



## CITY PLANNING COMMISSION

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February 19, 2014/Calendar No. 11

C 140055 ZSM

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**IN THE MATTER OF** an application submitted by Downtown RE Holdings LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-712(a) of the Zoning Resolution to modify the use regulations of Section 42-10 to allow Use Group 2 uses (residential uses) on the 2nd through 12th floors, and Section 42-14(D)(2)(b) to allow Use Group 6 uses (retail uses) below the level of the second story of a proposed mixed use development on a zoning lot that, as of December 15, 2003, is vacant, located at 688 Broadway (Block 531, Lot 4), in an M1-5B District, within the NoHo Historic District, Borough of Manhattan, Community District 2.

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The application for a Special Permit, in conjunction with the related action, was filed by Downtown RE Holdings on August 5, 2013. The requested Special Permit, in conjunction with the related action, would facilitate the development of a new 12-story mixed residential and commercial building at 688 Broadway.

### **RELATED ACTIONS**

In addition to the Special Permit, which is the subject of this report, implementation of the proposed development also requires action by the City Planning Commission on the following application, which is being considered concurrently with this application:

**C 140056 ZSM**      Special Permit pursuant to Section 74-712(b) to modify the height and setback requirements of Section 43-43.

### **BACKGROUND**

The applicant, Downtown RE Holdings LLC, seeks the grant of City Planning Commission special permits pursuant to Section 74-712(a) and 74-712(b) of the Zoning Resolution to facilitate development of a new mixed residential and commercial building at 688 Broadway. The project site is located within the NoHo Historic District within Manhattan Community District 2.

The requested actions would enable the Commission to modify use and bulk regulations of the underlying M1-5B District to allow the applicant to develop retail use on the ground floor and in the cellar; residential use on the building's upper floors, and to enable the proposed building's street wall to rise above the maximum allowable base height and encroach within the required set back distance.

The project site, 688 Broadway (Block 531, Lot 1), is located on the east side of Broadway between West 4<sup>th</sup> Street and Great Jones Street. The project site comprises a vacant lot that is periodically used as a flea market and an adjoining portion of an alley to be improved as part of the project.

The site is abutted to the north by the Silk Building at 692 Broadway and a Zachy's department store at 686 Broadway to the south. The Silk Building is a 12-story Joint Living Work Quarters for Artists (JLWQA) building, with retail, office, and physical culture establishment uses on floors 1 through 6, and 55 artist-in-residence loft units on floors 7 through 12. The Zachy's building is a two-story clothing store. To the rear, the site is abutted by Great Jones Alley, which runs parallel to Broadway. Great Jones Alley is 20 feet wide and subject to an agreement between the adjacent property owners that requires it to remain open and accessible to the owners of these properties (i.e., Block 531, Lots 1, 3, 4 and 15). The Alley is gated, accessed by a curb cut on Great Jones Street and used by the adjacent property owners for vehicle and refuse storage.

The surrounding NoHo neighborhood consists of buildings with varying heights, ranging from 2 to 35 stories. The majority of buildings are in the 8 to 15 story range. Generally, these buildings have decorative façades with deep, rhythmic recesses and street walls that do not set back from the street line. Opposite the project site along Broadway are three buildings which range from six to 15 stories. Although originally used for manufacturing and industrial purposes when they were constructed in the late nineteenth and early twentieth century, the surrounding buildings now predominantly contain dwelling units on the upper floors (both JLWQA and traditional residential uses) and retail uses on the lower floors. The surrounding area has a wide mix of uses, with significant residential use present. Many buildings are mixed-use, with retail on the ground

floor and dwelling units above.

Additionally, New York University has several buildings in the neighborhood, which accounts for a significant institutional presence in the area.

The site is located in an M1-5B District and within the NoHo Historic District. M1-5B Districts allow light manufacturing and most commercial uses including warehousing, parking facilities, and hotels up to 5.0 FAR and community facility uses up to 6.5 FAR. Residential development is not permitted as-of-right. Use Group 6 uses, including all retail, office uses and art galleries, are not permitted below the second floor of any building. JLVQA units are permitted in existing buildings erected prior to 1961, provided that the lot coverage of such buildings does not exceed 5,000 square feet.

In M1-5B Districts, the street wall may rise to 85 feet or six stories, whichever is lower, above which the building must set back and rise within a building envelope controlled by a sky exposure plane.

The applicant proposes to construct an 11-story mixed-use building with a one-story set-back penthouse that would have 14 residential units and approximately 3,970 square feet of retail space to be placed in the ground floor and cellar.

The zoning lot comprises 8,998 square feet of lot area and includes a portion of Great Jones Alley. The proposed building would have approximately 44,985 square feet of zoning floor area, of which 41,015 square feet would comprise residential space and 3,970 square feet would comprise commercial/retail space. The 14 residential units will be located on floors 2 through 12. The ground floor and cellar will contain retail space and accessory residential space. The sub-cellar is anticipated to contain accessory residential space and mechanical rooms.

Private access to the residential portion of the proposed building would be provided at the rear of the building, accessed through Great Jones Alley. A second entry point for the residential portion will be provided on Broadway.

The proposed building's Broadway facade will be comprised of aluminum and glass window wall between brick piers and sidewalls, painted metal slab edge covers and cornice elements, and a vertical screen made of glazed terra cotta extrusions.

As part of this development, Great Jones Alley, which abuts the proposed development site to the east, would be renovated. The alley would be improved with new Belgian block pavers and granite slab sidewalks, lighting and a new gate at its entrance.

On November 28, 2012, the proposed building's design received a Certificate of Appropriateness from the Landmarks Preservation Commission. In the surrounding area, heights of buildings vary, but most are in the 8 to 15-story range. Most buildings in the area are built to the street line, creating a consistent street wall. The proposed building street wall is placed at the street line to re-establish and reinforce street wall continuity at this location, further contributing to the character and scale of the area.

In order to achieve its overall development objective, the proposed project requires approval of City Planning Commission special permits pursuant to ZR 74-712(a) and ZR 74-712(b). While the proposed build program will comply with the floor area regulations of the M1-5B district (which allows commercial and light manufacturing uses up to 5.0 FAR), the proposed residential use, height of the street wall and proposed Use Group 6 retail use are not permitted as-of-right. Section 74-712(a) permits the modification of the use regulations of M1-5A and M1-5B districts to allow development to contain residential use and to have Use Group 6 uses below the second story within an Historic District, and on vacant zoning lots, lots that have minor improvements or lots, where not more than 20 percent of the lot area is occupied by existing buildings as of December 15, 2003. The requested action (140055 ZSM) would enable the applicant to develop and place Use Group 6 retail use on the ground floor and in the cellar.

The building also requires a bulk modification to permit the street wall to rise above the maximum allowable base height (140056 ZSM). In M1-5B Districts, buildings may have a maximum street wall height of 85 feet or six stories, whichever is less/lower, above which it is required to set back from the street line. As proposed, the street wall would rise to a height of 11

stories/131 feet, then set back 15 feet from the street line and rise to a twelfth-floor height of 144 feet. The requested bulk waiver, pursuant to Section 74-712(b) would allow portions of the street wall to rise above the maximum allowable base height and encroach within the required set back distance.

The special permits require that three findings be met related to the proposed use modifications. The applicant must show that the use modifications will have minimal adverse effects on the conforming uses in the surrounding area; are compatible with the character of the surrounding area; and for modifications that permit residential use, result in a development that is compatible with the scale of the surrounding area.

