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Gale A. Brewer, Borough President

May 22, 2017

**Recommendation on ULURP Application C 170192 ZSM – 462 Broadway
By 462BDWY LAND, L.P.**

PROPOSED ACTION

462BDWY LAND, L.P.¹ (“the applicant”) seeks (1) a special permit pursuant to Section 74-781 of the Zoning Resolution (“ZR”) to permit Use Group 6 (retail use) in the cellar and southerly portion of the ground floor; and (2) a special permit pursuant to ZR Section 74-922 to permit Use Group 6 and Use Group 10A (large retail establishment over 10,000 square feet) in the cellar and southerly portions of the ground floor through third floor of an existing 6-story building located at 462 Broadway (Block 473, Lot 1) in an M1-5B district within the SoHo-Cast Iron Historic District, in Community Board 2, Manhattan.

In order to grant the special permit pursuant to § 74-781, the City Planning Commission (“CPC”) must find that the owner of the space 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 year², prior to the date of the application for a special permit.

Pursuant to ZR § 74-922, the CPC may permit department stores, carpet, rug or linoleum or other floor covering stores, clothing or clothing accessory stores, dry goods or fabric stores, food stores, furniture stores, television, radio, phonograph or household appliance stores, or variety stores, with no limitation on floor area per establishment. As a condition of granting a special permit for such large retail establishments, the Commission shall find:

- a) That the principal vehicular access for such use is not located on a narrow street
- b) That such use is so located to draw a minimum of vehicular traffic to and through local streets
- c) That adequate reservoir space at the vehicular entrance, and sufficient vehicular entrances and exits, are provided to prevent congestion;
- d) That vehicular entrances and exits are provided for such uses and are located not less than 100 feet apart;
- e) That in selecting the site, due consideration has been given to the proximity and adequacy of bus and rapid transit facilities;
- f) That such use is so located as not to impair the essential character or the future use of or development of the surrounding area;

¹ The building is owned by Stephen Meringoff of Himmel and Meringoff Properties, Incorporated.

² 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 117,274 zoning square feet.

- g) 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;
- h) That such bulk modifications will not unduly obstruct the access of light and air to surrounding streets and properties.

Finally, the Commission may prescribe additional conditions and safeguards to minimize adverse effects on the character of the surrounding area.

PROJECT DESCRIPTION

The applicant seeks two special permits, (1) pursuant to ZR § 74-781 to permit UG 6 (retail) in the cellar and the southerly portion of the ground floor along Crosby Street, and (2) a special permit pursuant to ZR § 74-922 to permit a large retail establishment over 10,000 square feet in the cellar and the southerly portions of the ground floor through third floor of an existing 6-story, cast-iron building occupied by UG16 (storage) space, UG7 (service establishment) space, UG 9 (trade school and accessory office) space, and UG 6 (office) space.

The project site has a total lot area of 20,127 square feet with street frontage along three streets: approximately 200 feet along Broadway, approximately 100 feet along Grand Street and approximately 100 feet along Crosby Street. The existing 6-story building has approximately 117,274 square feet of zoning floor area with a floor area ratio (FAR) of 5.8.

The applicant proposes 45,201 square feet of UG6 and 10A (retail) space distributed from the cellar to third floor of the existing building. In the cellar of the building, the applicant proposes 16,567 square feet of UG6 and 10A (retail) space and a total of 8,668 square feet on the southerly portion of the ground floor. The southerly portion of the second floor is proposed with 9,983 square feet of UG6 and UG10A (retail) space and an additional 9,983 square feet in the southerly portion of the third floor. The existing UG9 (trade school and accessory office) space in the northerly portion of the second floor, northerly portion of the third floor, entire fourth floor and northerly portion of fifth floor will remain. The existing UG6 (office) space on the sixth floor will also remain.

For the project proposal, the applicant proposes to use the existing service entries along Crosby Street for truck deliveries through the existing cellar level service elevator. The Environmental Assessment Statement states this development will not trigger any significant adverse impacts to traffic on Crosby Street and will not have an impact on the existing loading and unloading commercial parking along Grand Street.

