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Gale A. Brewer, Borough President

August 27, 2015

**Recommendation on
ULURP Application No. 150334 ZSM – 359 Canal Street
by Canal Associates, LP**

PROPOSED ACTION

Canal Associates, L.P.¹ (“the applicant”) seeks a special permit pursuant to Section 74-781 of the New York City Zoning Resolution (“ZR”) to modify the use regulations of ZR §42-14(D)(2)(b) to allow Use Group 6 (retail uses) on the ground floor and cellar of an existing five-story building located at 359 Canal Street, Block 228, Lot 2, within an M1-5B zoning district in the SoHo-Cast Iron Historic District of Manhattan Community District 2.

In order to grant the special permit, the City Planning Commission (“CPC”) must find that the owner of the space² has made a good faith effort to rent such space to a permitted use at a fair market rate. Such efforts shall include, but not be limited to, advertising in local and citywide press, listing the space with brokers 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 feet³, prior to the date of the application for a special permit.

PROJECT DESCRIPTION

The applicant seeks approval of the special permit pursuant to ZR §74-781 to allow Use Group 6 (retail use) on the ground floor and cellar of a five-story mixed residential and commercial building at 359 Canal Street. The project will consist of 1,335 square feet of retail use in the cellar, 1,161 square feet of retail use on the first floor, and proposes no change of use of four interim dwelling units on floors 2 through 5.

The project site’s lot area is 1,335 square feet and is located on the north side of Canal Street between West Broadway and Wooster Street. The project site is within an M1-5B district which permits light manufacturing, commercial and community facility uses; joint-live working

¹ Canal Street Associates, L.P. is a New York Foreign Limited Partnership Company registered on January 17, 2008 and represented by member, Albert Laboz.

² The building is owned by United American Land, LLC a New York City family-owned real estate development and investment company that converts commercial spaces to luxury residences and commercial properties to retail uses. The principals are Albert Laboz, Jason Laboz and Jody Laboz. They have owned this building since January 1986 and currently have two other similar applications, 357 Canal and 449 Broadway, in ULURP.

³ A period of no less than six months is required for buildings under 3,600 square feet and a period of no less than one year for buildings over 3,600 square feet; the subject building is approximately 6,019 square feet

quarters are permitted as a light manufacturing use. The manufacturing and commercial maximum floor area ratio (FAR) is 5.0 and the community facility FAR is 6.5. Use Group 7, 9, 11, 16, 17A, 17B, 17C and 17D are permitted below the second story as-of-right. Retail use is not permitted as of right.

The subject building was designed by the architect W.T. Beers in 1855 and embodies the commercial period of the historic district as a store and loft building. The building was constructed with a marble and iron façade and the fifth floor of the building was added in 1866. The applicant purchased the building in January of 1986 and believes retail use (counterfeit goods) was the use on the ground and cellar floors. In 1992, the building registered with the New York City Loft Board to lawfully convert the second, third, fourth and fifth floors to residential use pursuant to the Loft Law (Article 7C of the Multiple Dwelling Law) which has not been completed. The building currently does not have a Certificate of Occupancy and the cellar and ground floors are currently vacant.

Area Context

The project site is located in a M1-5B zoning district in the SoHo-Cast Iron Historic District in Community District 2, Manhattan. The SoHo-Cast Iron Historic District was designated by the Landmark's Preservation Commission in 1973 as an effort to preserve the city's cultural and historic heritage of the brick, stone, mixed iron and masonry commercial construction of the post-Civil War period. The SoHo-Cast Iron Historic District consists of 26 blocks containing 500 buildings and the largest concentration of full and partial cast-iron façades in the world. The district is bounded by West Houston Street, Crosby Street, Howard Street, Broadway, Canal Street and West Broadway. The project area is north of the Tribeca East Historic District, designated in 1992, which includes ornate store and loft buildings developed in the mid-19th to early 20th century that were historically the commercial and industrial center of the city. To the east of the site is the SoHo-Cast Iron Historic District Extension, designated in 2010, as an effort to preserve the continuity of the streetscape of cast iron architecture along Crosby and Howard Streets developed in the post-Civil War era.

