



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

1 Centre Street, 19th floor, New York, NY 10007
(212) 669-8300 p (212) 669-4306 f
431 West 125th Street, New York, NY 10027
(212) 531-1609 p (212) 531-4615 f
www.manhattanbp.nyc.gov

Gale A. Brewer, Borough President

March 17, 2017

**Recommendation on ULURP Application No. 170235 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 5-story building located at 361 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 year³, 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 to the four interim dwelling units located on floors two through five.

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; JLWQA are permitted as a light manufacturing use. The manufacturing and commercial maximum floor area ratio (FAR)

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.

²The 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. United American Land has owned this building since the late 1980’s and currently has two other similar applications (Nos. C 170236 ZSM and C 170237 ZSM) calendared at the same time.

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 6,200 square feet in size.

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.

Background

The subject building was designed by the architect W.T. Beers in 1855 as a store and loft building and embodies the commercial period of the historic district. According to the SoHo Cast-Iron Historic District report, the building was constructed with a marble and iron façade and the fifth floor of the building was added in 1866. The ground floor has historically been used for commercial use which is captured in Department of Finance photographs from 1983 and 1988 showing a lot which permits retail use. The applicant purchased the building in January of 1986 and believes counterfeit goods were the use on the ground and cellar floors but the space has remained vacant since 2011. 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 but the applicant expects to obtain a Temporary Certificate of Occupancy by the end of summer 2017.

On May 15, 2015, the City Planning Commission certified application No. 150334 ZSM for a special permit pursuant to ZR § 74-781 for this property with two concurrent applications. After Manhattan Community Board 2 (“CB2”) and the Manhattan Borough President’s review period, the applicant withdrew their applications on October 5, 2015 because the site was advertised for retail use while it was under review. The application packet states the retail real estate listings online of the space were not authorized by the applicant and the applicant had them removed by January 6, 2016.

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 is 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 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.

The neighborhood generally consists of two to six-story buildings that are either mixed commercial/residential uses or mixed commercial/office uses with ground floor retail. The dominant zoning district in the area is M1-5B north of Canal and C6-2A south of the site below

Canal Street. Beginning at the midblock of West Broadway at Canal Street, is an M1-5A district that extends to the midblock of West Broadway and Thompson Street.

The area is well served by mass transit with the A/C/E subway entrance one block west at Canal and Avenue of the Americas, the No. 1 subway line at Canal and Varick, and additional trains farther east of the site at the intersection of Canal, Broadway and Lafayette. 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 an existing 5-story building. Such use 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.

In the beginning of January 2016, the applicant hired brokerage firms familiar with the industrial marketplace: Brian Leary at Cpex Real Estate and Justin DiMare at Newmark, Grubb, Knight and Frank. These brokers advertised the space on their websites including the asking price of \$80 a square foot (which was determined by the brokers in coordination with DCP as a fair market rent), the building site's address, the zoning district and permitted/unpermitted uses with the broker names and contact number. The brokers received interest from non-conforming users: liquor store, photography studio and beauty parlor and other non-serious leads. The applicant also provided two copies of the email list the brokerage firm CPEX used to market the space. The applicant has provided copies of weekly advertisements published in *The Villager* and *New York Post* beginning March 31, 2016 stating the type of space for amount of space for lease, the permitted use, the location and address of the building and that retail and office is not permitted.⁴ The applicant packet states the applicant only received three phone calls during the first marketing period, which is captured in the call log: two callers were soliciting advertisements with another newspaper and the other stated the space was too small for their needs.

On February 5, March 3rd and 4th, 2016 the applicant's land use attorney, Akerman mailed leaders to industry groups and organizations stating the location and size of the site, the rental price per square foot and contact and phone number by certified mail with a return receipt request⁵. The mailings included: two letters to divisions of the NYC Economic Development Corporation, Department of Small Business Services, two letters to two NYC Business Solutions* offices, Pratt Center for Community Development, Greenpoint Manufacturing and Design Center, UNITE HERE Headquarters*, South Bronx Overall Economic Development Corporation*, Long Island City Partnership*, Greater Jamaica Development Corporation*, the Lower Manhattan Development Corporation, Workers United NY/NJ Regional Joint Board*, and the Council of Fashion Designers of America*. Akerman also contacted the organizations by phone on February 18th, March 2nd, 3rd and 11th of 2016 to advertise the space; of these 12 organizations, four asked to be emailed the listing. The application packet further states that five

⁴ The application states the advertising period in newspapers originally began on November 19, 2015 but there was an unintentional interruption in one newspaper publication of the advertisement.

