



CITY PLANNING COMMISSION

August 25, 2010/Calendar No. 22

C 090253 ZSM

IN THE MATTER OF an application submitted by David Novros and Joanna Pousette-Dart 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 and bulk regulations of:

1. Section 42-14D(2)(b) to allow UG 6 uses (retail uses) on portions of the cellar, ground floor and mezzanine level; and

2. Section 43-17 to allow the enlargement of a building containing Joint Living Work Quarters for Artists;

of an existing 4-story building, on property located at 433 Broome Street (Block 473, Lot 16), 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 David Novros and Joanna Pousette-Dart on December 23, 2008, to allow, in an M1-5B District within the SoHo Cast-Iron Historic District, a Use Group 6 retail use on the ground floor and the cellar levels; the construction of a mezzanine level between the first and second floors for Use Group 6 retail use; and a 661-square-foot rooftop addition for an artist studio (Use Group 9) use.

BACKGROUND

The building located at 433 Broome Street (Block 473, Lot 16) is a four-story structure that was built as a single-family residence in 1827 and was converted to store and loft building use in the 1870s. It is located within an M1-5B District, situated on the south side of Broome Street between Crosby Street and Broadway within the SoHo Cast-Iron Historic District. The structure has a lot coverage of 2,496 square feet and contains approximately 9,377 square feet of floor area.

The building is occupied by artists who reside in a Joint Living Work Quarters for Artists

(JLWQA) unit on the third floor and who utilize artist studios on the entire second and fourth floors. The ground floor and cellar level are currently vacant.

The applicant is seeking to establish 5,038 square feet of retail use (Use Group 6) on the ground floor and the cellar levels, to construct an 832 square foot mezzanine level between the first and second floors for retail use, and to construct a 661-square-foot rooftop addition for an artist studio (Use Group 9) use.

According to the use regulations of the 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, 17A, 17B, 17C and 17E) unless modified by special permit. In addition, according to the bulk regulations for an M1-5B district, buildings containing JLWQAs may not be enlarged. 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.

Therefore, the application seeks a modification of the M1-5B use regulations to allow Use Group 6 uses on the ground floor and cellar levels of the building, including the proposed mezzanine level. The application is also seeking a modification of the bulk regulations of the M1-5B district to allow the enlargement of the building by the construction of the mezzanine level and the rooftop artist studios. The enlarged building will contain 10,870 square feet of floor area, producing a Floor Area Ratio (FAR) of 4.1, less than the permitted FAR of 5.0.

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 the building, and that the proposed use and bulk modifications contribute to a preservation purpose.

The surrounding portion of the SoHo neighborhood is generally developed with five- to six-story loft buildings. While the upper floors in many of these buildings have been converted to dwelling units, including JLWQAs and interim multiple dwellings, the upper floors in other

buildings contain offices, art galleries or other commercial uses. Ground floor uses in the vicinity primarily consist of a mix of home furnishing stores, clothing stores and restaurants.

ENVIRONMENTAL REVIEW

This application (C 090253 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 09DCP039M. 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 April 12, 2010.

UNIFORM LAND USE REVIEW

This application (C 090253 ZSM) was certified as complete by the Department of City Planning on April 12, 2010, 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 May 13, 2010, and on May 20, 2010, by a vote of 40 to 0, adopted a resolution recommending approval of the application.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation on July 20, 2010, approving the application.

City Planning Commission Public Hearing

On July 14, 2010, (Cal. No. 21), the Commission scheduled July 28, 2010, for a public hearing on this application (C 090253 ZSM). The hearing was duly held on July 28, 2010 (Cal. No. 39). There were two speakers in favor of the application and none in opposition.

The attorney for the project described the subject proposal and stated that it met the requisite findings. A representative of the Borough President reiterated the Borough President's support for the application.

There were no other speakers and the hearing was closed.

CONSIDERATION

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

Throughout the better part of the last century, the area known as SoHo contained five-story buildings containing a mix of commercial, warehouse and industrial uses. However, over the last thirty years many buildings in this area have been converted from manufacturing uses to JLWQAs (Use Group 17D) and Use Group 6 uses, which 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, as well as provides opportunities for JLWQAs. The Commission therefore believes that the proposed Use Group 6 uses on the ground floor, cellar level and the proposed mezzanine level of the subject building will be consistent with established land use trends in the SoHo neighborhood. Further, the Commission notes that the requested modification of bulk to facilitate the enlargement of the building by construction of the mezzanine level is limited to the internal layout of 433 Broome Street and, as such, would have a minimal adverse effect on the structures or open space in the vicinity in terms of scale, location and access to light and air.

