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Gale A. Brewer, Borough President

June 30, 2014

**Recommendation on ULURP Application Nos. C 140299 PPM, C 140300 ZSM,
C 140301 ZSM, and C 140302 ZSM – 19 East Houston Street
by NYC Economic Development Corporation, Department of Citywide Administrative
Services, and MC 19 East Houston LLC**

PROPOSED ACTIONS

MC 19 East Houston LLC¹ (the “Applicant”) seeks approval of three **special permits** pursuant to Sections 74-712(a), 74-712(b), and Section 74-922 of the New York City Zoning Resolution (“ZR”), to modify use requirements, to modify height and setback requirements, and to allow a large retail establishment with no limitation on floor area, respectively, to facilitate the construction of a six-story commercial development at 19 East Houston Street (Block 511, Lot 19) on the southern side of Houston Street between Crosby Street and Broadway. The site is located in an M1-5B district in the SoHo-Cast Iron Historic District in Manhattan Community District 2.

In order to facilitate this proposal, the Department of Citywide Administrative Services (“DCAS”) is requesting a **disposition** of a City-owned property at the aforementioned location to the New York City Land Development Corporation. The NYC Land Development Corporation will in turn dispose of the property to the New York City Economic Development Corporation (EDC), who will then sell the property to MC 19 East Houston LLC, who was chosen via a Request for Proposal (RFP) by EDC and the New York City Metropolitan Transit Authority (“MTA”). The proposal will also require review by the Manhattan Borough Board and the Mayor pursuant to New York City Charter § 384(b)(4).

In order to obtain a permit pursuant to ZR § 74-712(a), a development must have a maximum floor area ratio (“FAR”) of 5.0 and must comply with residential yard and window requirements, minimum dwelling unit size, sign regulations, and cannot include an eating or drinking establishment of any size. In order to grant the use modifications, the permit requires that the City Planning Commission (“CPC”) find that the development:

- (1) has minimal adverse effects on conforming uses in the surrounding area;
- (2) is compatible with the character of the surrounding area; and
- (3) for modifications that permit residential use, results in a development that is compatible with the scale of the surrounding area.

The special permit pursuant to ZR § 74-712(b) allows bulk modifications provided that the development:

¹ MC 19 East Houston, LLC is a subsidiary of Madison Capital under executive management by Richard Wagman and J. Joseph Jacobson

- (1) not adversely affect structures or open space in the vicinity in terms of scale, location and access to light and air; and
- (2) relate harmoniously to buildings in the Historic District as evidenced by a Certificate of Appropriateness or other permit from the Landmarks Preservation Commission (“LPC”).

In addition, the applicant seeks a special permit pursuant to ZR § 74-922. The special permit allows for large retail establishments (Use Group 6 and/or 10A uses), such as department stores, clothing or clothing accessory stores, furniture stores, and household appliance stores, with no limitation on floor area per establishment above the 10,000 sf of floor area threshold set forth in the zoning as of right. The CPC must find:

- (1) that the principal vehicular access for such use is not located on a local narrow street;
- (2) that such use is so located to draw a minimum of vehicular traffic to and through local streets;
- (3) that adequate reservoir space at the vehicular entrance, and sufficient vehicular entrances and exits, are provided to prevent congestion;
- (4) that vehicular entrances and exits are provided for such uses and are located not less than 100 feet apart;
- (5) that in selecting the site due consideration has been given to the proximity and adequacy of bus and rapid transit facilities;
- (6) that such use is so located as not to impair the essential character or the future use of or development of the surrounding area;
- (7) that such use will not produce any adverse effects which interfere with the appropriate use of land in the district or in any adjacent district; and
- (8) that such bulk modifications will not unduly obstruct the access of light and air to surrounding streets and properties.

Lastly, Section 197-c of the New York City Charter mandates that the disposition of all City-owned real property (other than the lease of office space) be subject to the Uniform Land Use Review Procedure (“ULURP”). No specific findings must be met to make a property eligible for disposition under Section 197-c.