For the proposed bulk modifications, the applicant must meet two findings that show the bulk modifications shall not adversely affect structures or open space in the vicinity in terms of scale, location and access to light and air; and that the proposed bulk modifications relate harmoniously to buildings in the Historic District as evidenced by a Certificate of Appropriateness or other permit from the Landmarks Preservation Commission.

## **ENVIRONMENTAL REVIEW**

This application (C 140055 ZSM), in conjunction with the related application (C 140056 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 New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR Number is 13DCP091M. The lead is the City Planning Commission (CPC).

After a study of the potential impacts of the proposed actions in the Environmental Assessment Statement (EAS), a Negative Declaration was issued on October 21, 2013. A revised EAS reflecting a proposed change in the project description by the applicant to provide an A/C system for the adjacent Silk Building was submitted on February 13, 2014. The modification does not affect the conclusions of the previous environmental review and a revised Negative Declaration

was issued on February 18, 2014.

## **UNIFORM LAND USE REVIEW**

On October 21, 2013, this application (C 140055 ZSM), in conjunction with the application for the related action (C 140056 ZSM), was certified as complete by the Department of City Planning, and was duly referred to Manhattan Community Board 2 and the Manhattan Borough President in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

### **Community Board Public Hearing**

Community Board 2 held a public hearing on this application (C 140055 ZSM), on December 19, 2013 and on that date, by a vote of 36 in favor, 0 opposed and 0 abstaining, adopted a resolution recommending disapproval of this application with the following conditions:

- a) The pre-2009 zoning lot is restored and the zoning calculations for the proposed building are based on the zoning lot as it existed prior to December 15, 2003, being a rectangular lot of dimensions 54 feet x 130 feet; and
- b) Agreements are executed with owners of other properties privileged with the use of the alley (including 686 and 684 Broadway) specifying work to be performed affecting the property held in common or by others, and responsibilities for maintenance and security of the alley and regulating its use.

The community board also had the following additional comments:

1. Urges the applicant and affected parties to establish direct communications and make best efforts to reduce harm in the event that this application is approved and specifically, urges the applicant to consider inclusion of an air shaft or partial side yard serving as many Silk Building windows as possible.
2. Urges the relevant city agencies and elected officials to work with the applicant and affected parties and CB#2, Manhattan in an effort to achieve such outcome.

### **Borough President Recommendation**

This application, (C 140055 ZSM), was considered by the Borough President, who issued a recommendation approving the application on January 17, 2014, with the following condition:

Contingent on the applicant continuing to work with the affected residents of the neighboring Silk Building and following through on their construction and financial commitments necessary to help mitigate any adverse effects.

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

On January 8, 2014 (Calendar No. 14), the City Planning Commission scheduled January 22, 2014, for a public hearing on this application (C 140055 ZSM), and the application for the related action (C 140056 ZSM). The hearing was duly held on January 22, 2014 (Calendar No. 9), in conjunction with the public hearing on the application for the related action. There were four speakers in favor of the application and six in opposition.

Those speaking in favor included the developer, the project architect, the project's land use counsel, a representative of NoHo/Bowery Stakeholders and the Director of Land Use and Planning for the Manhattan Borough President.

The applicant's land use counsel described the requested actions, how it met the requisite findings and how the applicant intends to address concerns raised by the community board and by residents of the Silk Building, which abuts the proposed project site. The project architect described the proposed building and how the design of the building was intended to reflect the scale and context of the surrounding NoHo neighborhood. The developer gave an overview of the project site's history, and desired goals and objectives for the project. The representative from NoHo/Bowery Stakeholders commended the applicant's community outreach efforts. The Director of Land Use and Planning for the Manhattan Borough President reiterated the Borough President's conditional support for the application.

Those speaking in opposition included five residents of the Silk Building who raised concerns about the proposed underpinning of their building; the applicability of Zoning Resolution Section 74-712 to this project; the legal possession and use of Great Jones Alley by the applicant; the use of the Alley's development rights to achieve the proposed project's overall development objective and lot line light/air issues for 27 windows which serve 18 rooms in the Silk Building. These windows would be blocked if the proposed project is built. The sixth speaker, a consulting engineer and a Silk Building resident, raised concerns about the proposed underpinning of the Silk Building's foundation.

There were no other speakers and the hearing was closed.

## **CONSIDERATION**

The Commission believes that this application for a Special Permit pursuant to Section 74-712(a) of the Zoning Resolution, in conjunction with the application for the related action, is appropriate.

The requested actions would facilitate the development of a new 12-story mixed residential and commercial building at 688 Broadway, which is located on the east side of Broadway between East 4<sup>th</sup> Street and Great Jones Street. The proposed development site is located within an M1-5B zoning district, within the NoHo Historic District.

### ***Section 74-712(a) Special Permit - C 140055 ZSM***

The Commission notes that the applicant seeks approval of a special permit that would modify use regulations of Section 74-712(a) to build the proposed building. The requested modification of the use regulations of Section 74-712(a) would allow the cellar and ground floor to be used for local retail (Use Group 6) use and for the upper floors (i.e., floors 2-12) to be used for residential use. Under current regulations, in M1-5B Districts, Use Group 6 uses are not allowed below the second level in any building and residential use is not permitted as-of-right.



The surrounding area is mainly characterized by five- to twelve-story loft-style buildings that have been converted to a mix of uses. Most of the buildings in the area contain ground floor retail uses with residential, Joint Living Work Quarters for Artists (JLWQA) space, or office uses above. The Commission believes that the proposed local retail use on the ground floor and in the cellar, with residential use on the upper floors, is compatible with the character of the surrounding area and is consistent with the prevailing land use pattern found on neighboring blocks. As a result, the requested modifications would have minimal adverse effects on the conforming uses in the surrounding area. Finally, as discussed further below, the Commission believes that the modification allowing residential use would result in a development that is compatible with the scale of the surrounding area.

***Section 74-712(b) Special Permit – C 140056 ZSM***

The building also requires a bulk modification, pursuant to Section 74-712(b), to permit the street wall to rise above the maximum allowable base height. In M1-5B Districts, buildings may have a maximum street wall height of 85 feet or six stories, whichever is less/lower, above which it is required to set back from the street line. As proposed, the street wall would rise to a height of eleven stories – approximately 131 feet, then set back 15 feet and rise to a twelfth-floor height of 144 feet (or 145 feet to the top of the mechanical space). The requested bulk waiver, pursuant to ZR 74-712(b) would allow portions of the street wall to rise above the maximum allowable base height and encroach within the required setback distance. The Commission believes that the requested bulk modification allows the proposed building to relate harmoniously to buildings in the Historic District as evidenced by a Certificate of Appropriateness from the Landmarks Preservation Commission, dated November 28, 2012.

The Commission believes that the proposed building design, in terms of its scale, street wall design and overall height, is consistent with the existing built character of the area and would be of similar height to many buildings in the area. In the surrounding area, heights of buildings

vary, but most are in the 8 to 15-story range. The block's Broadway frontage also has two JLVQA buildings - 684 Broadway and the Silk Building, which rises to 12 stories, to which the Commission believes the proposed building, is architecturally compatible in its proposed height and scale. Most buildings in the area are built to the street line, creating a consistent street wall. Accordingly, the proposed building street wall is placed at the street line to re-establish and reinforce street wall continuity at this location. By developing the subject vacant parcel, the Commission believes that the proposed building will unify the street wall along this Broadway block front, further contributing to the character and scale of the area. Given its location on Broadway, a wide street, the Commission believes that the proposed building design would not adversely affect structures or open space in the vicinity or block legal sources of light and air, as defined by the Multiple Dwelling Law and New York City Building Code.

