



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

August 21, 2017

**Recommendation on ULURP Application No. 170464 ZSM – 449 Broadway
By 449 Broadway, LLC**

PROPOSED ACTION

449 Broadway, LLC¹ (“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 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 year³, 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 5-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 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

¹ 449 Broadway, LLC is associated with Canal Street Associates, L.P which 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. 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.

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.

Background

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.

On May 15, 2015, the City Planning Commission certified application No. 150337 ZSM for a special permit pursuant to ZR § 74-781 for this property with two concurrent applications. On October 5, 2015, after Manhattan Community Board 2 (“CB2”) and the Manhattan Borough President’s review period, the applicant withdrew their applications because the site was advertised for retail use while it was under review. The application packet includes emails confirming the retail real estate listings online of the space were not authorized by the applicant and had them removed by January 8, 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 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.

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 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 late December of 2015 and early January 2016, the applicant hired brokerage firms familiar with the industrial marketplace: Brian Leary at Cplex Real Estate and Brett Bedevian of 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 as a fair market rent), the building site size, permitted/unpermitted uses with the broker names and contact number. The applicant also provided copies of the marketing activity lists each brokerage firm used to solicit interest 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 and amount of space for lease, the permitted use, the location and address of the building and that retail and office is not permitted. The applicant packet states the brokers did not receive an offer to rent the space.

On February 5, 2016, the applicant's land use attorney, from the law firm Akerman, LLP (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 request⁴. The mailings included: two letters to divisions of the NYC Economic Development Corporation, the 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 included a log documenting when letters were mailed, when voicemails were left, and with whom they spoke to market the space on February 5th, 18th, and March 3rd of 2016. The log states that four representatives asked to be emailed the listing, two representatives referred Akerman to two other organizations which received certified mailings after stating they could not assist; one stated they do not assist with tenancy in Manhattan, and another representative stated they cannot assist with tenancing the space. As reported by the applicant, despite these efforts, they were unable to rent the space for a conforming use.

COMMUNITY BOARD RECOMMENDATION

⁴ Of the requested return receipts, the applicant's attorney received eight which are indicated by an asterisk (*).

When the application for this site previously went before Manhattan Community Board 2 (“CB2”) in 2015 (C 150337 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, completing 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 July 20, 2017, CB2 voted unanimously to approve the application. The resolution cites concerns raised by the Manhattan Borough President Gale A. Brewer in previous recommendations regarding the fair market rent sought for manufacturing use in recent 74-781 special permit applications and in this one. The recommendation also urges the Department of City Planning to overhaul this special permit process including adjusting the suggested rent sought in consultation with the applicants.

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 two concurrent applications 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. 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 which remains holistically unaddressed in this application and the others. 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. 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. I must insist 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. Given this unresolved issue and the commitment for a study, I also respectfully ask that the Department of City Planning advise applicants to not proceed with marketing efforts until we receive a written explanation on the analysis for determining such a range and we have met to discuss any questions on that formulation.

In addition, my office did a windshield survey along Broadway between Canal Street and Grand Street and found five vacant ground floor spaces, all advertising for retail tenants, and two of these buildings are owned by the applicant. There are spaces occupied as temporary spaces including a pop-up store and a multi-vendor, pop-up space. This trend supports a broader trend throughout the borough identified in a survey my office did on retail vacancies along the entire length of Broadway in May, 2017 which found 188 vacancies. These retail vacancies add to my continued concern with converting manufacturing space to retail use. High asking retail rents and the economic trends affecting retail stores are certainly playing a significant role. However, because the applicant seeks approval for a retail space that is smaller than the most of the nearby vacant spaces and on a block that is nearly fully occupied, I am hopeful they will find a tenant. While not a factor that can be taken into account in this type of special permit, it should be considered when studying appropriate uses for the neighborhood as a whole.

Regardless, 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 commercial space, I believe in this instance the conditions for this special permit have been met.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends approval of ULURP application No. C 170464 ZSM.

The Manhattan Borough President also requests a written explanation of an analysis for determining the fair market price or range for manufacturing space in SoHo/NoHo.



Gale A. Brewer
Manhattan Borough President