PROJECT DESCRIPTION

The applicant proposes construction of a six story commercial building with the cellar through third floors consisting of retail and the upper three floors of office space on a currently vacant site on the south side of East Houston Street between Broadway and Crosby Street. The irregular, triangular-shaped lot is currently owned by the City and is leased to the MTA which operates it as a parking facility for MTA vehicles. The disposition of the site by the City for development is for the purposes of contributing funds to MTA capital improvement programs.

Background

The project site lies within the SoHo-Cast Iron Historic District, named for its large concentration of buildings with cast-iron facades. Designated LPC on August 14, 1973, this area encompasses 26 blocks bounded by Canal Street to the south, West Houston Street to the north, Crosby Street to the east, and West Broadway to the west and includes approximately 500 buildings. Cast iron facades were considered a major engineering innovation at the time of their use due to their modular nature, ease in shipping, and customization available for an individual proprietor. The district represents one of the largest concentrations of cast iron buildings in the world.

The LPC voted to approve the applicant's request to construct the new building on November 19, 2013. LPC found that the proposed building design, which was ten feet higher than a previously considered design, would "restore the continuity of the street walls and anchor the end of the block...thereby strengthening the streetscape around this prominent site, that the height and overall volume of the building is consistent with that of historic buildings found in this historic district; that the plane of the Crosby Street façade will align with the facades of the adjacent properties." In addition, LPC found that "the large glass openings at the Houston Street elevation will transition from transparent at the ground floor to opaque at the sixth floor and will relate well to the solid-void ratio of the masonry buildings found on the adjacent side streets, and as well to the evolution of Houston Street... that the proposed signage at the first floors consisting of facade mounted brushed aluminum letters will be well scaled to the facades and will not overwhelm the storefronts or detract from the building." A Certificate of Appropriateness (LPC # 14-7337) was granted on November 20, 2013.

Project Site and Area Context

19 East Houston Street is located on Block 511, Lot 19, on the southern side of East Houston Street between Crosby Street and Broadway. The 6,174 sf lot is located in an M1-5B district. The triangular lot is currently owned by the City and subject to a master lease with the MTA which operates it as an at-grade parking facility for MTA vehicles.² In addition to MTA vehicles, the site contains a vent to the Broadway-Lafayette subway station below.

Land use in the northern portion of the SoHo-Cast Iron Historic District consists of predominantly artist lofts and commercial uses with buildings typically five to six stories on the side streets with an assortment of one-story buildings scattered throughout. This area also has a number of buildings ranging in height from 10 to 12 stories along the major thoroughfares of the district: Broadway, East Houston Street, and Prince Street. While uses range in the neighborhood from retail, museums, galleries, and restaurants, within the immediate vicinity of the site the predominant ground-floor use is retail, including destination or large-scale retail establishments. After enjoying status as part of the neighborhood's red light district, at the peak of cast-iron construction and development in SoHo, this northern area was predominantly developed for commercial and manufacturing uses. These uses are reflected in the building typology of the immediate vicinity. Today very little manufacturing is left and the area is predominated by mostly commercial uses.

The M1-5B district permits manufacturing and commercial uses as of right, as well as conversions to joint living-work quarters for artists under certain conditions. This zoning district does not permit retail use below the level of the second story nor does it permit residential use as of right. The predominant zoning districts surrounding the project site are M1-5B and M1-5A, which carry similar restrictions on residential and commercial use. In M1-5A districts, Group 6 uses are permitted as of right below the level of the second story only in buildings located on zoning lots occupying less than 3,600 sf of lot area. Both M1-5A and M1-5B districts have a maximum permitted commercial and manufacturing FAR of 5 and a maximum community facility FAR of 6.5. A setback is required above six stories or 85 feet, whichever is lower, after which buildings must set back according to a sky exposure plane. The setback required is 15 feet on wide streets and 20 feet on narrow streets. A rear yard of 20 feet is required for interior lots, but no rear yard is required for corner lots within 100 feet of a street line. Tower construction is also permitted in these districts. No parking is required for this district under Article I, Chapter 3 of the ZR.