During the public review of this application, the Commission heard testimony at the public hearing and received correspondence (dated October 26, 2013, December 4, 2013 and February 6, 2014) from residents of the Silk Building, which is located at 694 Broadway. The Silk Building abuts the proposed project site to the north. The residents' primary concerns focused on the applicability of Section 74-712 to facilitate this project; the proposed project's light and air impacts to their building; the proposed project's build program and scale (i.e., bulk and height); the proposed development's need to underpin the Silk Building; and the legal possession and use of Great Jones Alley by the applicant and the use of the Alley's development rights to achieve the proposed project's overall development objective.

### ***Applicability of Section 74-712***

Special permits pursuant to Section 74-712 are available "in M1-5A and M1-5B Districts, on a #zoning lot# that, as of December 15, 2003, is vacant, is #land with minor improvements# or has not more than 20 percent of the #lot area# occupied by existing #buildings#." (Zoning Resolution Section 74-712(a); see also ZR Section 74-712(b)). At the public hearing, the Commission heard testimony that the proposed project is not eligible for the requested special permits under Section 74-712 because the zoning lot was formed through the merger of two vacant lots after December 2003.

Upon review, the Commission finds that Section 74-712 concerns the condition of the land comprising the zoning lot; it does not prohibit zoning lot mergers or changes in the configuration of zoning lots after 2003. The Commission believes that the proposed project is eligible because the site consists of land which meets the eligibility requirement of having been vacant as of December 2003 and that the fact that the current zoning lot was formed after 2003 is not determinative. In other words, a project is eligible where the site which comprises the zoning lot consists of land which meets one of the eligibility requirements under the regulation. The Commission further notes that when it is the intention to require that a zoning lot to be in existence and unchanged from a certain date onward, the zoning text is explicit in saying so. For example, Zoning Resolution Article 7 Chapter 7 – “Special Provisions for Zoning Lots Divided by District Boundaries,” Section 77-21 says in part;

“Whenever a #zoning lot# existing on December 15, 1961, or on any applicable subsequent amendment thereto. . . .”

The Commission believes that this interpretation of Section 74-712 is consistent with the applicability of the zoning text in relation to recently approved applications by the Commission, such as 150 Wooster Street (C 120201 ZSM) and 300 Lafayette Street (N 140092 ZRM).

### ***Lot Line Windows***

At the public hearing and in related correspondence sent to the Commission during its public review, Silk Building residents raised concerns about the proposed project’s light and air impact on their building. In their testimony and related correspondence, the residents stated that the proposed project would block 27 large-scale lot line windows that have existed for over 100 years and currently provide light and air to 18 rooms, including 16 bedrooms. Moreover, the residents stated that the proposed project would also block 22 through-wall heating, ventilation and air conditioning (HVAC) louvres, also located on the lot line, which serve these rooms.

In 1981, the Silk Building received a variance from the Board of Standards and Appeals (BSA) to allow commercial and manufacturing uses on floors two through six, and Joint Living Work

Quarters for Artist (JLWQA) units on floors seven through twelve. In M1-5B Districts, JLWQA units are allowed in buildings where lot coverage does not exceed 5,000 square feet. Since the Silk Building has more than 5,000 square feet of lot coverage, the BSA variance was necessary to allow the conversion of the Silk Building's former commercial office and manufacturing space into JLWQA space. The BSA noted that the Silk Building has high lot coverage and its long rectangular shape allowed for its then-proposed JLWQA units to have access to light and air from its northern East 4<sup>th</sup> Street façade and western Broadway façade. The BSA variance stipulated that all JLWQA units must conform to plans submitted at that time to the BSA, "that all interior habitable rooms have light and ventilation in accordance with the Multiple Dwelling Law and Building Code," which do not allow lot line windows to be used for legal light and air purposes. Accordingly, all JLWQA units accessed light and air must come from either Broadway or East 4<sup>th</sup> Street.

In correspondence to the Commission, Silk Building residents stated that since the grant of the 1981 BSA variance, some of the BSA-approved JLWQA units have been subdivided into duplex units that are solely dependent on the building's lot line windows along its southern façade to provide light and air to these rooms. According to the residents, 27 lot line windows would be blocked by the proposed building, which in turn would unduly affect light and air to 18 rooms. There was no testimony indicating that the lot line windows were legalized in connection with the subdivisions.

The Commission notes that the proposed building would be built to the zoning lot line and its northern wall would rise without setback and block several windows currently used by residents of the neighboring Silk Building. The Commission is aware that the proposed building would cover 27 lot line windows on the Silk Building, as well as the under-window louvres for heating, ventilation and air conditioning (HVAC). Although these windows and louvres do provide light and air for the affected units on the Silk Building's south façade, as stated previously, these lot line windows and louvres are not legally protected windows for light and air purposes.

In their letter, dated December 4, 2013, the Silk Building residents stated that "We believe the development not only extends beyond the limits of its permitted zoning regulations but that the

developer has improperly merged a jointly owned alley into its lot to increase the buildable square footage. The letter further states, " If left unchanged, this lot merger will enable the developer to add an additional 10,000 square feet of above-ground space to the project, thereby blocking the 27 south-facing windows and 22 in-wall ac/heating units in the Silk Building." In their letter, the residents suggested that the rear of the proposed building be redesigned, so that a portion of the proposed building's bulk that is currently adjacent to the Silk Building, and would block light and air for 12 units, be moved to the southern portion of the proposed building's floor plate. This proposed redesign would provide light and air for 4 of the 12 affected units; the remaining 8 units would still have blocked lot line windows, and none of the lot line windows would be legalized.

In response, the applicant, in a letter to the Commission dated January 30, 2014, stated that it has carefully considered the proposed redesign scheme in relation to the proposed layout of the building and has proposed an alternative to best provide legal light and air to rooms within the three of the 12 units with blocked lot line windows, while meeting the overall goals of the proposed build program.

The applicant proposes to construct roof-top skylights for three of the Silk Building's units that are adjacent to the roof and have lot line windows that would be blocked. The skylights would provide legal light and air to rooms within three units with the affected lot line windows. The applicant has agreed to finance this construction and is willing to continue in dialogue with the Silk Building residents. The Commission urges the applicant to continue to meet with the Silk Building residents to hear and discuss their suggestions and related concerns for this project.

Regarding air and ventilation to affected units with lot line air conditioning louvres, the applicant also stated in its letter that it would replace the Silk Building's south facing in-wall air conditioning units with a split system configuration. Multiple chases will be constructed on the applicant's property to provide space for piping to run to roof-top condensers on the Silk Building. Each chase will be approximately six inches deep and 3 feet wide to accommodate the required piping. The applicant stated that it will contribute \$250,000 for to cover construction costs and for the provision of new HVAC equipment.