The neighborhood generally consists of two to six-story mixed buildings that are either commercial/residential uses or mixed commercial/office uses with ground floor retail. The dominant zoning district in the area is M1-5B and C6-2A south of the site. Beginning at the midblock of West Broadway and Thompson at Canal Street, is an M1-5A district that extends to the midblock of West Broadway and Thompson Street. The area is served well by mass transit with the A/C/E trains one block west and one block southwest of the site, the 1 train is two blocks northwest of the site and additional trains are four blocks southeast of the site. The M20 bus runs south on West Broadway and the M5 bus runs north on Avenue of the Americas. Citibike bicycle stations are also within close proximity of the site.

Proposed Actions

The applicant seeks a special permit pursuant to ZR §74-781 for a use modification in an M1-5B zoning district to allow Use Group 6 on the ground floor and cellar of a five-story commercial and residential use building, which is only permitted after the CPC has found the applicant has

made a good faith effort to rent the space as a conforming use at a fair market rate for one year. The applicant has provided documentation of a contract order with *The Villager* for weekly advertisements and an insertion order with the *NY Post* for weekly advertisements from January 10, 2013 to January 9, 2014 and January 10, 2013 to January 2, 2014. On January 20, 2014, the applicant also hired two exclusive real estate brokers familiar with SoHo and the M1-5B zoning district, JDF Realty, Inc. and Ripco, to market and lease the property. On February 11, 2013 the applicant's representative sent a letter to various local groups - the Association of Graphic Communications, Chambers/Canal Civic Association, the Association of Commercial Property Owners, the Garment Industry Development Corp, Federation of Apparel Manufacturers, Local 23-25/UNITE and the Chinese-American Planning Council, Inc - to inform the groups of the space for rent in addition to five other industrial use properties. As reported by the applicant, despite these efforts, the applicant was unable to rent the space to a conforming use.

COMMUNITY BOARD RECOMMENDATION

At its Full Board meeting on July 23, 2015, Manhattan Community Board 2 ("CB2") recommended disapproval of this application. CB2 wrote the applicant did not make a good faith marketing effort of the space for the following reasons: (1) some of the organizations to which the applicant provided notice of the space no longer exist; (2) one of the two companies marketing the property is no longer in operation; (3) information was sent to incorrect mailing addresses; and (4) in one case the mailing was sent to a community organization without an interest in manufacturing. CB2 also stated the applicant did not properly advertise conforming uses of the space by only listing it as a manufacturing space. CB2 voted to deny the application; however, the Board stated no objection to a change of use to UG6 at this particular location if work is done in compliance with the IMD law purposes, the building gets a permanent Certificate of Occupancy and is issued a Letter of No Objection from the Loft Board.

BOROUGH PRESIDENT'S COMMENTS

Manufacturing jobs and factories once required large footprints, had smokestacks and large operating equipment and engaged in the production of items such as shoddy. While the industry has changed and contracted, manufacturing still exists and is vibrant, representing new manufacturing techniques and processes, and addressing modern needs. Today, New York City's manufacturing sector is made up of small, locally-owned businesses of twenty employees or less that focus on regional niche markets such as artisanal foods and custom props for print advertisements.

At the same time the industry has been changing, spaces for this industry are rapidly disappearing as the city has adopted new mixed-use districts that favor residential and retail uses. In the SoHo neighborhood of Manhattan, the zoning was supposed to protect these uses; however, the overwhelming number of approvals for use change permits to residential or retail use has in many ways altered the land use balance in the neighborhood and effectively circumvented this protection. While the Department of City Planning has already committed to looking at the zoning framework in the neighborhood at a future date, in the interim we must

evaluate whether these changes individually continue to make sense. It is critical that as part of public review the Community Board, Borough President, and City Planning Commission consider these special permits against the backdrop of this aggregate land use change and the modern needs and types of manufacturing uses in the city today.