² There is currently also a fruit stand located on the project site. According to the MTA, the fruit vendor has already signed a vacate agreement and will be leaving in October.

Located nearby is the Special Little Italy District, which is comprised of C6-1, C6-2, and C6-2G districts, which place additional restrictions on height and use on new development.

There is an entrance to the Broadway-Lafayette subway station on the site which serves the B, D, F and M subway lines and has connections to the Bleeker Street 6 train station on Lafayette Street. There is another entrance to the same station directly across East Houston Street. In addition, the Prince Street subway station for the N and R trains is located on Broadway and Prince Streets. There is a bus stop for the M21 bus located on East Houston Street near Crosby Street on the sidewalk adjacent to the project site.

Proposed Project

The applicant proposes to construct an approximately 30,821 square feet, six-story commercial building consisting of 17,284 gross square feet of retail uses, 11,901 gross square feet of commercial office uses, and 6,077 square feet of common and mechanical space on what is currently an MTA parking lot.³ Retail use is proposed for the cellar, first, second, and third floors, while the office space is proposed for floors four through six. Portions of the cellar will be dedicated to mechanical and to an MTA easement, and a portion of the first floor will be dedicated to lobby space for the office uses on the upper floors. In addition, a second MTA easement will be provided for the entrance to the Broadway-Lafayette subway, currently located on the building site. The applicant has agreed to improve the subway entrance by widening it by a minimum of 2 feet. In meetings with Community Board 2 and the Borough President's office, the applicant has declared an interest in finding a single tenant to occupy both the three floors of retail and the office space above. This would make the building a potential site for a signature, flagship location for a large national retailer.

The design of the building utilizes a glass-clad façade on the East Houston Street side framed in brick masonry, and brick masonry on the Crosby Street side with punched window openings. The building will rise to a total height of approximately 98 feet. Potentially up to eight entrances are proposed on the ground floor to access the retail space, with one along Crosby Street and the remainder along Houston. A 171 sf office lobby would be accessed off of Crosby Street. The proposed project does not include a dedicated loading berth, and the applicant initially believed a waiver would be necessary. A further review of ZR § 13-33, however, indicated that a loading berth is not required for this project, and the applicant has stated they will seek a dedicated curbside loading space.

As mentioned above, the triangular site currently contains a subway vent. Through the proposed project, this vent would be moved onto the East Houston Street sidewalk, taking up four feet of what is now concrete sidewalk. The initial application for this project did not propose to widen the existing 10.5 foot sidewalk. In April 2014, Community Board 2 and the Borough President met with the applicant, the Department of Transportation ("DOT"), and the MTA to discuss the potential for widening the sidewalk in conjunction with the project. With the approval of the DOT and the MTA, and agreement to undertake a relocation of the M21 bus stop to a nearby location, on May 14, 2014 the developer proposed widening the sidewalk an additional two feet along East Houston Street. An initial expansion of three feet was proposed, but was reduced in order to allow a retail loading lane along East Houston Street. However, DOT, Community Board 2, the development team, and the Borough President's Office are continuing discussions on proposals to allow a three foot sidewalk expansion.

³ The MTA vehicles currently on the site will be relocated to 6 East 20th Street, to what is currently a privately-owned public parking lot

Proposed Actions

DCAS requests a disposition and the applicant proposes three special permits in order to facilitate the commercial development at 19 East Houston Street:

- 1) A disposition (C 140299 PPM) of the property pursuant to zoning, as modified by the special permits requested by the applicant. The MTA, which currently leases the property, will surrender the property to the city, placing the property in DCAS' jurisdiction. The approval of this disposition will allow for the subsequent transfer of the property to the New York City Land Development Corporation, which will in turn dispose of the property to EDC, which will sell the property to the applicant.
- 2) A special permit (C 140300 ZSM) pursuant to ZR § 74-712(a) to modify the use requirements of ZR § 42-14(D)(2)(b) which does not permit commercial uses below the second floor. The granting of this special permit would allow retail and retail accessory uses on the cellar and first floor.
- 3) A special permit (C 140301 ZSM) pursuant to ZR § 74-712(b) to modify the height and setback requirements of ZR § 43-43, which limits the maximum front wall height to 85 feet or 6 stories, whichever is less, and requires at that maximum front wall height a setback of 20 feet along a narrow street (Crosby Street) and 15 feet along a wide street (East Houston Street and Broadway) after which the height of the building is governed by the sky exposure plane. The granting of this special permit will allow the proposed building to rise to a height of approximately 98 feet without setbacks and exceed the limits of the sky exposure plane. The building height was proposed to be consistent with the heights of the adjacent, existing buildings on Crosby Street and Broadway.
- 4) A special permit (C 140302 ZSM) pursuant to ZR § 74-922 to allow large retail establishments in Use Group 6 and/or 10a with no limitation on floor area per establishment. The granting of this special permit would allow a singular retail establishment in excess of 10,000 sf of floor area to occupy portions of the cellar and the ground, second, and third floors of the proposed six-story commercial building.

The Building will conform to all other applicable regulations, including the signage regulations of ZR § 32-60, inclusive, as required as a condition of approval pursuant to ZR § 74-712(1)(iv).

COMMUNITY BOARD RECOMMENDATION

At its Full Board meeting on May 22, 2014, Manhattan Community Board 2 ("CB2") voted on a resolution recommending disapproval with conditions of the application by a vote of 40 in favor and none opposed. CB2 resolved as follows:

1. To support the application for the disposition of the site, recognizing the importance of obtaining funding for MTA capital improvements, but "in the context of development that is positive for the district."
2. To deny the special permit pursuant to ZR § 74-712(a) for retail below the second floor unless (a) there would be no freight entrance on Crosby Street and (b) the applicant agrees to (i) a reduction of the transparency of the glass on all floors except the ground floor and (ii) a restrictive declaration on the use of building windows for advertising and branding by means of the display

of objects, images and signs inside the building, and also limiting the light levels emanating from the building at night;

3. To reject the proposal to move the subway ventilation grates onto the East Houston Street sidewalk unless (a) the applicant pays to widen the sidewalk such that the concrete portion of the sidewalk is not narrowed from the current width of the sidewalk; and (b) the project included upgrading the existing fan plant to meet current standards and the applicant provides a full cost benefit analysis to assess all future MTA costs related to moving the ventilation grates;
4. To support moving the bus stop to a location that is nearby if needed to allow the widening of the East Houston Street sidewalk;
5. To approve the special permit pursuant to ZR § 74-712(b) to modify applicable height regulations;
6. To deny the special permit under ZR § 74-922 to allow a retail store exceeding 10,000 square feet, but not object to a multi-level retail and office project with at least two smaller stores; and
7. To deny the application pursuant to ZR § 44-582 for a waiver of the requirement for a loading berth and recommending instead a reduction of the project size such that no loading berth is required;⁴

Finally, CB2's last objections concerned the RFP process conducted by EDC. CB2 objected to the fact that it was not consulted during the creation of the objectives for this disposition of City-owned land in its district so that community needs such as public open space and affordable housing could have been considered. In addition, CB2 stated its concerns that the requirements of the RFP were changed to allow relocation of the subway ventilation grates to the sidewalk and the lack of public input over the relocation of the MTA parking facility from the development site to East 20th Street.

BOROUGH PRESIDENT'S COMMENTS

The applicant proposes a handsome new building on what is now a vacant lot in an historic district. The building itself is well designed to fit in with the character of the surrounding neighborhood and is appropriate in size and scale. Furthermore, the proposed project will provide the MTA much-needed revenue from what is currently an underutilized site, a laudable effort from the under-funded agency. The proposed development site is small and oddly configured, however, and does not lend itself to the large amount of retail space proposed by the applicant. The process by which this development program was selected is additionally concerning as it failed to take into account community priorities for the area or the unique challenges of this particular site. Though the building itself is unobjectionable, the amount and configuration of retail and community concerns around lighting, signage, and sidewalk width must be addressed before this project moves forward.