### ***Project Scale and Bulk***

The Commission also heard concerns about the proposed project scale and bulk. At the public hearing, those who gave testimony inquired about the bulk and mass of the proposed building if development rights from Great Jones Alley were not included in the proposed build program. The alley comprises 1,915 square feet of lot area; at 5.0 FAR, the alley would generate approximately 9,575 square feet of floor area. According to the applicant, the top three floors of the proposed building would total approximately 9,575 square feet, which is roughly equal to the development rights generated by Great Jones Alley. Minus the aforementioned 9,575 square feet (i.e., three floors), the proposed building would rise to 9 stories plus a mechanical penthouse; the proposed building would have 12 stories plus a mechanical bulkhead.

At the public hearing, questions were also raised about the potential height and massing of an as-of-right building. Under the M1-5B regulations, the building could rise to 85 feet or six stories, whichever is less, above which the building massing and height is controlled by the sky exposure plane. As described in the Environmental Assessment Statement (EAS), a height-factor hotel, with a floor plate that does not cover the entire development site, was analyzed as the most probable as-of-right scenario. The hotel would have 46,609 gross square feet of floor area and would rise to a height of approximately 153 feet, which is taller than the proposed building which rises to 144 feet.

### ***Silk Building Foundation Concerns***

During the public review, concerns were heard about the proposed development's need to underpin the foundation of the Silk Building, which is more than 100 years old. The residents were concerned that the proposed project would require deep excavations for both a cellar and sub-cellar that would require underpinnings to their building that would put the building at risk. In response, the applicant agreed not to underpin the Silk Building and has revised the proposed project's foundation plan. Moreover, the applicant will make its engineer and architect available to discuss this issue with the Silk Building residents and their consultants.

### ***Great Jones Alley***

At the public hearing, concerns were raised about the ownership of Great Jones Alley. In response, the applicant confirmed that it owns the portion of the alley that comprises part of the zoning lot and is legally entitled to use it as part of the proposed build program for this project.

The Commission notes that the applicant proposes to rehabilitate and improve Great Jones Alley, a historic alley that has been solely used for storage and parking purposes. Great Jones Alley is not a mapped street but is privately owned property comprising several tax lots. The applicant owns half of the alley, which comprises part (1,915 square feet) of the zoning lot. The main residential lobby for the proposed building would be accessed through Great Jones Alley, which will be improved with Belgian block pavers, granite sidewalk slabs, improved lighting and a new gate. The proposed alley improvements would create a pedestrian friendly environment through use of improved lighting, paving and plantings. In its letter to the Commission, the applicant stated that all parties that have access to Great Jones Alley will continue to do so.

The Commission believes that the proposed building complements the area's existing built context and scale. The proposed project further supports NoHo's role as a thriving mixed-use neighborhood, with destination and local retail use and commercial office use. The Commission, therefore, believes that this application for a Special Permit pursuant to Section 74-712(a) of the Zoning Resolution, in conjunction with the application for related action, is appropriate.

### **FINDINGS**

The City Planning Commission hereby makes the following findings pursuant to Section 74-712

(a) (Developments in Historic Districts) of the Zoning Resolution:

Such use modifications

- (i) have minimal adverse effects on the conforming uses in the surrounding area;
- (ii) are compatible with the character of the surrounding area; and
- (iii) for modifications that permit residential use, result in a development that is compatible with the scale of 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 submitted by Downtown RE Holdings LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-712(a) of the Zoning Resolution to modify the use regulations of Section 42-10 to allow Use Group 2 uses (residential uses) on the 2nd through 12th floors, and Section 42-14(D)(2)(b) to allow Use Group 6 uses (retail uses) below the level of the second story of a proposed mixed use development on a zoning lot that, as of December 15, 2003, is vacant, located at 688 Broadway (Block 531, Lot 4), in an M1-5B District, within the NoHo 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 140055 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following approved plans, prepared by BKSK Architects, LLP, filed with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-1	Site Plan	07/23/13
Z-2	Zoning Analysis	07/23/13
Z-3	Building E-W Section	07/23/13
Z-3A	Building N-S Section	01/25/13
Z-4	Sub-Cellar	10/26/12
Z-5	Cellar	10/26/12



<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-6	Ground Floor	07/23/13
Z-7	Second Floor	07/23/13
Z-8	Typical Floor (3 <sup>rd</sup> -5 <sup>th</sup> )	10/26/12
Z-9	Typical Floor (6 <sup>th</sup> – 11 <sup>th</sup> )	10/26/12
Z-10	Twelfth Floor	10/26/12

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, operating 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. 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 the provisions of which 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 or breach of any of the conditions referred to above, may constitute grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, renewal or extension of the special permit hereby granted.
  
7. 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 action or failure to act in accordance with the provisions of this special permit.

The above resolution (C 140055 ZSM), duly adopted by the City Planning Commission on February 19, 2014 (Calendar No. 11), is filed with the Office of the Speaker, City Council and

the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

**KENNETH J. KNUCKLES, ESQ., Vice Chairman**  
**ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E.,**  
**ALFRED C. CERULLO, III, BETTY Y. CHEN,**  
**MICHELLE R. DE LA UZ, MARIA M. DEL TORO,**  
**JOSEPH I. DOUEK, RICHARD W. EADDY,**  
**ANNA HAYES LEVIN, ORLANDO MARIN, Commissioners**

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Susan Kent, *Secretary*  
Keen Berger, *Assistant Secretary*

## COMMUNITY BOARD NO. 2, MANHATTAN

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Greenwich Village ♦ Little Italy ♦ SoHo ♦ NoHo ♦ Hudson Square ♦ Chinatown ♦ Gansevoort Market

December 20, 2013

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

Dear Chair Burden,

At its Full Board meeting on December 19, 2013, CB#2, Manhattan (CB#2-Man.), adopted the following resolution:

### **688 Broadway (east side, between Great Jones and East 4<sup>th</sup>) Applications C 140055 ZSM and C 140056 ZSM**

Applications 140055 ZSM and 140056 ZSM to the City Planning Commission pursuant to 74-712a and 74-712b of the Zoning Resolution to modify use regulations to allow residential use on floors two through twelve and retail use on the ground floor and cellar levels of a new building on a vacant lot in an M1-5B zoning district within the NoHo Historic District, and to modify the height and setback requirements to allow the street wall of the building to rise above the allowed height of 85 feet or six stories, whichever is less.

### **#1 - A resolution opposing a special permit for a lot created after December 15, 2003, and facilitating unilateral changes to the ownership and use of a jointly-owned private road.**

#### **Whereas:**

1. The application was presented to the Land Use committee by Mitch Korbey of Herrick Feinstein, George Schieferdecker and Harry Kendall of BSKS Architects and David Schwartz of Downtown Real Estate Holdings;
2. The proposed development is for 41,015 zoning square feet of residential space and 3,970 zoning square feet of commercial space for a total of 44,985 square feet of zoning floor area;
3. The application states that this conforms with a maximum 5.0 FAR based on a lot of 8,998 square feet;
4. However, the lot of this size was created in 2011 through a combination of apportioning and merging of parts of a separate jointly-owned lot (Lot 15) no zoning lot of this size existed at this location until those actions were completed;
5. A Zoning Lot Certification filed for Block 531, Lot 4, on December 3, 2009, describes the lot as a rectangle of 54.5 feet by 130 feet;

