



SPECIAL PERMIT pursuant to Section 197-c of the New York City Charter and Section 74-782 of the Zoning Resolution involving modification of regulations (Section 42-14D 1B) for the conversion to joint living-work quarters for artists in a loft building with frontage along Broadway whose lot coverage exceeds 3,600 square feet on property located on a corner lot at the south-west corner of the intersection of Broadway and Prince Street (565 Broadway) within the SoHo M1-5B district, Borough of Manhattan, Community Board #2.

This application for a Special Permit was filed by Prince Tower Tenants Corporation in order to allow the conversion to joint living-work quarters for artists of floors two through nine of 565 Broadway, a building located in the SoHo M1-5B district and whose lot coverage is 5,100 square feet.

Section 42-14D 1(b) allows conversion to joint living-work quarters for artists to occur in buildings along Broadway in the M1-5B district where the lot coverage does not exceed 3,600 square feet. Conversions to joint living-work quarters for artists can be allowed in buildings that exceed this lot coverage by Special Permit of the City Planning Commission pursuant to Section 74-782.

To grant a Special Permit pursuant to Section 74-782 the following findings must be met:

For those portions of the building occupied as joint living-work quarters for artists on September 1, 1980, the Planning Commission must find that:

- o the conversion will not harm the industrial sector of the City's economy;
- o the neighborhood will not be excessively burdened by increased residential density;
- o all permitted units will meet the applicable standards of that district (i. e., unit size, light and air);

- o there is no substantial evidence that the landlord forced commercial or manufacturing tenants to vacate such floor area through harassment, non-renewal of leases or the charging of rents in excess of the then fair market value.

For portions of the building not occupied on 9/1/80, several additional findings (B, C, D and E of Section 74-782 of the Zoning Resolution) must also be made:

- o the applicant or the predecessor in title has made a good faith effort for at least one year to rent such space to a mandated use at fair market rentals;
- o there is sufficient alternative space to meet the need of commercial and manufacturing uses in the area;
- o applicable City, State and Federal economic development programs have been explored but were found not suitable;
- o previous commercial and industrial tenants had the opportunity by the applicant or predecessor in title to remain in the space at fair market rentals, and the property owner or predecessors in title did not cause the vacating of the space for the additional conversion.

The subject building is a nine-story loft building, located at the southwest corner of the intersection of Broadway and Prince Street.

The building is located in the SoHo, M1-5B district which allows a broad range of industrial and commercial uses and also allows buildings of less than a certain size (3600 square feet along the Broadway corridor and 5,000 square feet elsewhere in the district) to be converted to joint living-work quarters for artists.

565 Broadway was previously occupied by conforming commercial and manufacturing uses. The building was purchased in the spring of 1977 by 565 Broadway Company. An offering plan for the conversion of the building to cooperative ownership was subsequently filed with the New York State Attorney General's office by 565 Broadway Renaissance Corporation. Over this period of time the remaining commercial

occupants of the building vacated the premises. In November of 1979, the title to the building was transferred to the co-operative corporation, Prince Tower Tenants Corporation. All the units in the building except for one half floor have been sold to tenant shareholders who now occupy the building for joint living-working purposes. The building applied to the Board of Standards and Appeals in November 1979 for a variance to allow the conversion of the building into joint living-work quarters for artists. The application was pending on April 9, 1981 when the loft conversion zoning amendments were adopted by the Board of Estimate which required that the applicants seek a special permit from the City Planning Commission under section 74-782 of the Zoning Resolution before they can proceed with a variance application. Currently, floors 2 - 4 & 6 - 9 have been converted into full floor joint living-working quarters. At least one occupant of each unit is an artist certified by the Department of Cultural Affairs. The fifth floor is divided into two units. The rear portion of the floor is utilized as a non-living studio by the occupant of the fourth floor. The front portion of the fifth floor is vacant and still retained by the sponsor of the building. The shareholder of the second floor is currently trying to sell this unit and may not now be residing there.

The application was certified as complete by the City Planning Commission on May 17, 1982, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) and referred to Community Board No. 2.

A report was submitted by the Office for Economic Development as required by Section 74-782. The report stated their opposition to the approval of the Special Permit application.

Community Board #2 held a complying hearing and voted to disapprove the application on July 15, 1982, in accordance with Article 4 of ULURP.