First, the conditions and findings have been met for the requested special permits pursuant to ZR §§ 74-712(a) and 74-712(b), respectively. The proposed commercial uses of office space and retail are compatible with the development trends of the SoHo neighborhood. The proposed design is sympathetic to the distinguishing elements of the SoHo-Cast Iron Historic District. Specifically, the LPC noted that

⁴ The applicant was initially unclear as to whether a loading berth was required on this site, and in discussions with the Community Board indicated that it would seek a waiver of loading berth requirements. After further research it was found that no loading berth is required by zoning for this development. .

the proposed plans utilize materials and architectural elements such as a brick-clad wall and punched window openings on the Crosby Street façade, which are consistent with other buildings on that streetscape. Along East Houston Street masonry will frame the large openings in the façade with alternating vertically divided areas of glazing which are suggestive of the facades of buildings on that street that were altered or partially demolished when Houston Street was widened. The building will also re-establish the street wall and provide an active street frontage at a critical entry point to the historic district.

Of concern is the request for a large retail establishment and the applicant's discussion of the findings for ZR § 74-922. Retail establishments over 10,000 square feet require a special permit because they take up large portions of building frontage, changing the character of neighborhoods, and because they have potentially unique impacts due to vehicular and pedestrian traffic and merchandise loading. The immediate vicinity of the project site already has a large number of destination retail offerings, which include flagship, large floor-plate retail establishments over 10,000 sf. In fact the developer points to the adjacent Hollister clothing store and the Adidas store across the street to support its proposal that this is an appropriate location for another such flagship store. The presence of similar stores in the vicinity, however, is not thorough enough justification for their appropriateness on this site which is small and oddly shaped, with a smaller sidewalk and the entrance to a busy transit facility. Additionally, a new large retail facility furthers a trend in the neighborhood towards every retail space containing a large-scale facility, against significant community opposition. In a recent recommendations in support of a special permit to allow retail on all floors of a building in the historic district at 155 Mercer Street (C 140263 ZSM), the Community Board and Borough President both argued that the transformation of the SoHo neighborhood into a large-scale flagship store district has the potential to have a cumulative negative impact on transportation, the character of the neighborhood, quality of life, and the vitality of retail diversity.

In addition, a flagship-like store in this location would impact traffic and pedestrian flow. While the applicant can meet the finding in regard to proximity to mass transit, it does not take into consideration that the site sits upon a principal entry and egress from this system and that the adjacent sidewalks are already narrower than the frontages of other flagship stores referenced in the applicant's discussion of the findings. Furthermore, none of the large retail stores referenced in the application have main entrances on East Houston Street. All of them, with the exception of REI, front on Broadway. Though the applicant, working with the MTA and DOT, has agreed to widen the sidewalk from its currently narrow 10.5 foot width, the addition of four foot vent grates will effectively negate any effect of this widening. Though the grates can be walked upon, significant numbers of New Yorkers avoid walking on subway grates, and their use is particularly avoided in inclement weather. The applicant is requesting a special permit for what could become a destination retail establishment on a site that is simply not configured to handle the pedestrian traffic that would come from such a store.

The applicant has repeatedly raised the challenging space configuration of the development site in support of its request for the large retail permit and has stated that the small floor plate of the building will limit the space and therefore the ability to attract large tenants. The applicant is attempting to distinguish its site from that of surrounding flagship stores to allay community concerns, while at the same time comparing it to those stores to justify the large retail special permit. In response to CB2's concerns about the large retail special permit the developer stated that "[t]here is a significant probability that the end retailer will not use the third floor space..." At the same time the Environmental Assessment Statement states that the "proposed retail uses would be compatible with existing nearby uses, such as large-format retail stores on Broadway (including Crate and Barrel, Hollister, and Adidas, as noted above) and REI in the Puck Building." It appears the best solution would be for the retail space at this challenging site to be limited to two floors of retail with two or more retail establishments. This would mitigate pedestrian flow, loading, and traffic concerns as well as some of the streetscape issues described below. It would additionally

encourage retail diversity and allow space for small businesses in what has become an international retail destination. Though generating revenue for the MTA is an important goal, and a flagship store may generate the most revenue, the disposition of public land should balance multiple public purposes.

