



## **CITY PLANNING COMMISSION**

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October 19, 2005/Calendar No. 30

C 050210 ZSM

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IN THE MATTER OF an application submitted by Fluency 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 modify the use regulations of Section 42-14D(2) (b) to allow retail uses (Use Group 6 uses) on the ground floor and cellar of an existing 6-story building on property located at 525 Broome Street (Block 476, Lots 1001 and 1002), in an M1-5B District, Borough of Manhattan, Community District 2.

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The application for the special permit was filed by Fluency LLC on December 7, 2004, to permit modification of the use regulations of Sections 42-14D(2) (b) of the Zoning Resolution to permit Use Group 6 uses below the floor level of the second story of a building located in an M1-5B zoning district in the southern portion of SoHo in Manhattan.

### **BACKGROUND**

525 Broome Street is a six-story condominium building located on the south side of Broome Street, midblock between Avenue of the Americas and West Broadway. The building is located on a lot with an area of 2,414 square feet.

Pursuant to Section 42-14D(2), uses below the floor level of the second story in M1-5B Districts are restricted to Use Groups 7, 9, 11, 16, 17A, 17B, 17C, or 17E (including wholesale, warehouse and light manufacturing uses). Use groups other than those permitted may be allowed by special permit pursuant to Section 74-781 provided that the City Planning Commission finds that the owner of the space, or a predecessor in title, has made a good faith effort to rent such space to a permitted use at fair market rentals. The good faith marketing of

the space shall have been pursued for a minimum of six months for buildings occupying less than 3,600 square feet of lot area.

This application seeks to allow a total of approximately 3,406 square feet of retail area; 1,660 square feet of retail space (Use Group 6) on the ground floor; and 1,746 square feet of retail space on the cellar level of 525 Broome Street for a total of 3,406 square feet of retail area. The upper floors are occupied as-of-right by joint living-work quarters for artists. If the special permit is granted, the applicant intends to use the subject space as a restaurant.

The surrounding neighborhood, in the southwestern edge of SoHo, is a mix of five- to seven-story residential and loft structures, primarily containing residential uses on the upper floors and retail and restaurant uses on the ground floors.

## **ENVIRONMENTAL REVIEW**

This application (C 050210 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 050210 ZSM) was certified as complete by the Department of City Planning on June 6, 2005, 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 July 14, 2005, and on July 21, 2005, by a vote of 41 to 0 with 0 abstentions, adopted a resolution recommending disapproval of the application with the following comments:

**WHEREAS;** This location has a long history of very bad operation of an eating and drinking establishment on the ground floor and cellar that did not have the proper required permits, And,

**WHEREAS;** The applicant was advised to reach out to the condo owners in this building and the surrounding community and the outreach was never done, And

**WHEREAS;** The condo owners in this building appeared at the committee meeting and noted the neglect of the space by the current owner and they strongly opposed this application, And

**WHEREAS;** Two years ago this space was the subject of an application for a Board of Standards and Appeals Special Permit pursuant to Section 73-241 of the Zoning Resolution for a Use Group 6 eating and drinking establishment on the ground floor and cellar that was denied, And,

**WHEREAS;** It is questionable if any eating and drinking establishment would be successful at this location,

**THEREFORE BE IT RESOLVED,** That CB2 Man. strongly opposes this City Planning Special Permit pursuant to Section 74-781 of the Zoning Resolution for a Use Group 6 eating and drinking establishment on the ground floor and cellar (approximately 3,100 square feet) of a building located in an M1-5B Zoning District.

### **Borough President Recommendation**

This application was considered by the Borough President, who issued a recommendation on September 2, 2005, approving the application.

### **City Planning Commission Public Hearing**

On August 24, 2005 (Calendar No. 7), the City Planning Commission scheduled September 14, 2005, for a public hearing on this application (C 050210 ZSM). The hearing was duly held on September 14, 2005 (Calendar No. 26). There were three speakers in favor of the application and one in opposition.

The applicant's attorney described the location of the building and the subject proposal; stated that the application met the requisite findings. The attorney discussed the community board's vote and stated that the current owner of the property had no connection with any of the prior owners of the space referred to by the community board in its resolution. The attorney stated that it is the owners' intention to operate a 'white-tablecloth' restaurant in the space. One of the owners of the subject space described how it is the owners' intention to soundproof the space and not to have live music or entertainment. The architect for the space commented that 'white-tablecloth' restaurants enhance the community.

A member of Community Board 2 discussed the community board's opposition to the special permit. The speaker noted that the community board was displeased that the applicant had not reached out to the community to discuss the proposal.

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 050210 ZSM) pursuant to Section 74-781 of the Zoning Resolution would modify the use regulations of Sections 42-14D(2)(b) and allow Use Group 6 (retail) uses on the ground floor and cellar level of the subject building.

The applicant has made the necessary good faith marketing effort for a period of more than six months. Such efforts included signing an exclusive agency agreement with a real estate broker familiar with marketing space in SoHo; and publishing weekly ads in the Tribeca Tribune, Village Voice and The New York Times beginning March 2004. Additional efforts included adding a circular advertisement to a monthly mailing sent to the real estate broker's prospective and existing clients; placing an advertising sign on the subject building; and notifying local and citywide industry groups of the availability of the spaces, 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 notes the concerns of the Community Board regarding the previous use of the space as a nightclub and their concerns about future operations planned for the site. The Commission also notes the concerns of the community regarding their desire for dialogue with the current owner of the space. The Commission acknowledges that in response to these concerns,

the owner has expressed a willingness to restrict the use of the space through an agreement or a restrictive declaration to an eating and drinking establishment with no live music, entertainment, or dancing.

The Commission's own determination under the special permit is solely whether the applicant has made a good faith effort to lease the space to a conforming use. The Commission finds that the applicant did make such an effort and 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 also notes that the use-specific findings set forth in Section 74-31 do not apply to the subject application and Section 74-781 special permits, generally, because the Commission is not approving a specific use. Rather, pursuant to 74-781, the Commission is making a broader determination that the use group restrictions of Section 42-14 for M1-5A/B districts shall be modified to allow Use Groups normally permitted in the underlying M1-5 district.

## **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 Fluency LLC for the grant of a special permit pursuant to Section 74-781 of the Zoning Resolution to modify the use regulations of Section 42-14D(2) (b) to allow retail uses (Use Group 6 uses) on the ground floor and cellar of an existing 6-story building located at 525 Broome Street (Block 476, Lots 1001 and 1002), in an M1-5B District, Community District 2, Borough of Manhattan, is approved, pursuant to Section 74- 781 of the Zoning Resolution, subject to the following terms and conditions:

1. The property that is the subject of this application (C 050210 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 the Joseph J.

Kleinmann, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Date Last Revised</u>
A1	Revised Site Plan - Attachment 2	4/18/05
A2	Revised Floor Plan - Attachment 6	4/18/05
A3	Revised Floor Plan - Attachment 6	4/18/05

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 050210 ZSM), duly adopted by the City Planning Commission on October 19, 2005 (Calendar No. 30), 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.,  
ALFRED C. CERULLO, III, RICHARD W. EADDY, LISA A. GOMEZ, JOHN MEROLO,  
KAREN A. PHILLIPS, DOLLY WILLIAMS, Commissioners**