On July 14, 1982 (Ca1. No. 21) the City Planning Commission scheduled a PUBLIC HEARING on this application. The hearing was duly held on August 11, 1982 (Ca1. No. 51).

The president of the co-operative corporation, Prince Tower Tenants Corporation and the attorneys representing the cooperative corporation spoke in favor of the application. A representative of Community Board No. 2 spoke in opposition to the application.

The hearing was closed.

CONSIDERATION

When the City Planning Commission created the SoHo/NoHo M1-5A and M1-5B districts in the 1970's the Commission found that the buildings with larger floor sizes were more suitable for, and in demand by manufacturing tenants. Smaller buildings that were experiencing higher vacancy rates and were less desirable for manufacturing or commercial uses, were however increasingly attractive to artists and other individuals for combined living and working use. The Commission therefore set a lot coverage limitation for as-of-right conversion at 5,000 square feet. However, along the Broadway corridor, which is the prime industrial sector in the district, there was a demand for smaller buildings by manufacturers, therefore, the Commission established a more restrictive lot coverage limitation with a cut-off of 3,600 square feet of lot coverage.

On April 9, 1981, as part of the City policy on loft conversions, the Board of Estimate approved a series of amendments to the Zoning Resolution. Included in these amendments was a new special permit under Section 74-782 which would allow for the conversion of over-sized buildings in the SoHo/NoHo district. This special permit process was designed to address the future conversion of buildings which exceed the lot coverage limitations as well as the legalization of existing illegally converted oversized buildings whose continued illegal status is unacceptable municipal policy.

As part of the City's comprehensive loft policy balancing the needs of housing and industry, the special permit process was designed in part to provide a feasible process for the legalization of residential use of illegally converted lofts, where appropriate. Therefore, the special permit pursuant to Section 74-782 is designed to differentiate between conversions which occurred before the creation of this new special permit and those that occurred at a later date by waiving a number of findings for those portions of buildings that had been occupied as joint living-work quarters for artists on September 1, 1980. One finding, however, that is required by Section 74-782 in all cases is that the City Planning Commission must find no substantial evidence that the prior commercial tenants of a building or a portion thereof were forced by the landlord to vacate such floor area through harassment, non-renewal of leases, or the charging of rents in excess of the then fair market value. This provision guards

against the legalization of those buildings where the space was available for conversion not because of vacancy or voluntary relocation by a commercial user but because of the deliberate actions of the owner of a building.

565 Broadway is required to apply for a special permit under Section 74-782 because its lot coverage of 5,100 square feet exceeds the limitations on as-of-right conversion to joint living-work quarters for artists. The applicant requested a waiver of findings B, C, D and E of Section 74-782 on the basis of the occupancy and/or ownership of floors 2-9 on September 1, 1980 as joint living-working units. The applicant was only able to submit documentation of such residential occupancy for two floors, the sixth and seventh, For the other floors which could not prove residential occupancy as of the required date, the applicant contended that the purchase of the units by shareholders in the cooperative corporation before 9/1/80 satisfied the requirement of occupancy as specified in 74-782. The applicant felt that the units had been removed from commercial use and on 9/1/80, the new owners were completing the improvements to the spaces prior to occupancy.

The City Planning Commission has found, however, that the requirement of occupancy for the waiver of findings B, C, D and E of Section 74-782 is only satisfied by actual possession and habitation of a unit September 1, 1980. The premises could not be used for residential use at the time of purchase, and, as is apparent from the offering plan, the purchasers of the units were aware of this restriction at that time. Therefore, the act of purchase did not remove the premises from commercial use, but in fact merely confirmed their non-residential use. The September 1, 1980 date was chosen to protect existing residents in SoHo, and not to protect everyone who contemplated living there. Therefore, the applicant has only satisfied this occupancy requirement for the waiver of findings for floors six and seven and the remaining floors in the building must satisfy all the findings of Section 74-782.