6. 74-712 pertains if a zoning lot “as of December 15, 2003 is vacant or has not more than 20 percent of the lot area occupied by existing buildings” so the proposed development substantially exceeds the allowed 5.0 FAR for the lot that did exist at this location prior to that date;
7. The lot area used for this calculation includes 2/3 of the area of an alley that was part of a different lot, Lot 16, before and on December 15, 2003, and thereby defies the language of 74-712 and contorts its intent;
8. Through action by the applicant in 2011, Lot 16 was effectively divided up among adjacent properties through a process that may or may not withstand legal challenge if brought by other owners, but in any case appears inequitable in that the property lines were drawn without consultation or agreement with the other parties;
9. The zoning text provides for an equitable process for such reapportionment that would require either agreement or waiver of rights by all parties-in-interest, but the applicant chose not to follow this process;
10. Furthermore, Lot 16 was deeded in 1806 and 1818 as a private road, and the deed created a permanent restriction such that no building of any size can ever be built on or over it, and reserving it “for all the use and purposes that roads or ways rightfully may or ought to be used but to and for no other use or purpose whatsoever”, thus logically precluding the property from having floor area associated with it;
11. The proposed floor area therefore exceeds the floor area allowed under 74-712;
12. Otherwise, the use modifications appear to meet the requirements of 74-712 including for rear yards, distances between windows and lot lines, dwelling unit floor area, signs, and prohibition of eating and drinking establishments;
13. The proposed use modifications, if floor area is appropriately calculated, would have minimal adverse effects on conforming uses in the surrounding area and would be compatible with the character of the surrounding area;
14. While the building is no larger than some other buildings in the immediate area, 74-712 was added to the zoning text at the recommendation of and with the support of CB-2 Manhattan specifically to regularize the size and uses of buildings that can be constructed on lots that are in M1-5A and M1-5B districts, in historic districts, and are unimproved or improved with buildings covering no more than 20 percent of their lot area, and as such, buildings that exceed the anticipated size based on a 5.0 FAR for the lot size prior to December 15, 2003 should not be considered to be compatible with the scale of the surrounding area;
15. Similarly, per the clear intent of 74-712, buildings that exceed the 5.0 FAR for the lot size prior to that date should be assumed to adversely affect structures or open space in the vicinity in terms of scale, location, and access to light and air;
16. In addition to merging the lots for the purpose of increasing available floor area, the project intends to make use of the alley as the main vehicle and pedestrian entrance to the residential building with 14 units;
17. The proposal includes improvements to the alley, but the new use will represent a substantial increase in intensity of use to this narrow, jointly-owned lot, with potential for nuisance from noise and fumes, as well as conflicts with longstanding uses such as retail deliveries and trash collection;
18. The president of the condominium board at 684 Broadway spoke at the hearing to express concerns about impacts increased vehicle traffic in the alley;
19. A significant current use of the alley is for retail deliveries to 866 Broadway which may be incompatible with the planned new use;
20. The proposed uses could not have been anticipated when the alley was laid out well before the advent of internal combustion engines and a major change in use that will impact longstanding prior uses should be based on an agreement between all affected parties;
21. The application refers to an “agreement between the adjacent property owners” but at the hearing the applicant agreed that there is no such agreement, and that the other property owners did not participate in the remapping process or the design of the road renovations or the new gate.
- 22.

**Therefore it is resolved that CB#2, Man.** recommends DENIAL of these special permits UNLESS

- a) **The pre-2009 zoning lot is restored and the zoning calculations for the proposed building are based on the zoning lot as it existed prior to December 15, 2003, being a rectangular lot of dimensions 54 feet x 130 feet; and**
- b) **Agreements are executed with owners of other properties privileged with the use of the alley (including 686 and 684 Broadway) specifying work to be performed affecting the property held in common or by others, and responsibilities for maintenance and security of the alley and regulating its use.**

**#2 - A resolution favoring accommodations for neighbors if the permits are granted.**

**Whereas:**

1. The proposed building will block 27 large lot line windows on the south side of the adjacent building at 14 East 4<sup>th</sup> Street (aka The Silk Building);
2. The proposed building will block and render useless 27 HVAC units providing heat, air-conditioning, and ventilation to this building;
3. Representatives of the Silk Building presented a report to the committee demonstrating that 18 units will lose access to light and air if the proposed building is built as planned;
4. The report also detailed objections to the changes to the lot configurations and their concerns about undermining of the foundations of their building;
5. Thirty-four people who identified themselves as owners and/or occupants of "JLWQA" condominium units of the Silk Building signed the guest list and expressed opposition to the application;
6. JLWQA units were allowed in this building as a result of a 1980 Application 864-80-BZ to the Board of Standards and Appeals which was supported by CB-2 Manhattan;
7. The resolution passed by the BSA at that time required that "all interior habitable rooms have light and ventilation in accordance with the Multiple Dwelling Law and Building Code";
8. To the extent that the current residential habitation of the Silk Building depends on light and air from the lot line windows, such use is not in accordance with the MDL and the Building Code;
9. The requested special permits are not subject to requirements to retain these lot line windows and the applicant has no legal responsibility to mitigate conditions caused by the blocking of the 27 windows and AC units;
10. Nevertheless, it is clear that the loss of use of these windows and AC units will cause substantial hardship and loss to multiple families;
11. The applicant presented a modified foundation plan that appeared to address concerns that foundations of neighboring buildings may be damaged during construction of the cellars;
12. Noho Broadway Stakeholders submitted a statement supporting the application;
13. CB-2 recommended denial of this application for reasons not related to the impacts of this project on light and air or risk of damages to the adjacent foundations;

**Therefore it is resolved that CB#2, Manhattan:**

1. **Urges the applicant and affected parties to establish direct communications and make best efforts to reduce harm in the event that this application is approved and specifically, urges the applicant to consider inclusion of an air shaft or partial side yard serving as many Silk Building windows as possible.**
2. **Urges the relevant city agencies and elected officials to work with the applicant and affected parties and CB#2, Man. in an effort to achieve such outcome.**

Vote: Unanimous, with 36 Board members in favor.

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

Sincerely,



David Gruber, Chair  
Community Board #2, Manhattan



Tobi Bergman, Chair  
Land Use & Business Development Committee  
Community Board #2, Manhattan

DG/fa

cc: Hon. Jerrold L. Nadler, Congressman  
Hon. Brad Hoylman, NY State Senator  
Hon. Daniel 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  
Edwin Marshall, Dept. of City Planning

# 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 140055 ZSM and C 140056 ZSM

### Docket Description:

**C 140055 ZSM - IN THE MATTER OF** an application submitted by Downtown RE Holdings LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-712(a) of the Zoning Resolution to modify the use regulations of Section 42-10 to allow Use Group 2 uses (residential uses) on the 2<sup>nd</sup> through 12<sup>th</sup> floors, and Section 42-14(D)(2)(b) to allow Use Group 6 uses (retail uses) below the level of the second story of a proposed mixed use development on a zoning lot that, as of December 15, 2003, is vacant, located at 688 Broadway (Block 531, Lot 4), in an M1-5B District, within the NoHo Historic District, Borough of Manhattan, Community District 2.