Background

According to the SoHo-Cast Iron Historic District report, the building was designed as a cast-iron commercial palace in the French Renaissance style by John Correja between 1879 and 1880 for George Bliss and J. Cossitt. The original function of the building was a store but has been occupied by a number of different uses according to its Certificate of Occupancies including floors dedicated to hotel uses, cabaret use, an eating and drinking establishment, a day care center, and factory uses. In 1984, the building became occupied by a trade school, the International Culinary Center (“ICC”).

In December 2015, ICC, a top-tier trade school specializing in professional culinary, pastry and sommelier training, reorganized its business structure within the building at 462 Broadway. ICC recently occupied the southerly portion of the ground floor with the restaurant, L'Ecole, training students in an internship program, occupying the entire second through fourth floors, and the northerly portion of the fifth floor. The ICC decided to eliminate the on-site internship program and replace it with a paid externship program and therefore, downgraded their usage in the building to the northerly portions of the second, third and fifth floors and the entire fourth floor of the building.³ The application packet states the purpose of the special permits is to support the ability to provide a reduce rent to the ICC.

Area Context

The project site is located in an M1-5A 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 site is bounded by Spring Street, Mercer Street and Broome Street to the south. The block consists primarily of five to six-story commercial/office buildings with JLWQA units on the upper floors. Most of the buildings along Broadway also have retail frontage. South of the site at Broome Street is an M1-5B zoning district which extends west, midblock of West Broadway and Wooster Street and east of the site extending north along Mercer Street.

The project site is served by the Spring Street No. 6 subway line located at Broome Street and Lafayette Street just four blocks east and the B/D/F/M subway line is located three blocks north at East Houston Street and Crosby Street. Citibike bicycle stations are also located one block south at Grand Street and Greene Street and one block north of the site at Mercer Street at Spring Street.

Proposed Actions

The applicant seeks two special permits in order to facilitate a large retail development at 462 Broadway.

The first is 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 southerly ground floor and cellar of a 6-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.

³At the briefing meeting between the applicant team and Manhattan Borough President Office staff on May 3, 2017, a copy of a letter from Erik Murnighan of the International Culinary Center to Manhattan Community Board 2 dated March 1, 2017 was provided detailing the history of the trade school at 462 Broadway and the modification to the school's program and curriculum.

The statement of findings states that beginning October 9, 2014, the ground floor space was advertised in *Our Town*, *Our Town Downtown* and *Our Town Eastsider*, and later the *New York Post* beginning November 3, 2014 at \$400 a square foot and the cellar was advertised at \$100 a square foot but was reduced by February 12, 2015 to the rents advertised for the duration of the marketing period after a subsequent meeting with DCP.

The applicant packet includes an affidavit stating Jason Vacker of Meringoff Properties, Inc. was hired as the exclusive broker for the space on August 12, 2014 and published weekly advertisements in local and citywide press, including: the *Jewish Herald* from June 24, 2014 to September 4, 2015; *New York Post* from November 3, 2014 to September 28, 2015 and June 13, 2016 to September 26, 2016; *Our Town* from October 9, 2014 to February 25, 2016 and June 2, 2016 to at least January 12, 2017; *Our Town Chelsea Clinton News* from April 9, 2015 to February 25, 2016 and June 2, 2016 to at least January 12, 2017; *Our Town Chelsea News* from April 9, 2015 to February 25, 2016 and June 2, 2016 to at least January 12, 2017; *Our Town Downtown* from October 9, 2014 to February 25, 2016 and from June 2, 2016 to at least January 12, 2017; *Our Town Downtowner* from April 9, 2015 to February 25, 2016 and from June 2, 2016 to at least January 12, 2017; and *Our Town Eastsider* from April 9, 2015 to February 25, 2016 and from June 2, 2016 to at least January 12, 2017. The application packet included copies of advertisements run in April 2015 for *Chelsea News*, *Chelsea Clinton News*, *Our Town*, *Our Town Downtowner*, *Our Town Downtown* and *Our Town Eastsider*; a copy of an advertisement in the *New York Post* from September 2015 was also included. These advertisements provided the location of the space, listed manufacturing use and no retail and food permitted, square footage for both the ground and cellar spaces, the asking price of \$90 per square foot for the ground floor space and price of \$75 per square foot for the cellar space, and the contact information for the listing agent. The good faith marketing period ended in February 2017.