The baseline consideration in public review is the findings for this particular special permit, which does not mention the impact on the context of the neighborhood and the integrity of the existing zoning district. Instead, the findings are simple – was a good faith effort made within the pre-determined timeframe, to rent the space to a conforming use? Moving forward, it is necessary to have a robust outreach process that targets the new light industrial uses in the food, technology and design sectors. Guidelines can and should be provided, and updated regularly as the industry continues to evolve, to at least ensure the appropriate organizations are reached and the applicants have a baseline from which to work. Our office is prepared to work with DCP and applicants to ensure that this occurs.

However, the subject application was required, regardless of current or future process, to make a good faith effort in order to be granted this particular special permit. The special permit pursuant to ZR §74-781 allows certain use modifications on levels below the second story of buildings located in an M1-5A and M1-5B zoning district. Since the subject building is over 3,600 square feet, the applicant was required to make a good faith effort to market the space at the conforming use for one year. The Borough President does not believe that this finding was met.

The applicant's marketing campaign for a conforming use was a just over a year beginning in January 2013 and ending February 2014. The advertisements in *The Villager* and *The New York Post* do not provide descriptions of the properties beyond "service/industrial use." The contract order and advertisement for *The Villager* does not provide the address of the property, therefore making it difficult to know that the listing is indeed for this property. A good faith effort should, at minimum, provide a range of examples of permitted uses so prospective tenants are aware of the opportunities in an M1-5B zoning district. In February 2013, the applicant contacted six local community organizations that no longer exist or have their phone number disconnected. While these community organizations may have come from a list distributed by DCP at some point in the past, it is our understanding that this list has not been provided by the agency for some time. JDF Realty, Inc. which was one of the exclusive brokerages for the property, cannot provide any proof the property was marketed on the company website because the company no longer exists. In a letter in the application packet, the exclusive broker at Ripco Real Estate stated he had a few telephone inquiries for non-conforming uses for the space. Additionally, this property was advertised on the website Agorafy, a website which states it confirms listings with brokers to ensure accuracy of residential and commercial listings in New York City, as a retail space beginning August 12, 2013 during the time frame of the required good faith marketing effort.

While some may view certification as the first step to pro-forma approval for these "simple" special permits, it is actually only the first step of a public review process in which the Community Board, Borough President, City Planning Commission and City Council consider whether the action is appropriate and meets the findings. A better effort to market to other civic/community citywide organizations and city agencies should have been made. This outreach

should have included NYC-wide organizations that work directly with industrial businesses such as: The Association of Neighborhood and Housing Development, Pratt Center for Community Development, New York City Environmental Justice Alliance and Evergreen. These organizations focus on retaining and fostering the growth of urban manufacturing in the City and have a network of users and organizations that could have shared this information and would have resulted in a more relevant marketing effort. Previous special permit applications pursuant to ZR §74-781, contacted the New York City Economic Development Corporation (EDC) which has a division that oversees initiatives that support the industrial sector growth and development of businesses. While an outdated list may be the alleged culprit, it is disturbing that the same list was used for so long, for multiple applications, and with no outside check on the realities of a changing industry.

If the accuracy or the timeliness of the list the applicant used was put aside, it is still believed the findings would not be met for this particular special permit. The advertisements are vague and do not directly reference the property in question. The extent to which the applicant completed community outreach is insufficient as there is no log available of inquiries of the space for conforming or non-conforming use, there is no record of follow-up communication from the brokers with the local organizations notices were sent to and the letters from the brokers are inadequate evidence that a good faith marketing effort was made.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends disapproval of Application No. C 150334 ZSM.



Gale A. Brewer
Manhattan Borough President