⁵ Of the requested return receipts, the applicant's attorney received eight which are indicated by an asterisk (*).

of these organizations stated on the phone calls that they do not work with rental spaces, are not involved with spaces in Manhattan, do not assist with as-of-right tenancy, and another stated they only work with hospitality tenancy. As reported by the applicant, despite these efforts, they were unable to rent the space for a conforming use.

COMMUNITY BOARD RECOMMENDATION

When the application for this site previously went before Manhattan Community Board 2 (“CB2”) in 2015 (C 150334 ZSM), the board voted to recommend denial of the application based upon a complete lack of a good faith marketing effort and asked that any approval be conditioned upon the applicant, within a reasonable time period, complete the legalization of all uses in the building, include in its Department of Buildings filing all work needed for a permanent CofO, and apply to the Loft Board for a Letter of No Objection.

At its Full Board meeting on February 16, 2017, CB2 voted unanimously to deny the special permit unless certain conditions were met. The resolution states CB2 believes the applicant did a satisfactory effort to rent for a conforming use and does not object to UG6 at this location; however, CB2 stated the owners should complete the legalization of all units in a timely fashion, obtain a permanent Certificate of Occupancy for the entire building and that receive a Letter of No Objection from the Loft Board.

BOROUGH PRESIDENT’S COMMENTS

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 for the conforming manufacturing use for one year at a fair market rate.

In August of 2015, I submitted a recommendation of disapproval for this property and a concurrent application for 357 Canal Street because the advertisements at the time were vague, did not directly reference the property advertised, and there was insufficient community outreach to market the ground floor and cellar spaces for a conforming use. The effort was inadequate. However, the extent of the marketing effort for the application before us demonstrates that a much more robust and thorough effort was made.

In January 2016, the applicant hired two brokers who advertised the space on their websites including the asking price of \$80 a square foot, the building site’s address, the zoning district and the permitted/unpermitted uses with the brokers’ contact information. The applicant also sent my office the emailing lists these brokerage firms used in email blasts for the space and copies of a dated call log for all inquiries received for the space. There were weekly advertisements in *The Villager* and the *New York Post* beginning in March 2016 which included the same information as the brokers’ advertisements. The applicant has provided evidence of their marketing efforts to local and citywide industry groups of the availability of the space by providing copies of these letters and copies of the returned certified receipts.

The applicant responded to the concerns raised in my previous application about the marketing effort undertaken. However, there is another factor in determining whether the marketing effort is adequate which we have raised before and remains unaddressed. And that factor is that the effort to market must be at a “fair market price.” Since I have been in office it appears that the prices used for the marketing of these spaces has ranged from approximately \$70 to \$80 per square foot (see, e.g. 34 Howard Street C 17102 ZSM)). However, since we have begun looking at data for a study of SoHo and NoHo, as well as information on proposals around manufacturing in the Garment District, it is becoming increasingly doubtful to me that \$80 is a realistic or “fair” market price to ask for manufacturing space. Because the applicant discussed this price with DCP and our office prior to its second good faith marketing period, and because this space was designed as a retail store, I believe in this instance the conditions for this special permit have been met. However, if we are going to keep reviewing §74-781 special permits in the absence of a study, we must insist that the Department of City Planning set an appropriate manufacturing price per square foot or provide applicants with an appropriate range and that such a price or range be based upon what manufacturers might pay for space in lower Manhattan, and not some type of formula based upon the commercial and retail value of the space.

BOROUGH PRESIDENT’S RECOMMENDATION

Therefore, the Manhattan Borough President recommends approval of ULURP application No. C 170237 ZSM in support of Manhattan Community Board 2’s condition that the owners complete the legalization of all units in a timely fashion, obtain a permanent Certificate of Occupancy for the entire building and that the property receive a Letter of No Objection from the Loft Board.



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Manhattan Borough President