The call log included in the application packet captured four phone calls received on November 24, 2014, August 14, 2015, January 18, 2016 and February 10, 2016. Two of the inquirers were interested in using the space for a restaurant and the other two were interested in running the advertisement in local papers.

The applicant also contacted citywide and local industry groups beginning October 9, 2015 to advertise the space, including: The New York City Economic Development Corporation, the SoHo Broadway Initiative, NoHo BID, Chinatown BID, Hudson Square BID, Alliance for Downtown New York, Chinatown Partnership Local Development Corporation, Lower Manhattan Development Corporation, Pratt Center for Community Development, Manufacturing New York, UNITE HERE, The Association for Neighborhood and Housing Development, and New York City Environmental Justice Alliance. Outreach efforts emails sent on October 9, 2015, October 19, 2015, November 20, 2015, and January 14, 2016; the applicant also mailed letters by certified mail on October 9, 2015. Most of these industry groups did not respond to emails and the mailed letters with the exception of the NoHo BID and the SoHo Broadway Initiative; the correspondence spreadsheet included in the application packets states these groups “agreed to direct leads”. Copies of the email correspondence and of certified receipts were included in the application package.

The applicant also seeks a special permit pursuant to §74-922 of the ZR to permit a large retail establishment with UG 6 and 10A with no limitation on floor area per establishment. The granting of this permit would allow a singular retail establishment in excess of 10,000 square feet of floor area to occupy portions of the cellar, and southerly portions of the ground, second and third floors of the existing 6-story building.

COMMUNITY BOARD RECOMMENDATION

On April 21, 2017, Manhattan Community Board 2 (“CB2”) unanimously recommended denial of the application. The Board disputes the applicant’s claims that oversized retail is within the character of Broadway and the neighborhood as a result, in part, of CB2’s approval of Section 74-781 special permit applications. Instead the Board notes that with limited exceptions, this oversized retail has resulted from illegal conversions and internal DOB Determinations which did not undergo a public review process. The Board also stated that the development of oversized retail would negatively impact nearly 1,000 residents within 400 feet of the site because of retail merchandize deliveries. The resolution further emphasized existing issues with trash placed on the streets from commercial tenants, the impacts of oversized retail on small-scale businesses, impacts of retail illumination and after hour deliveries to stores on residents’ quality of life. The applicant agreed to put some controls in place to prevent any future retail tenants’ leases to help with those aforementioned quality of life issues. Additionally, the Board questioned whether the good-faith marketing effort was sufficient to attract more advanced manufacturers to use the space.

Ultimately, CB2 voted 34 in favor, none opposed and no abstentions to recommend (1) denial of the special permit for large retail pursuant to ZR section 74-922; (2) denial of the special permit pursuant to ZR section 74-781 to allow the change of use for the cellar and ground floor unless the total area for any single retail store, including cellar space, does not exceed 10,000 square feet; and (3) that no eating or drinking establishments or late night uses be permitted if CPC chooses to grant the permits.

BOROUGH PRESIDENT’S COMMENTS

We have raised significant, substantive concerns over a piecemeal elimination of the manufacturing zoning from the SoHo and NoHo neighborhoods in favor of retail and have questioned the rent sought for manufacturing spaces – which, in each instance seems to be calculated on a percentage of what the applicant feels they are entitled to were they to rent the space for a retail use, rather than on a market price for manufacturing space.