**C 140056 ZSM - IN THE MATTER OF** an application submitted by Downtown RE Holdings LLC pursuant to Sections 197-c and 201 of the new York City Charter for the grant of a special permit pursuant to Section 74-712(b) of the Zoning Resolution to modify the height and setback requirements of Section 43-43 (Maximum Height of Front Wall and Required Front Setbacks) to facilitate the development of a 12-story mixed-use development on a zoning lot where not more than 20 percent of the lot area is occupied by existing buildings as of December 15, 2003, located at 688 Broadway (Block 531, Lot 4), in an M1-5B District, within the NoHo 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

1/17/2014  
DATE





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

January 21, 2009

**Recommendation on  
ULURP Application Nos. C 140055 ZSM and C 140056 ZSM – 688 Broadway  
by Downtown RE Holdings LLC**

**PROPOSED ACTION**

Downtown RE Holdings LLC<sup>1</sup> (“the applicant”) seeks a **special permit** pursuant to Section 74-712 of the New York City Zoning Resolution (“ZR”) to facilitate the development of a 12-story mixed-use building on a vacant lot located at 688 Broadway in the NoHo neighborhood of Manhattan Community District 2. The proposed special permit would modify use and bulk regulations of §§ 42-00 (General Provisions), 42-14(D)(2)(a) and 43-43 (Maximum height of front wall and required front setbacks) in an M1-5B district

In order to grant the use modifications pursuant to ZR § 74-712(a), the City Planning Commission (“CPC”) must find (i) that the residential development of the project complies with the minimum requirements for rear yards and distance between legally required windows, walls, or lot lines pertaining to R8 districts (§§ 23-86 and 23-47); (ii) that the total FAR be limited to 5.0; (iii) that the minimum floor area for each dwelling unit is 1,200 square feet; (iv) that all signs conform to sign regulations (§ 32-60) pertaining to C2 zoning districts; and (v) that eating and drinking establishments (Use Groups 6A and 12A) of any size are not permitted. CPC shall further find that the proposed use modifications (i) have minimal adverse effects on conforming uses in the surrounding area; (ii) are compatible with the character of the surrounding area; and in the case of residential developments (iii) result in a development that is compatible with the scale of the surrounding area.

Further, in order to grant the bulk modifications to special permit § 74-712(b), CPC must find that the proposed development (1) shall not adversely affect surrounding structures or open space in terms of scale, location and access to light and air; and (2) relate harmoniously to buildings in the Historic

<sup>1</sup> Downtown RE Holdings LLC is a subsidiary of DJS Real Estate Development LLC which is managed by David Schwartz

District as evidenced by a Certificate of Appropriateness from the Landmarks Preservation Commission (“LPC”).<sup>2</sup>

## PROJECT DESCRIPTION

The proposed mixed-use development will contain 14 dwelling units on floors 2 through 12, with ground floor and cellar retail space and accessory residential space. The proposed building would occupy a long-vacant lot in the NoHo Historic that is currently occupied by an outdoor market.

### Neighborhood Context

The NoHo neighborhood surrounding the proposed development consists primarily of 8- to 15-story buildings with no setbacks. Most of the area is within the NoHo Historic District. Originally a manufacturing area, most of the buildings in the district were built in the late nineteenth and early twentieth centuries. Most of these industrial buildings have been converted to residential uses on the upper floors. Because of the area’s zoning designation, many of these dwelling units are Joint Live Work Quarters for Artists (“JLWQA”), though some function as traditional residential units. The majority of the district’s buildings have retail uses on the ground floors. New York University owns a number of properties in the area, with the bulk of their Washington Square campus lying immediately to the west of the proposed development.

The project site and the areas directly north and south of the proposed development are zoned M1-5B, which permits most industrial and several commercial uses as of right. Notably, commercial Use Group 6, which permits retail and art galleries, is not allowed under the M1-5B designation. JLWQA are permitted in existing buildings erected prior to 1961, provided the lot coverage for such buildings does not exceed 5,000 square feet. In M1-5B districts new developments and enlargements are permitted a maximum floor area ratio (“FAR”) of 5.0 and must set back 15 feet from the lot line after a street wall of 85 feet.

Across Broadway from the proposed development is a C6-2 district stretching from West Houston Street to Waverly Place. C6-2 districts permit residential, commercial, and community facility uses up to 6.0 FAR. As with M1-5B districts, new developments are permitted a street wall height of 85 feet after which buildings must adhere to a sky exposure plane. Directly across the street from the proposed development are three buildings at 12, 6, and 15 stories.

Directly adjacent to the proposed development are the Silk Building, at 692 Broadway,<sup>3</sup> and the two-story Zacky’s clothing store, a non-contributing building to the historic district at 686 Broadway. The Silk Building was constructed in 1912 as a 12-story commercial and manufacturing building. Situated on a 15,272 square foot lot, the building occupies the entire south side of this block of East 4<sup>th</sup> Street, from Broadway to Lafayette Street. In 1982 the building was converted to retail on the ground level, commercial and manufacturing uses on floors two through six, and JLWQA on floors seven through twelve.<sup>4</sup> Because M1-5B districts allow for JLWQA only where lot coverage does not exceed 5,000 square feet, the Silk Building’s residential units are subject to a 1981 Board of Standards and Appeals

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<sup>2</sup> The LPC issued a Certificate of Appropriateness on November 28, 2012. LPC’s determinations will not be re-examined in this application.

<sup>3</sup> The Silk Building also goes by the address 14 East 4<sup>th</sup> Street.

<sup>4</sup> Floors one through six are currently occupied by a physical culture establishment.

("BSA") variance. The lot coverage requirement is intended to prevent residential units in large floorplate manufacturing buildings in order to ensure all units have adequate access to light and air. The Silk Building's variance is based on the fact that though the building has exceptionally high lot coverage, its long rectangular shape allows for all units to access light and air from its northern East 4<sup>th</sup> Street façade. The BSA decision stipulates that all units must conform to plans submitted at that time in which all units accessed light and air from either Broadway or East 4<sup>th</sup> Street.

### **Proposed Development Site**

The proposed project sits on Block 531, Lot 4, which has an area of 8,998 square feet. The lot consists of vacant property on Broadway which is temporarily occupied by flea market vendors. At the rear of the lot, a 10 foot wide portion of Great Jones Alley connects the lot to the south to Great Jones Street. Great Jones Alley is gated and accessed by a curb cut on Great Jones Street.

Prior to 2011, Great Jones Alley was recorded as its own zoning lot, Lot 16. This lot was originally declared and recorded in 1818 by Samuel Jones, who owned the entirety of Block 531 as well as many other blocks in the vicinity, as a private passageway for the exclusive use of Samuel Jones, his heirs and assigns. Over time, the various buildings on Lot 531 were sold to other owners, but Lot 16 was never assigned to a single owner. According records at the New York City Topographical Bureau, Great Jones Alley is used in common and maintained by owners of adjoining property, with tax valuation reflected in and paid by the adjoining owners. According to the applicant, this means that the alley is jointly owned by the owners of Lots 1, 3, 4, and 15. Indeed, tax maps prior to 2011 indicate that a ten-foot portion of the alley adjacent to Lot 1 had already been incorporated into that lot. In 2011, the applicant filed a Tax Map Application with the New York City Department of finance to have the portions of the alley adjacent to the property reflected in the tax map, and subsequently purchased the ten-foot wide corridor leading to Great Jones Street from Lot 15, which is also owned by the applicant. Residents of the Silk Building dispute this classification, and, though other supporting documents have been provided, the applicant has not made clear why the Silk Building does not classify as an "adjoining property" with equal interest over the alley. Were further analysis to indicate that Great Jones Alley was improperly incorporated into Lot 4, the lot would have an area of 7,085 square feet.

