-111. Therefore, the proposed use modification meets the required findings for a use waiver pursuant to ZR § 74-711.

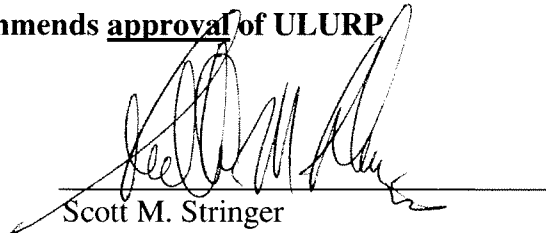
In applying for the special permit, the building's owner is undertaking extensive work to bring the building up to a sound, first-class condition and is ensuring continued maintenance to keep the building in this state in perpetuity. The owner has proposed the restoration of the building's original storefront and base. Such restorative work includes the refurbishment of the terra cotta cornice, colonnade, balustrades, and ground- and second-floor display windows.

The community board has expressed valid concerns about the changing character of the neighborhood and the need for diversity in commercial office stock. Though legitimate concerns, these are not directly related to the findings of the requested special permit. The special permit process allows a use modification only when CPC has determined that the application meets certain findings. Generally, as long as all requisite findings are met, it is appropriate public policy to allow new uses to offset the cost of rehabilitating and maintaining historic structures. While the community board's greater concerns cannot be addressed in this specific project, DCP could examine these issues outside of this individual discretionary action. As such, DCP should work with the community board and relevant stakeholders to examine the existing uses in the neighborhood to determine if a reconsideration of the existing zoning is warranted.

BOROUGH PRESIDENT'S RECOMMENDATION

The application meets the relevant conditions and findings for a special permit regarding a use modification pursuant to ZR § 74-711.

Therefore, the Manhattan Borough President recommends approval of ULURP Application No. C 080361 ZSM.



Scott M. Stringer
Manhattan Borough President