With regard to the requested modification of bulk to allow the enlargement of the building on the roof level, the Commission notes that the proposed roof-level construction is to be occupied as additional art studio space by the owner/occupants of the lower floors of the building. The Commission further notes that the proposed enlargement will result in only a slight increase in density – well within the permitted FAR – and the enlargement would be positioned so as not to have a deleterious effect on nearby conforming uses and access to light and air.

In addition, the Commission notes that as a condition of the application, the Landmarks Preservation Commission issued a Certificate of Appropriateness on October 7, 2008, and a plan for continuing maintenance was agreed to by the applicant.

The Commission notes that the application will facilitate the renovation and preservation of 433 Broome Street. The conversion of the ground floor and cellar level and the enlargement of the 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) such bulk modifications shall have minimal adverse effects on the structures or open space in the vicinity in terms of scale, location and access to light and air.
- (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 David Novros and Joanna Pousette-Dart for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the following bulk and use regulations:

1. Section 42-14D(2)(b) to allow UG 6 uses (retail uses) on portions of the cellar, ground floor and mezzanine level; and
2. Section 43-17 to allow the enlargement of a building containing Joint Living Work Quarters for Artists; of an existing 4-story, on property located at 433 Broome Street (Block 473, Lot 16), 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 090253 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 Franke, Gottsegen, Cox Architects, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
P1	Zoning Analysis & Property Information, Plot Plan, & Floor Area Calculation	11/09/09
P2	Site Plan	2/23/10
P3	Cellar, First, Mezzanine, & Second Floor Plans Proposed Conditions	2/23/10

P4 Third, Fourth, Penthouse/Roof, & 2/23/10
Upper Roof Plans Proposed Conditions

P7 Proposed Building Section 2/23/10

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, sub-lessee or occupant.
6. Development pursuant to this resolution shall be allowed only after the attached restrictive declaration dated August 10, 2010, executed by David Novros and Joanna

Pousette-Dart, 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 090253 ZSM), duly adopted by the City Planning Commission on August 25, 2010 (Calendar No. 22), 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
KENNETH J. KNUCKLES, ESQ., Vice Chairman
ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,
ALFRED C. CERULLO, III, MARIA M. DEL TORO, RICHARD W. EADDY,
NATHAN LEVENTHAL, ANNA HAYES LEVIN, SHIRLEY A. MCRAE,
KAREN A. PHILLIPS, Commissioners

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Bo Riccobono, *First Vice Chair*
Sheelah Feinberg, *Second Vice Chair*
Bob Gormley, *District Manager*



Erin Roeder, *Treasurer*
Susan Kent, *Secretary*
Elaine Young, *Assistant Secretary*

COMMUNITY BOARD No. 2, MANHATTAN

3 WASHINGTON SQUARE VILLAGE

NEW YORK, NY 10012-1899

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May 24, 2010

Amanda Burden, *Chair*
City Planning Commission
22 Reade Street
New York, New York 10007

Dear Chair Burden:

At its Full Board meeting on May 20, 2010, CB#2, Manhattan (CB#2-Man.), adopted the following resolution:

433 Broome Street ULURP NO. N090253ZSM (Block 473, Lot 16) City Planning Special permit application under section Section 74-711 to modify the bulk and use regulations to allow the conversion of the first floor and cellar of the subject premises to commercial Use Group 6 (Retail) use and the construction of a new Penthouse, Use Group 9, Artist's Studio, on the roof in an M1-5B zoning district

WHEREAS, the surrounding area was posted and there was no community opposition to this application, And,

WHEREAS, The application is by artists and the proposed penthouse will be an artist studio, And,

WHEREAS, The building is owner occupied and the owners have clearly stated their intent to avoid any nuisance uses on the ground floor, And,

WHEREAS, The usage is consistent and compatible with the other uses in this building and in the surrounding buildings and will have no adverse impacts on the neighborhood.

THEREFORE BE IT RESOLVED, that CB#2, Man. is satisfied that the applicant has met the requirements for this special permit,

THEREFORE BE IT FURTHER RESOLVED, that CB#2, Man. supports this application for a City Planning Special permit application under section Section 74-711 to modify the bulk and use regulations to allow the conversion of the first floor and cellar of the subject premises to commercial Use Group 6 (Retail) use and the construction of a new Penthouse, Use Group 9, Artist's Studio, on the roof in an M1-5B zoning district.