### **Proposed Project**

The proposed 12-story development will contain 14 dwelling units on floors 2 through 12, with retail and accessory residential space on the ground floor and cellar. The building will rise to a height of 131 feet, or 11 stories, before setting back 15 feet to reach the total building height of 144 feet. The façade of the building will be composed of a multilayered surface of aluminum and glass window walls between brick piers and sidewalls. Over this surface will be a vertical screen of glazed terra cotta extrusions. This façade and building massing were approved unanimously by the LPC in November 2012. The Broadway frontage at the ground level will be dominated by the retail component, with a small residential entrance on the north side. The main residential entrance and lobby is proposed to be accessed through Great Jones Alley, which will be improved with historically contextual Belgian block pavers and granite sidewalk slabs, as well as improved lighting and a new gate. The rear of the building will set back after the first floor, creating both shared and private terraces on the second level. Additionally, there will be private balconies in the rear of the building on floors seven through eleven.

The proposed building will cover 27 lot line windows on the Silk Building, as well as under-window

louvers for heating, ventilation and air conditioning (“HVAC”). These lot line windows are not legally-required windows for any of the attached apartments, though the windows do constitute a large amount of the available light in these apartments. Absent the HVAC louvers on the south façade, the East 4<sup>th</sup> Street or Broadway façade of the historic building would have to be altered to allow for ventilation to these units.

### **Proposed Actions**

The applicant seeks a special permit pursuant to ZR §§ 74-712(a) and 74-712(b). The special permit would allow residential and retail development in a manufacturing district as well as bulk modifications to waive the required 15-foot setback. In order to receive the requested special permit the applicant must show that the proposed development is in context with the surrounding community and that it will not adversely affect neighboring properties and uses. Furthermore, ZR § 74-712 requires a zoning lot that was vacant as of December 15, 2003. The proposed development will occur on a zoning lot that, as of 2003, consisted of two separate zoning lots, both of which were vacant at that time.

### **COMMUNITY BOARD RECOMMENDATION**

At its Full Board meeting on December 19, 2013, Manhattan Community Board 2 (“CB2”) unanimously approved two resolutions: (1) recommending **conditional denial** of the two special permits; and (2) favoring accommodations for neighbors of 688 Broadway if the special permits are granted. CB2’s two resolutions and conditions are described more fully below.

In its first resolution, CB2 recommends denial of the two special permits unless: (a) the zoning calculations are based on the dimensions of the zoning lot as it was constituted on December 15, 2003; and (b) agreements are executed with the other owners of the private, commonly-owned alley running behind the properties on the block specifying work to be performed affecting the alley and responsibilities for maintenance, security, and use of the alley.

#### *Available Floor Area*

First, CB2 opposes the special permits for the development on the grounds that the zoning lot for which these special permits are sought was created after December 15, 2003. CB2 argues that “ZR § 74-712 pertains if a zoning lot ‘as of December 15, 2003 is vacant or has not more than 20 percent of the lot area occupied by existing buildings,’” and that as of 2003 the zoning lot at this location was smaller than the current zoning lot which now includes portions of a different zoning lot. Because of this, CB2 argues, the maximum floor area of a building allowed pursuant to ZR § 74-12 is less than that being sought by the applicant. The dimensions of the lot on December 15, 2003 were 54 feet by 130 feet, as opposed to the current lot size which is 54 feet by 150 feet.

#### *Residential Use*

CB2 found that, were the floor area of the building properly calculated, residential use would not be out of character with the surrounding community and would not have adverse effects on other uses. It also acknowledges that the proposed building is no larger than some other buildings in the immediate area. However, because of its interpretation of the requirements of ZR § 74-712, CB2 concludes that the anticipated size of the proposed development based upon a larger, post-December 15, 2003 zoning lot

size would make the building incompatible with the scale of the surrounding area and that the proposed development “should be assumed to adversely affect structures or open space in the vicinity in terms of scale, location and access to light and air.”

#### *Ownership and Use of Great Jones Alley*

In addition, CB2 recommends denial of the two special permits because granting them would facilitate unilateral changes to the ownership and use of the jointly owned alley. The Board questions whether the process used to divide the alley up among adjacent properties was legal and equitable.

CB2 takes issue with the proposed use of the Alley as the primary vehicular and pedestrian entrance to the residential portion of the proposed building. While acknowledging that the applicant proposes to make improvements to the alley, CB2 states that the new use of the alley will substantially increase its use and will pose a potential for nuisance from noise and fumes and conflicts with current uses.

#### *Accommodations for Neighboring Properties*

In its second resolution, CB2 encourages accommodations for the neighbors of 688 Broadway if the permits are granted. CB2: (1) urges the applicant and affected parties to communicate and make best efforts to reduce harm and specifically urges the applicant to consider inclusion of an air shaft or partial side yard serving as many windows of the Silk Building as possible and (2) urges relevant City agencies and elected officials to work with the applicant and affected parties and CB2 in an effort to achieve this outcome.

The second resolution states that the proposed development will block 27 lot line windows on the south side of the adjacent Silk Building and render 27 HVAC units useless. It also notes that 18 rooms in the Silk Building would lose access to light and air and that residents of the Silk Building had set forth concerns about construction undermining the foundation of their building. The resolution goes on to state that the applicant presented a modified foundation plan that appeared to address concerns over the foundation.

### **BOROUGH PRESIDENT’S COMMENTS**

The applicant is proposing to construct a new residential building on a lot in the NoHo neighborhood that has been vacant for many years. The addition of this building to the historic district will fill a gap in the streetwall, helping to preserve the character of the surrounding neighborhood. The special permit pursuant to ZR § 74-712 was created to develop remaining vacant lots such as this one within historic districts.

#### *Special Permit for Use Modification*

ZR § 74-712(a) provides for a special permit in a historic district in an M1-5B district to allow residential development and commercial uses below the second floor where five specific conditions are met and where findings are made that the modifications have minimal adverse effects on conforming uses in the surrounding area and are compatible with the character of the neighborhood.

The proposed residential units are consistent with nearby uses, and will unlikely have adverse impacts

on conforming commercial and JLWQA uses in the surrounding area. The proposed 3,970 square foot retail space is compatible with the typical ground-floor usage prevalent in the neighborhood—along this section of Broadway nearly every building is occupied by ground floor retail, and the proposed commercial space is smaller than many neighboring stores. The few apartments in the proposed development, twelve units, are unlikely to adversely affect the surrounding uses. Additionally, the proposed development meets all requirements for rear yards, minimum distance between windows and walls or lot lines, minimum floor area for each dwelling unit, signage, and the prohibition on eating and drinking establishments.

CB2 raised concerns over the use of Great Jones Alley as the primary vehicular and pedestrian entrance to the residential component of the proposed building, as the increased use of the alley could potentially create a nuisance from noise and fumes. Given the small number of apartments in the proposed development, and the fact that the Broadway entrance will be closer to the elevator serving the building's residences, however, it appears unlikely that these impacts would be significant. In addition, the developer is proposing to rehabilitate, maintain, and secure this historic alley, one of only a small number remaining in the entire city.

Some community members have raised concerns over whether sections of Great Jones Alley, included in the zoning lot, can be used to generate floor area for this development. Section 74-712 provides that it applies to “a zoning lot that as of December 15, 2003 is vacant” or has minor improvements or is only partially occupied as set forth in such section. The zoning lot in question is the product of the merger of a smaller zoning lot that existed as of December 15, 2003 and a portion of the Great Jones Alley that was acquired by the developer in 2011. At the time of its acquisition, those portions of Great Jones Alley acquired by the developer were part of separate zoning lot which was undeveloped.