Still, we have concerns about the material submitted by the applicant to demonstrate its “good faith effort” to rent the space for manufacturing use. Originally, the applicant advertised the ground floor space at \$400 a square foot which fell right below the asking rents for ground floor retail space in SoHo on Broadway between Houston Street and Broome Street captured in REBNY’S fall 2014 Retail Report. At that time, the applicant was seeking \$100 a square foot for the cellar space but after a meeting with DCP a few months later, the rent was reduced to \$90 a square foot for the ground floor and \$75 for the cellar floor to reflect recent listings for manufacturing space for applicants pursuant to the §74-781 special permit. Unlike many of these

types of applications my office has reviewed over the past couple of years, this applicant sought two different rent prices for the ground and cellar floors whereas other applicants have included the cellar space in the price for the ground floor space.⁴ Although the applicant argues the asking price is a discount and in line with the rent of the International Culinary Center, my office has engaged with creators and designers in the Garment Center and beyond in Manhattan, and we have come to learn that the asking price in SoHo is at least two to three times what would be reasonably expected to be paid elsewhere in the city. If we are to continue to review §74-781 special permit applications 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, retail or residential value of the space.

Two other factors raise questions about the adequacy or “good faith” of the marketing effort. The first was raised at the CPC when the application was first presented for certification in February 2017. It appears that after the end of the one year required marketing period, but prior to certification, the applicant began marketing the premises for lease as a retail establishment for a large flagship or boutique store. While counsel at DCP opined that such marketing does not violate the legal requirements, it is not clear to me that it comports with the spirit of the law. Similarly, CB2 has raised and provided evidence that a portion of the ground floor of the building not currently subject to this application, is being marketed for retail use – an effort which if successful would result in an unlawful nonconforming use. This concern was raised in writing to the applicant’s attorney and on a follow up call, he stated the current lessee for the former Joe Fresh space was marketing the space without the owner’s consent and it was not something the owner can currently control. However, it is difficult to ignore these factors when the finding requires “good faith.”

The second special permit is for a large retail establishment. The application packet states that SoHo is already a retail destination and that the granting of the special permit will not impair the character of the surrounding area and will not interfere with uses in the area. The application packet further states that it will draw minimal vehicular traffic to the streets because the development site is located on a high pedestrian-trafficked wide street which will allow customers and employees to arrive by public transit: Prince Street, Canal Street and Broadway-Lafayette Street-Bleecker Street subway stops and the 5, X1, X10, X12, X17, X27, and X28 bus lines. The representatives have argued that existing oversized retail along Broadway, which have been cited with violations for illegal conversion from manufacturing space by the Department of Buildings as recently as April 10, 2017 make this proposal within the character of the neighborhood.⁵ Illegal uses and/or establishments as the rationale for a land use decision is illogical. JLWQA units are part of the character and there is a track record of the adverse effects these large retail uses have.

⁴ Recent applications pursuant to ZR §74-781 which included one combined price for the ground floor and cellar space include ULURP Application No.’s: C 170102 ZSM (34 Howard Street), C 170235 ZSM (359 Canal Street), and C 170237 ZSM (357 Canal Street).

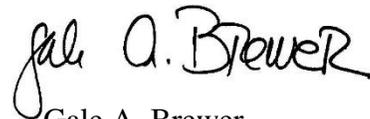
⁵ Department of Buildings issued Environmental Control Board (ECB) violations on April 3, 2017 and April 10, 2017 for non-permitted retail exceeding 10,000 square feet at 478 Broadway (Topshop), 503 Broadway (Zara), 546 Broadway (Uniqlo), 599 Broadway (American Eagle), 600 Broadway (Hollister), and 622 Broadway (Best Buy).

Furthermore, I question the long term viability given the anticipated rents and retail trends. There have been a number of articles written in the *New York Times* this spring stating the decline of retail along the major shopping corridors in the city. Stores are closing; retail employees are losing jobs, and storefronts are remaining vacant as more retail businesses move to ecommerce. There is a legitimate concern that this 45,000 square foot space could remain vacant if this special permit is granted.

The application packet states that the granting of this special permit would not impact traffic on the adjacent streets but it does not take into consideration that this is also a dense residential neighborhood. At the two CB2 Land Use Committee meetings for this application, many community residents expressed their concerns with retail loading and unloading along Crosby and the potential impacts of public access to the rear of the building.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends denial of ULURP Application No. C 170192 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