Vote: Unanimous, with 40 Board members in favor.

Please advise us of any decision or action taken in response to this resolution.



Jo Hamilton, Chair
Community Board #2, Manhattan



David Reck, Chair
Land Use and Business Development Committee
Community Board #2, Manhattan

JH/fa

cc: Hon. Jerrold L. Nadler, Congressman
Hon. Thomas K. Duane, NY State Senator
Hon. Daniel L. Squadron, NY State Senator
Hon. Deborah J. Glick, Assembly Member
Hon. Scott M. Stringer, Man. Borough President
Hon. Christine C. Quinn, Council Speaker
Hon. Margaret Chin, Council Member
Hon. Rosie Mendez, Council Member
Sandy Myers, CB2 Liaison, Man. Borough President's office
Lolita Jackson, Manhattan Director, CAU
Vivian Awner, Community Board Liaison, Dept. of City Planning
Lorna Edwards, Land Use Review Unit, Dept. of City Planning
Jeff Mulligan, Executive Director, Board of Standards & Appeals
Magdi Mossad, P.E., Man. Borough Commissioner, NYC Department of Buildings
Applicant

Borough President Recommendation

SV/VA/JM

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 090253 ZSM

Docket Description:

C 090253 ZSM - IN THE MATTER OF an application submitted by David Novros and Joanna Pousette-Dart 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 and bulk regulations of:

1. Section 42-14(D)(2)(b) to allow UG 6 (retail uses) on portions of the cellar, ground floor and mezzanine level; and
2. Section 43-17 to allow the enlargement of a building containing Joint Living Work Quarters for Artists;

of an existing 4-story, on property located at 433 Broome Street (Block 473, Lot 16), in an M1-5B District, within the SoHo-Cast Iron Historic District, Borough of Manhattan, Community District 2.

COMMUNITY BOARD NO: 2

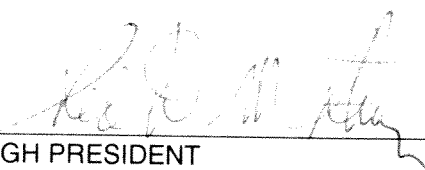
BOROUGH: Manhattan

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

7/20/10
DATE

CITY PLANNING COMM. SIG.
2010 JUL 20 PM 2:41
DEPT OF CITY PLANNING



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

CITY PLANNING COMMISSION
 2010 JUL 20 PM 2:41
 DEPT OF CITY PLANNING

SCOTT M. STRINGER
 BOROUGH PRESIDENT

July 20, 2010

Recommendation on
ULURP Application No. C 090253 ZSM – 433 Broome Street
by David Novros and Joanna Pousette-Dart

PROPOSED ACTION

David Novros and Joanna Pousette-Dart (herein together “the applicants”) seek approval of a **special permit pursuant to Section 74-711** of the Zoning Resolution (“ZR”) to modify the use regulations of ZR § 42-14D(2)(b) to allow Use Group 6 uses on portions of the cellar, first floor and proposed mezzanine level of a building containing joint living-work quarters for artists (“JLWQA”) and the bulk regulations of ZR § 43-17 to permit the creation of a first-floor mezzanine and a rooftop enlargement of a building containing JLWQAs not in existence on or prior to December 15, 1961. The subject building, 433 Broome Street (Block 473, Lot 16), is located in an M1-5B zoning district within Community District 2 and is within the SoHo-Cast Iron Historic District.

Pursuant to ZR § 74-711, applicants may request special permits to modify bulk and use 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 bulk and use modifications, an 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;¹ 2) the LPC has issued a Certificate of Appropriateness or other report that such bulk modifications relate harmoniously to the subject landmark building or buildings in the Historic District;² and 3) the maximum number of permitted dwelling units is as set forth in ZR § 15-111³. 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 and that the proposed bulk modifications shall have minimal adverse effects on structures or open space in the vicinity in terms of scale, location and access to light and air.

¹ The LPC issued such a report on October 7, 2008, regarding the applicant’s request for a use and bulk modification. LPC’s determinations has not been re-examined in this recommendation.

² The LPC issued a Certificate of Appropriateness on October 7, 2008.

³ Since the applicants do not propose dwelling units, this finding is not applicable.