Prior to the certification of the application by the Commission on May 17, 1982, the applicant failed to address the additional findings

required for floors two through five, eight and nine. At the time of the public hearing before the City Planning Commission, the applicant did make a supplemental submission intended to satisfy findings B through E. However, this information did not address all of the findings, and, in addition, for those findings that were addressed, the submitted documentation was incomplete, unverifiable, and inadequate. For example, the applicant submitted six newspaper advertisements from May and June 1978, and five additional newspaper ads from March through August 1979 as proof of the applicant's good faith effort to locate conforming use tenants for the building. More than half of these ads identified the location as "Greenwich Village/NoHo" and offered the space "for any use." In none of the submitted ads, was there a specific reference to 565 Broadway or to any building. The Commission noted that 565 Broadway is located in SoHo, not in Greenwich Village or NoHo. Furthermore, no information was submitted pertaining to potential tenants who responded to the ads, the terms under which the space was offered, or the reasons prospective tenants declined to rent space. The only additional information submitted by the applicant which was at all relevant to the findings was a statement from the sponsor of the co-op corporation attesting to offers to the previous tenants to renew their leases.

The Commission finds that these submissions fail to satisfy the requirements of Section 74-782 concerning the good faith effort to locate conforming users for the building, the availability of space in the area for commercial manufacturing uses, and the applicability of economic development programs to help keep the building in conforming usage.

The applicant's inability to make findings B, C and D, leaves the Commission unable to grant the special permit for floors 2, 3, 4, 5, 8, 9 - those floors not residentially occupied on 9/1/80. The Commission did not fully explore whether these floors satisfied finding E because they had already been removed from consideration on the basis of findings B, C and D.

For floors 6 and 7, the Commission did investigate the events surrounding the former commercial occupants vacating 565 Broadway, the last finding required by Section 74-782 which the Commission needed to make for these floors. The seventh floor had been occupied until July 1977 by Julia Sportswear, a manufacturer of swimwear. Julia Sportswear's final lease expired at the end of March 1977 and they remained on a month-to-month rental basis until July, when they relocated to 573 Broadway. Julia Sportswear stated in a letter to a staff member of the Department of City Planning in March 1979 that they were never offered the opportunity to renew their lease at 565 Broadway at any price. In a recent conversation with Department of City Planning staff, the president of Julia Sportswear confirmed that they had never been offered a lease renewal and that the reasons for their departure from 565 Broadway were accurately reflected in their March 1979 letter. The Commission has determined that the 7th floor of 565 Broadway does not meet the findings required by Section 74-782 because there is substantial evidence that the seventh floor was vacated due to non-renewal of leases. Therefore, the Commission cannot grant the Special Permit for the seventh floor.

For the sixth floor, the Commission has not found substantial evidence concerning the landlord's intentional vacating of the floor. Therefore, the Commission is able to make the required finding relating to the reasons for the departure of the prior commercial tenants. Concerning the remainder of the building, although the Commission did not investigate in detail the reasons behind the other commercial tenants vacating the building because these floors had already failed to satisfy findings B, C and D, the Commission is in receipt of a letter from the former occupant of the 5th floor, Ri-way Manufacturing Co., stating that they were given no opportunity to renew their lease.

The Commission noted Manhattan Community Planning Board #2's opposition to the grant of the special permit for 565 Broadway. Community Planning Board #2's resolution referred to the non-voluntary removal of prior commercial tenants in the building and concluded that the grant of the special permit did not seem justified. They did note, however, that floors 6 and 7 did satisfy the occupancy cut-off date and felt these floors might merit special consideration.

The Office for Economic Development's comments on the application also recommended denial of the permit. They examined whether the application satisfied the findings of Section 74-782 and commented in part that:

"The record does not indicate, and the Office for Economic Development has no knowledge of the owner having attempted, in good faith, to rent the space involved in this application to a mandated use at a fair market rental. Finding (b) cannot, therefore, be made."

and...

"The Office for Economic Development has seen no indication that applicable governmental economic development programs were explored by the owner. Finding (d) cannot, therefore, be made.

"The history of this building indicates that the former industrial tenants were not given an opportunity to renew their leases and remain at fair market rentals. Finding (e) cannot, therefore, be made."

