



CITY PLANNING COMMISSION

January 5, 2011/Calendar No. 22

C 080277 ZSM

IN THE MATTER OF an application submitted by 209-211 Hester Street 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(1)(d) and Section 42-14D(2)(b) to allow Use Group 17D (Joint Living Work Quarters for Artists) and/or Use Group 6 uses on portions of the ground floor and cellar of an existing seven-story building, erected prior to December 15, 1961, and occupies more than 3,600 square feet of lot area, on property located at 209-11 Hester Street (Block 235, Lot 24), in an M1-5B District, Borough of Manhattan, Community District 2.

The application for the special permit was filed by 209 - 211 Hester Street LLC on February 1, 2008, to permit modification of the use regulations of Sections 42-14D(1)(d) and 42-14D(2)(b) of the Zoning Resolution to permit Use Group 17D (Joint Living Work Quarters for Artists) and 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

209 Hester Street is a seven-story building (Block 235, Lot 24), located at the northwest corner of the intersection of Hester and Baxter Streets. The subject zoning lot has 4,904 square feet of lot area and the building contains 28,553 square feet of floor area. The site is within an M1-5B (5.0 FAR) zoning district.

This application seeks to allow approximately 2,055 square feet of Use Group 6 use and approximately 1,144 square feet of Use Group 6 use and/or Joint Living Work Quarters for Artists (JLWQA) space on the ground floor and cellar levels of 209 Hester Street. The second through seventh floors of the building are occupied by twelve units of Joint Live-Work Quarters for Artists.

The ground floor is divided into two duplex units encompassing space on the ground floor and cellar levels and a single triplex unit encompassing space on the cellar level, ground floor and second floor of the subject building. One of the duplex units is vacant and the other is occupied by a Use Group 7 conforming use. The triplex is occupied by a non-conforming commercial office use and was issued a Buildings Department violation in April 2010. The special permit will correct this violation and legalize the use.

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 period of one year for buildings occupying over 3,600 square feet of lot area prior to the date of the application for a special permit.

The subject building is flanked by a printing shop and restaurant on either side. The surrounding neighborhood is primarily a mix of five- to seven-story commercial buildings and loft structures with residential uses in the form of joint living-work quarters for artists on the upper floors and home furnishings and clothing stores, restaurants, personal grooming establishments and food wholesalers on the ground floor.

ENVIRONMENTAL REVIEW

This application (C 080277 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 agency 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 080277 ZSM) was certified as complete by the Department of City Planning on September 27, 2010, and was duly referred to Community Board 2 and the 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 on October 14, 2010, and on October 21, 2010, by a vote of 38 to 0 with 0 abstentions, adopted a resolution recommending approval of the application.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation on November 23, 2010, approving the application.

City Planning Commission Public Hearing

On November 17, 2010 (Calendar No. 3), the City Planning Commission scheduled December 1, 2010, for a public hearing on this application (C 080277 ZSM). The hearing was duly held on December 1, 2010 (Calendar No. 10). There were two speakers in favor of the application and none in opposition.

The applicant briefly described the proposed project and then described the good faith marketing efforts taken as part of the proposal. A representative of the Borough President reiterated the Borough President's recommendation of approval.

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 080277 ZSM) pursuant to Section 74-781 of the Zoning Resolution would modify the use regulations of Sections 42-14D(1)(d) and 42-14D(2)(b) and allow Use Group 17D (Joint Living Work Quarters for Artists) and Use Group 6 (retail) uses on the ground floor and cellar level of the subject building.

The City Planning Commission believes 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 in January 2006 who is familiar with marketing space in SoHo; and publishing weekly ads in the Village Voice and The New York Times beginning May 2006. Additional efforts included placing ads in two Chinese language newspapers (Sing Tao and The Chinese World Journal) and placing an advertising sign on the subject building. The applicant also notified 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 were unsuccessful in attracting a conforming use.

The Commission believes that the applicant did make a good faith effort to lease the space to a conforming use. The Commission notes that the applicant 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.