PROJECT DESCRIPTION

The applicants seek the proposed actions to allow retail uses (Use Group 6) on the first floor, cellar and a proposed first-floor mezzanine and to permit the construction of the first-floor mezzanine and a rooftop addition. The proposed modifications would alter an existing four-story loft building in the SoHo-Cast Iron Historic District. The building's cellar and first floor have been vacant for over five years; previously, the first floor contained a wholesale use with accessory storage in the cellar. Currently, the upper floors contain artist's studios (on the second and fourth floors) and a JLWQA (on the third floor). The artist's studios are used by the two residents of the JLWQA, who are also the owners of the building. The building is located on a 2,649-SF lot and contains 9,377 SF of zoning floor area. The proposed bulk modification would add 1,493 SF of floor area to the existing building, with 832 SF for Use Group 6 uses on the proposed mezzanine level and 661 SF for a new artist's studio (Use Group 9) within the rooftop addition. The building would utilize less than the site's permitted maximum floor area.

The building is located on the south side of Broome Street between Crosby Street and Broadway. The area surrounding the project site primarily consists of loft buildings with ground-floor retail, restaurant or other commercial uses and a mix of commercial uses and JLWQAs on the upper floors. The project site is within an M1-5B zoning district, which allows light manufacturing and most commercial uses as-of-right. However, Use Group 6 use below the second story of any building in an M1-5B zoning district is not permitted.⁴ While residential uses are not generally allowed as-of-right, JLWQAs are permitted uses in buildings erected prior to December 15, 1961 where the building's lot coverage is less than 5,000 SF. The enlargement of buildings within M1-5B zoning districts that contain JLWQAs is not permitted.⁵ Therefore, in order to achieve the proposed project the applicants seek a special permit pursuant to ZR § 74-711 to allow for the proposed additions and Use Group 6 uses below the second story.

As part of the special permit application, the applicants entered into a restoration and maintenance plan for the subject building. The restorative work, which includes repainting of the façade, repair of damaged stonework and metalwork, and installation of a new entrance and windows on the ground floor, was found by LPC to bring the historic building to "sound, first-class condition." Furthermore, the plan will be set forth in a restrictive declaration against the property to ensure that a continuing maintenance program for the building will be maintained in perpetuity.

COMMUNITY BOARD'S RECOMMENDATION

At a Full Board meeting on May 20, 2010, Manhattan Community Board 2 recommended approval of the application by a unanimous vote of 40 in favor.

BOROUGH PRESIDENT'S COMMENTS

The special permit pursuant to ZR § 74-711 is a powerful tool which can be used to modify

⁴ In M1-5B zoning districts, only Use Groups 7, 9, 11, 16, 17A, 17B, 17C or 17E (generally wholesale, warehousing, and light industrial uses) are permitted as-of-right below the second story of a building.

⁵ Pursuant to ZR § 43-17.

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 restoration of the building will contribute to a preservation purpose worthy of allowing the applicants to request these use and bulk waivers from the CPC.

The proposed bulk modifications would result in a building that is consistent in scale with adjacent buildings and buildings in the surrounding area. With the penthouse addition, the building will still be consistent with the predominant built character of the surrounding area, which is five- to six-story commercial and loft buildings. Further, the addition will be set back from Broome Street and will not be visible from any public thoroughfare. The proposed penthouse, together with the interior mezzanine addition, will have minimal, if any, adverse effects on structures or open space in the vicinity. Therefore, the proposed bulk modification meets the required findings for a bulk waiver pursuant to ZR § 74-711.

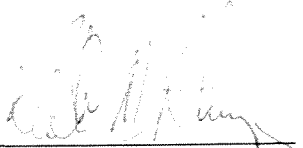
The proposed use waiver should have only minimal, if any, adverse effects on conforming uses within the building and in the surrounding area. The building will have separate means of ingress/egress for the ground-floor commercial space and the building's upper floors, which should be sufficient to minimize conflict between the commercial use and the JLWQA unit and the existing, as well as the proposed, artist's studios. Although the project site is located within a manufacturing district, the presence of several loft dwellings and JLWQAs, which are permitted as of right, has created a more residential and mixed-use character in this area than in other manufacturing districts. Consequently, the proposed retail use should be compatible with surrounding conforming uses. Therefore, the proposed use modification meets the required findings for a use waiver pursuant to ZR § 74-711.

In addition, in applying for the special permit, the building's owner are undertaking extensive work to bring the historic building to a sound, first-class condition and are ensuring continued maintenance to keep the building in this state in perpetuity.

BOROUGH PRESIDENT'S RECOMMENDATION

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

Therefore, the Manhattan Borough President recommends approval of ULURP Application No. C 090253 ZSM.



Scott M. Stringer
Manhattan Borough President