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Gale A. Brewer, Borough President

August 27, 2015

**Recommendation on
ULURP Application No. 150337 ZSM – 449 Broadway
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 portions of the ground floor and cellar of an existing five-story building located at 449 Broadway, Block 236, Lot 36, 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 to allow Use Group 6 (retail use) on the ground floor and cellar of a five-story commercial building at 449 Broadway with frontages on both Mercer and Broadway. The project will consist of 4,091 square feet of retail use in the cellar, 4,194 square feet of retail use on the first floor, and proposes no change of use of Use Group 6 office space to floors 2 through 5.

The project site’s lot area is 5,000 square feet and is located on the north side of Broadway bounded by Howard Street, Mercer Street and Grand Street. The project site is within an M1-5B district which permits light manufacturing, commercial and community facility uses; joint-live

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 October 2010 and currently have two other similar applications, 357 Canal and 359 Canal, 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 25,000 square feet in size.

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

The subject building was constructed by an unknown architect between 1855 and 1856 as a store and loft building embodying the commercial period of the area. The building façade is marble with iron cornices and three bays. Previously, the building was used as a radio broadcasting station. The building does not have a Certificate of Occupancy and the cellar and ground floors have been vacant since the building was purchased in October 2010.

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, historically the commercial and industrial center of the city. Designated in 1992, the district which includes ornate store and loft buildings developed in the mid-19th to early 20th century. 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.

This portion of the neighborhood generally consists of five to eight story buildings with residential, commercial and manufacturing uses on the upper floors and ground floor retail. The dominant zoning district in the area is M1-5B with C6-2A and M1-5 south of Canal Street. The area is served well by mass transit with the R, train one block south of the site at the intersection of Broadway and Canal Street and the N/Q, J/Z and 6 trains two blocks southeast of the site. The M5 bus runs south on Broadway. 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 5-story commercial use building. Such change 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 2, 2014 and January 9, 2013 to January 16, 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 space 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 retail use at this location provided the building gets a permanent Certificate of Occupancy, the upper floors are safe during all phases of work, and the developer and contractor provide contact information to office tenants to assure 24/7 availability until all work is signed off on by the Department of Buildings.

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 ten or less employees⁴ and 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 (DCP) 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

⁴ New York City Economic Development Corporation Industrial Desk report, NYCrafted.

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 that the applicants have a baseline from which to work from. 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 at least one year.

The applicant's marketing campaign for a conforming use was just over a year beginning in January 2013 and ending in February 2014. The advertisements in *The Villager* and *The New York Post* do not provide descriptions of the properties beyond "service/industrial use." 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 states the property was marketed throughout 2013 with no offers at conforming use but cannot provide any evidence 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. However, the broker-provided advertisements included in the ULURP application identify the floors as proposed retail spaces. In a subsequent letter provided to the Borough President, the broker wrote that these spaces were marketed for an industrial use; yet no updated floor plans or advertisements were provided.

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 the 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 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 by working directly with creative production and industrial service businesses. These organizations could have shared this listing which 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.

Putting aside the currency of the list, the Borough President believes more is necessary to satisfy the findings for this particular special permit. Advertisements should be clearer and directly reference the property in question. The completion of community outreach should be documented by a log of inquiries about the space for conforming or non-conforming use, and records of follow-up communication with the local organizations to which notices were sent should be kept and provided. When this is added to the fact that some of the materials labeled the space as retail space, there is 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 150337 ZSM.

A handwritten signature in black ink that reads "Gale A. Brewer". The signature is written in a cursive, flowing style.

Gale A. Brewer
Manhattan Borough President