The cooperative Shareholders of 565 Broadway have argued in support of their application for a Special permit that they were not aware of the actions of the Sponsor of the co-op related to the prior commercial occupants of the building. The Commission is aware that the present tenants were not involved in the sponsor's dealings with the prior tenants, but the Commission has noted that Section 74-782 requires that the Commission consider the actions not only of the current owner of the property, but also the predecessors in title. If residential purchasers or renters of loft space did not ignore zoning regulations, there would be no market and therefore little incentive for developers to convert manufacturing buildings such as 565 Broadway to residential use. Furthermore, ample warnings were communicated to the tenants concerning the availability of the premises for residential purposes. Prominently displayed in several sections of the offering plan for the conversion were warnings such as:

THE PREMISES ARE PRESENTLY LAWFULLY ZONED FOR BUSINESS AND MANUFACTURING PURPOSES. THIS BUILDING IS PRESENTLY ZONED "M1-5-B" AND CANNOT BE LEGALLY OCCUPIED FOR RESIDENTIAL USE UNDER PRESENT ZONING LAWS UNLESS A ZONING VARIANCE IS GRANTED, and:

THE BUILDING IS NOT LEGAL FOR RESIDENTIAL USE UNDER PRESENT LAW.

and:

"As noted above...because of the excess lot size of the Building, occupancy of the Building (or any loft unit therein) as joint living-work quarters for artists" requires a variance from the New York City Board of Standards and Appeals which variance is subject to compliance with various legal, technical, and architectural standards and to administrative discretion, generally. There can be no assurance that any such variance will ever be granted."

For floors two, three, four, five, eight and nine of 565 Broadway, the applicant neither proved occupancy on September 1, 1980 nor met findings B, C, D and E pursuant to 74-782 of the Zoning Resolution and therefore cannot be considered for a Special Permit. While the seventh floor did prove occupancy on September 1, 1980, the Commission finds that it does not meet the last finding required by Section 74-782 of the Zoning Resolution because of the substantial evidence that this floor was vacated due to non-renewal of leases and therefore the Commission cannot grant the Special Permit for the seventh floor.

For the sixth floor of 565 Broadway, the Commission hereby makes the following findings pursuant to Section 74-782 of the Zoning Resolution:

1. That the sixth floor was residentially occupied on September 1, 1980.
2. That the conversion will not harm the industrial sector of the City's economy.

No evidence has been submitted to the Commission that the prior commercial occupants were forced to relocate to allow the space to be converted to living-working use.

3. That the neighborhood will not be excessively burdened by increased residential density.

The sixth floor is occupied as a single living/working unit of approximately 5,000 square feet. The legalization of this unit will not add an excessive burden to residential services in the neighborhood.

4. That there is no substantial evidence that the landlord forced commercial or manufacturing tenants to vacate the sixth floor through harassment, non-renewal of leases, or the charging of rents in excess of the then fair market value.

Despite evidence submitted concerning other portions of the Building, which indicates a pattern of action by the sponsor of the co-op, the Commission has received no specific evidence concerning the sixth floor.

5. That the joint living-work quarter for artists permitted by this special permit meets the standards of the district for the unit: The unit exceeds 1,200 square feet and is currently occupied by an artist certified by the Department of Cultural Affairs.

Consequently, the Commission determines the application warrants approval of floor 6, subject to the conditions stated in the following resolution:

RESOLVED, by the City Planning Commission, pursuant to Section 197-c of the New York City Charter, that the application of Prince Tower Tenants Corporation for the grant of a special permit involving modification to a joint living-work quarter for artists of the sixth floor of a loft building with frontage along Broadway whose lot coverage exceeds 3,600 square feet on property located on a corner lot at the southwest corner of the intersection of Broadway and Prince Street (565 Broadway) within the SoHo M1-5B district, Borough of Manhattan, be and hereby is approved pursuant to Section 74-782 of the Zoning Resolution subject to the following conditions:

1. The sixth floor shall be developed in size and arrangement substantially as proposed and as indicated on plans filed with the application.
2. The development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications herein granted as shown on the plans filed with the application. All zoning computations are subject to verification and approval by the Department of Buildings.
3. The development shall conform with all applicable laws and regulations relating to construction, operation and maintenance.

Any alteration in the premises or in the manner of operations which departs from any of the above specified conditions, unless authorized by the City Planning Commission shall cause an immediate termination of the special permit herein granted.

The above resolution duly adopted by the City Planning Commission on September 20, 1982 (Cal. No. 1) is herewith filed with a copy of the Board of Estimate, together with a copy of the application and plans of the Zoning Resolution and in accordance with the requirements of Section 197-c of the Charter.

HERBERT STURZ, Chairman
MARTIN GALLEN, Vice-Chairman
MAX BOND, JOHN P. GULINO, HOWARD B. HORNSTEIN,
R. SUSAN MOTLEY, THEODORE E. TEAH, Commissioners.