The concerns raised by the application for the large retail special permit were intensified by at least one instance of marketing materials prepared for the developer portraying the proposed building in similar fashion to some of the much larger flagship stores in the area. The materials depicted a building in which the entire six floors of glass façade on the East Houston Street frontage were essentially a sign for a single retailer – in other words a flagship store with three floors of retail and three floors of related office space. The ULURP application and findings explicitly state that the signage requirements of commercial districts must apply to retail developments. These requirements include provisions on advertising, lighting, amount of signage, and transparency. Yet the marketing materials to which CB2 objected depict a building clearly in violation of these requirements. Even allowing that the marketing materials may not represent the intent of the developer with regard to the physical appearance of the façade, and acknowledging the developer's commitment to follow lighting and signage regulations, the possibility of a single, large retail store occupying three floors with an additional three floors of related office space with a glass façade at the entrance to the historic district raises concerns that lighting, advertising and signage could have adverse impacts on the surrounding area. CB2 has proposed a number of workable solutions to this problem, including adjusting the transparency of the glass above the first floor and committing to low levels of lighting. The applicant should agree to these requests in order to ensure a building that is truly in keeping with the historic district and that does not impair the essential character of the neighborhood.

In concept, the Borough President supports the disposition of this property with the proceeds used to support the MTA Capital Plan.⁵ However, the Borough President echoes the concerns of CB2 and stresses the importance of community input and planning at an early stage. Especially here, in the case of a disposition of City-owned property to a developer selected by RFP, many of the community's concerns could have been addressed prior to the ULURP process with community input into the RFP and with the maintenance of open communication throughout the process. While the proposed building itself is not objectionable, its proposed use is not in keeping with the desires of the local community. A more transparent RFP process could have resulted in a proposal for a more appropriately sized retail facility, or even a proposal for publicly accessible open space at this already-crowded location. If this disposition of City-owned land is to move forward, the project must be altered to be more appropriate for this location.

BOROUGH PRESIDENT'S RECOMMENDATION

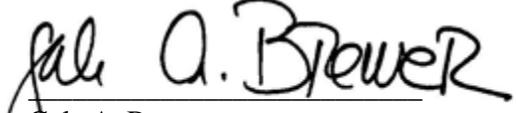
Though the proposed bulk modifications and retail use are appropriate for the neighborhood, these requested actions cannot be separated from the disposition, which proposed a use of City-owned land in a way that is not beneficial to the public. At this location, a retail establishment of the size proposed is inappropriate. The size of the retail facility should be reduced, and should include at least two stores to promote a vibrant retail mixture in the neighborhood and ameliorate the negative impacts on the area that would come from large scale retail.

Therefore, the Manhattan Borough President recommends disapproval of ULURP Application Nos. C 140299 PPM, C140300 ZSM and C 140301 ZSM, unless:

⁵ Pursuant to section 384(b)(4) of the New York City Charter, the terms of the disposition must also be approved by the Manhattan Borough Board.

1. The retail use consist of a minimum of two stores and be limited to the cellar and first two floors;
2. DOT, the MTA, and the development team continue to work with CB2 and the Borough President's Office to significantly widen the sidewalk along East Houston Street;
3. The development team reach an agreement with CB2 on reduced transparency of the windows above the ground floor and limitations on lighting and advertising that can be seen through the Houston Street glass façade;

The Manhattan Borough President further recommends disapproval of ULURP No. C 140302 ZSM on the grounds that such use will have adverse effects which interfere with the appropriate use of land in the district and will impair the essential character of the surrounding area.



Gale A. Brewer
Manhattan Borough President