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 201 of the New York City Charter, that based on the environmental determination, consideration and finding described in this report, the application of 209 - 211 Hester Street 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(1)(d) and Section 42-14D(2)(b) to allow Use Group 17D (Joint Living Work Quarters for Artists) and/or Use Group 6 uses (retail uses) on the ground floor and cellar of an existing seven-story building on property located at 209 Hester Street (Block 235, Lot 24), in an M1-5B 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 080277 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 Edgar L. Rawlings IV, R.A. filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
ZP1.00	Zoning Site Plan	January 15, 2010
ZP1.01	Zoning Notes	July 19, 2010
ZP1.05	Proposed Cellar Plan	July 19, 2010
ZP1.06	Proposed Ground Floor Plan	July 19, 2010

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
4. 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 080277 ZSM), duly adopted by the City Planning Commission on January 5, 2011 (Calendar No. 22), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

AMANDA M. BURDEN, FAICP, Chair
KENNETH J. KNUCKLES, Esq., Vice Chairman

**ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,
ALFRED C. CERULLO, III, BETTY Y. CHEN, MARIA M. DEL TORO,
RICHARD W. EADDY, ANNA HAYES LEVIN, SHIRLEY A. MCRAE,
KAREN A. PHILLIPS**, Commissioners

SV/SO/JM/JH/M

Community/Borough Board Recommendation

CITY PLANNING COMMISSION
22 Reade Street, New York, NY 10007
FAX # (212) 720-3356

Application # **C 080277 ZSM**
CEQR #
Community District No. 02 Borough: Manhattan
Community District No. ___ Borough: ___
Project Name: **209 Hester Street**

INSTRUCTIONS

1. Complete this form and return one copy to the Calendar Information Office, City Planning Commission, Room 2E, at the above address.

2. Send one copy of the completed form with any attachments to the applicant's representative at the address listed below, one copy to the Borough President, and one copy to the Borough Board, when applicable.

Docket Description:

IN THE MATTER of an application submitted by 209-211 Hester Street, 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 42-14(D)(1)(d) and Section 42-14D(2)(b) to allow Use group 17D (Joint Living Work Quarters for Artists) and/or Use Group 6 uses on portions of the ground floor and cellar of an existing 7-story building, erected prior to December 15, 1961, and occupies more than 3,600 square feet of lot area, on property located at 209-11 Hester Street (Block 235, Lot 24), in an M1-5B District, Borough of Manhattan, Community District 2.

Plans for this proposal are on file with the City Planning Commission and may be seen in Room 3N, 22 Reade Street, New York, N.Y. 10007.

Applicant(s):

209-211 Hester Street, LLC
99 University Place, 7th Floor
New York, NY 10003
Phone: (212) 400-6583 Fax: (212) 202-4032

Applicant's Representative:

Jay A. Segal, Esq.
Greenberg Traurig, LLP
200 Park Avenue
New York, NY 10166
Phone: (212) 801-9265 Fax: (212) 801-6400

Community Board No. 2 Borough: **Manhattan**

Borough Board

Date of public hearing: 10/14/10

Location: CB2, 3 Washington Sq. Village, NYC 10012
Conference Room

Was a quorum present? YES NO

A public hearing shall require a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.

Vote adopting recommendation taken: 10/21/10

Location: P.S. 130, 143 Bayter Street, Auditorium

RECOMMENDATION

Approve

Approve With Modifications/Conditions

Disapprove

Disapprove With Modifications/Conditions

Explanation of Recommendation-Modification/Conditions (Attach additional sheets if necessary)

See attached resolution

Voting

In Favor: 38

Against: 11

Abstaining: 11

Total members appointed to the board

CITY PLANNING COMMISSION
2010 OCT 26 PM 1:15
DEPT OF CITY PLANNING

50

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



OFFICE OF THE CHAIRPERSON
Erin Roeder, Treasurer
Susan Kent, Secretary
Elaine Young, Assistant Secretary
OCT 26 2010

COMMUNITY BOARD NO. 2, MANHATTAN
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October 22, 2010

Amanda Burden, Chair
Department of City Planning
22 Reade Street
New York, New York 10007

080277

Dear Chair Burden:

At its Full Board meeting on October 21, 2010, CB#2, Manhattan (CB#2-Man.), adopted the following resolution:

209-211 Hester Street (Block 235, Lot 24) City Planning Special Permit Application pursuant to Zoning Resolution section §74-781, to permit Use Group 6 commercial / Retail uses in the ground floor and cellar of an existing seven-story building located in an M1-5B district.