In the past, CPC has interpreted this provision to allow the calculation of floor area to be based upon the post-December 15, 2003 merger of two lots each of which was vacant or partially occupied. This interpretation has been used very recently in the case of 300 Lafayette (C 140093 ZSM), in which the CPC approved a § 74-712 permit for a development over three zoning lots, each of which was vacant or partially developed as of 2003.<sup>5</sup> The intent of the 2003 date appears to have been in large part to prevent developers from demolishing buildings in order to create vacant lots eligible for a special permit. This is sound policy. However, the wording of the text is not completely clear. CPC should carefully consider its interpretation to ensure that developers cannot use this provision to cobble together undeveloped portions of lots after the December 15, 2003 date (or graft such portions onto a larger lot that was undeveloped) in order to create a larger “undeveloped” lot.

In this case, both Lot 4 (the lot on which the proposed building is to be built) and the portion of the alley acquired by the developer in 2011, formerly Lot 16, were both undeveloped as of December 15, 2003 thereby fitting into a reasonable interpretation of the text that would allow them to be used together for the purpose of the FAR calculations for the special permit.

As mentioned above, there is some question about the process by which the applicant incorporated portions of the jointly owned alley into their zoning lot. If there is disputed ownership of the alley, this

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<sup>5</sup> The 300 Lafayette ULURP also included a text amendment to alter lot coverage requirements, as one of the included zoning lots had greater than the maximum 20 percent lot coverage. This text amendment does not change the underlying concept that multiple zoning lots can be used for a § 74-712 special permit.

issue should be resolved. It is not, however, a land use issue that can be addressed in ULURP. If the applicant does not indeed own the lot from which they intend to use floor area they cannot use that floor area. The Borough President's office has not, however, heard from other parties who shared ownership of the alley that the ownership is disputed.

### *Special Permit for Bulk Modification*

Special permits for bulk modification pursuant to ZR § 74-712(b) may be provided upon finding that the modification does not adversely affect structures or open space in the vicinity in terms of scale, location and access to light and air, and are in harmony with buildings in the historic district as evidenced by a Certificate of Appropriateness from the LPC.

In this case the proposed development was unanimously approved by the LPC and represents a significant improvement over a vacant lot. The proposed design will align the building's front façade with the facades of adjacent properties, which mirrors the architectural style and character of the historic district, whereas a setback at a lower level would be inconsistent. The design of the building is contemporary yet nods to historic context through the use of historically contextual materials.

The proposed modification will cover one lot line window of the neighboring Silk Building that would likely remain uncovered in the as-of-right development scenario, but leaves a row of six lot line windows in the Silk Building uncovered that could otherwise be block. Thus, in terms of the findings for the special permit, the bulk modification has a beneficial effect on air and light.

### *Other Considerations*

Finally, the CPC may prescribe appropriate additional conditions and safeguards in order to enhance the character of the development and to minimize adverse effects on the character of the surrounding area. While the bulk waiver sought by the applicant is likely to produce fewer adverse consequences for the Silk Building than certain as-of-right scenarios, and acknowledging that the residents of the Silk building may not be legally entitled to rely on lot line windows for light and air, requiring the removal of HVAC systems from the lot line windows could present significant challenges to the landmark Silk Building. The removal of these HVAC systems could require their replacement under other windows fronting on Broadway or East 4<sup>th</sup> Street, which would require lengthy LPC approvals and would adversely affect the context of the historic district.

The applicant has proposed creating a slot along the northern wall of its building and installing piping from the apartments losing lot line windows to a new HVAC system on the roof of the Silk Building, to be installed by the residents of that building. Because these are condominium units, the Silk Building is not prepared to undergo these renovations as one unit and it is unclear whether there could be a single unit on the roof or whether multiple units would be the best approach. The applicant should work with the Silk Building residents to facilitate the best and most efficient way to accomplish this HVAC work and the bricking in of windows for the residents of the 12 affected units without impacting the residents of other units or inequitably burdening these particular owners.

Finally, CB2 noted that Silk Building residents have expressed concerns over the developer's proposed plans for foundation work that could potentially undermine the Silk Building's century-old foundation. At CB2's public Land Use Committee meeting the developer presented an alternative plan to ensure no

construction impacts to the structural integrity of the Silk Building. The developer has committed to extensive monitoring, including vibration sensors within the Silk Building. The applicant should continue to work with residents of the Silk Building to ensure that the construction work is done conscientiously and with minimal adverse effects.

### **BOROUGH PRESIDENT'S RECOMMENDATION**

The proposed project would fill a long-standing gap in the NoHo historic district with a building that is contemporary yet historically contextual. The proposed use and bulk modifications are appropriate in the neighborhood and the building has been designed so as to minimally affect neighboring properties. Furthermore, the applicant proposes to rehabilitate and add a new use to a historic alley that has long been underutilized and unimproved. The proposed building does cover windows used by artists and families in the neighboring Silk Building and this impact should be addressed. The applicant, however, has committed to significantly invest in making sure that all effected rooms have access to ventilation so that these rooms can continue to be used.

**Therefore, the Manhattan Borough President recommends conditional approval of ULURP Application Nos. C 140055 ZSM and C 140056 ZSM, to grant a Special Permit pursuant to ZR § 74-72, contingent on the applicant continuing to work with the effected residents of the neighboring Silk Building and following through on their construction and financial commitments necessary to help mitigate any adverse effects.**



Gale A. Brewer  
Manhattan Borough President



Downtown RE Holdings LLC  
825 Third Avenue, 37th Floor  
New York, NY 10022

January 17, 2014

Gale Brewer  
President, Borough of Manhattan  
1 Centre Street, 19<sup>th</sup> Floor  
New York, New York 10007

Re: 688 Broadway, ULURP Application No.: 140055ZSM and 140056ZSM

Dear Borough President Brewer:

Firstly, please allow me to congratulate you again on your recent election. We wish you all the best as you commence your term of office as Manhattan's Borough President.

As you know, we are currently the applicants for a Special Permit to waive use requirements and a setback requirement for the above-referenced premises. Based on our conversations with your staff and many conversations with our neighbors, in particular, in the Silk Building, please be advised that we commit to the following to ameliorate certain conditions at the site:

1. We are committed to providing chase space between our buildings to accommodate piping for air conditioning units, currently located beneath lot line windows, that will be blocked by the construction of our building. That piping will run from the individual apartments up to the roof of the Silk Building and the air conditioning system that it will serve will be similar to a split system.
2. Installation will be by the Silk Building's contractor who will handle all logistics with Silk Building tenants. Ongoing maintenance access will come from the Silk Building's interior.
3. In the further spirit of neighborliness, we commit to coordinate construction referred to herein with the Silk Building. We will have our engineer review their plans for installation. We must rely on their spirit of cooperation and willingness to extend any and all courtesies required so as not to delay our work.
4. Furthermore, we commit the sum of \$250,000 to the Silk Building for any and all work required by the Silk Building in connection with the foregoing (to be allocated as the Silk Building sees fit).

We hope that our project will have your support and the support of our neighbors. It is our goal to build a first class residential building as was approved by the Landmark's Preservation Commission.

Thank you for your attention to the above and all you do to make this the greatest City in the world.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Schwartz". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David J. Schwartz