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

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

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

THEREFORE BE IT FURTHER RESOLVED, that CB#2, Man. supports this application for a City Planning special permit pursuant to Section 74-781 to permit Use Group 6 commercial / Retail uses in the ground floor and cellar of an existing seven-story building located in an M1-5B district.

Vote: Unanimous, with 38 Board members in favor.

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

Jo Hamilton, Chair
Community Board #2, Manhattan

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

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 080277 ZSM

Docket Description:

C 080277 ZSM- IN THE MATTER of an application submitted by 209-211 Hester Street, 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(1)(d) and Section 42-14D(2)(b) to allow Use group 17D (Joint Living Work Quarters for Artists) and/or Use Group 6 uses on portions of the ground floor and cellar of an existing 7-story building. The building was erected prior to December 15, 1961, and occupies more than 3,600 square feet of lot area, on property located at 209-11 Hester Street (Block 235, Lot 24), in an M1-5B District within Manhattan Community District 2.

COMMUNITY BOARD NO: 2

BOROUGH: Manhattan

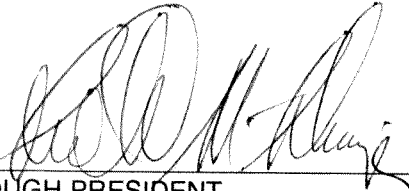
RECOMMENDATION

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

CITY PLANNING COM. ST. 10
21 NOV 23 PM 12:10
DEPT. OF CITY PLANNING

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

See Attached


BOROUGH PRESIDENT

11/23/10
DATE



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

CITY PLANNING COMMISSION
2010 NOV 23 PM 12:10
DEPT. OF CITY PLANNING

SCOTT M. STRINGER
BOROUGH PRESIDENT

November 23, 2010

**Recommendation on
ULURP Application No. C 080277 ZSM – 209 Hester Street
by 209-211 Hester Street, LLC**

PROPOSED ACTION

209-211 Hester Street, LLC,¹ seeks approval for a **special permit pursuant to Section 74-781 of the Zoning Resolution** (“ZR”) to modify the use regulations of ZR §§ 42-14D(1)(d) and 42-14D(2)(b) to allow Use Group 6 (retail and services establishments) and/or Use Group 17D (joint living-work quarters for artists (“JLWQA”)) uses on the ground floor and cellar of an existing seven-story building. The subject building is located at 209-211 Hester Street (Block 235, Lot 24) and is within an M1-5B zoning district in Manhattan Community District 2.

In order to grant the special permit, the City Planning Commission (“Commission”) must find 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 rate. 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 one year for buildings over 3,600 square feet, prior to the date of the application for a special permit.

PROJECT DESCRIPTION

209-211 Hester Street, LLC, requests approval to permit retail and service establishments (Use Group 6) and/or joint living-work quarters for artists (Use Group 17D) on portions of the cellar and ground floor of a primarily light industrial building at 209 Hester Street. The subject building, which was constructed as a warehouse in 1890, is sited on a 4,904 SF corner lot located on the northwest corner of Hester Street and Baxter Street. The project site is located within the Chinatown neighborhood.

The building was renovated in 2006; it was vacant for five years prior to that. It contains 28,512

¹ Eldon Scott is a member of 209-211 Hester Street, LLC.

SF of zoning floor area and 14 condominium units. The second through seventh floors are occupied with as-of-right JLWQAs (a total of 11 units). The cellar and ground-floor level of two duplex units and one triplex unit are subject to this special permit application. The duplex units, together, consist of 3,494 SF² on the cellar and ground floor, and the applicant proposes to occupy them with Use Group 6 uses. The triplex unit contains 3,199 SF extending from the cellar through the second floor and would have Use Group 6 and/or 17D uses.³ The applicant intends to locate an MRI facility and a printing and publishing office in the duplex units, and an on-line advertising agency in the triplex unit with the approval of this special permit application.

The project site is located within an M1-5B zoning district, which does not allow Use Groups 6 or 17D uses below the second floor of any building as of right.⁴ Use Group 6 includes uses such as retail and service establishments that serve local shopping needs as well as commercial offices. JLWQAs are as-of-right uses, with certain limitations, in an M1-5B zoning district.

Land uses in the surrounding area are predominantly mixed use with commercial and retail on the ground floors and residential or office uses on the upper floors. Ground-floor retail on or near Hester Street include eating and food establishments, beauty parlors, and stores that serve local shopping needs. There are also a few community facilities and institutional uses near the project site, including the American Society of Buddhist Studies, a public elementary school (P.S. 130), the Museum of Chinese in the Americas, and Open Door Senior Center. Two light manufacturing establishments, a noodle manufacturer and a printing and copying service shop, are also found on the same block as the project site.

COMMUNITY BOARD'S RECOMMENDATION

At its Full Board meeting on October 21, 2010, Manhattan Community Board 2 recommended approval of this application by a unanimous vote of 36 in favor.

BOROUGH PRESIDENT'S COMMENTS

Manufacturing districts within Manhattan's Chinatown neighborhood have shifted towards a more mixed-use character. As the neighborhood continues to contain a greater mix of uses, it is important that the Commission monitors these changes and their effects carefully to ensure that as-of-right uses be given priority in order to maintain the integrity of the neighborhood's zoning.

The special permit pursuant to ZR § 74-781 allows certain use modifications in buildings located within M1-5A and M1-5B districts. The modification is permitted only after the Commission has found that a good faith effort was made to rent such space for a mandated use at a fair market rate. The special permit process allows a use modification only when the Commission has determined that the application meets certain findings. Since the subject building is over 3,600 SF, the applicant was required to market the space for one year. Generally, as long as all

² These units contain 2,055 SF of zoning floor area.

³ The triplex unit consists of 2,359 SF of zoning floor area.

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

requisite findings are met, it is sound public policy to allow ground-floor uses that would enliven the streetscape or serve the neighborhood's local needs.

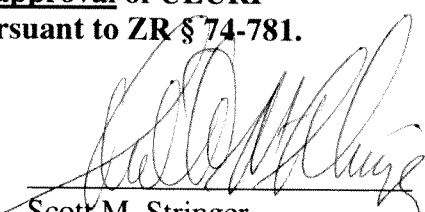
The applicant listed the subject spaces with a brokerage company for over a one-year period. The applicant placed the listing in *CoStar*, a multiple listing service for brokers in the industrial real estate business, and sent to other major brokerage firms and local brokers specializing in industrial, light manufacturing and warehousing. Additionally, the applicant also placed advertisements in *The New York Times*, *The Village Voice*, and two Chinese language newspapers (*Sing Tao* and *The Chinese World Journal*). The applicant also notified local and citywide industry groups, including the Association of Commercial Property Owners, the Chambers/Canal Civic Association, the Garment Industry Development Corporation, the Chinese American Planning Council, Inc., Local 23-25 UNITE, Federation of Apparel Manufacturers, and the Association of Graphic Communications. Further, the applicant notified the Industrial Space Bank of the NYC EDC of the available units. Lastly, the applicant placed a sign with relevant information about the units on the building for over a year. The applicant engaged in these marketing efforts for longer than the one-year period required. Even with these efforts, the applicant was unable to rent the space for as-of-right uses at fair market rate.

The applicant has made a good faith effort to market the space and should be commended for including advertisements in two Chinese language newspapers in an effort to engage the area's diverse population. As the applicant was unable to rent the space despite these efforts, the findings for the special permit have been met.

BOROUGH PRESIDENT'S RECOMMENDATION

The application for a use modification to allow Use Group 6 and/or 17D on the cellar and ground floor of an existing seven-story building at 209 Hester Street has community support and meets the required finding for the requested special permit, namely that the owner of the space, or a predecessor in title, has made a good faith effort to rent such space to a mandated use at fair market rate.

Therefore, the Manhattan Borough President recommends approval of ULURP Application No. C 080277 ZSM to grant a special permit pursuant to ZR § 74-781.



Scott M. Stringer
Manhattan Borough President