



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 6, 2019

**Recommendation on ULURP Application C 190317 ZSM – 363 Lafayette Street
By Lafayette Development Associates LLC.**

PROPOSED ACTION

Lafayette Development Associates LLC (“the applicant”) seeks a special permit pursuant to Section 74-781 of the Zoning Resolution (“ZR”) to permit Use Group 6 (retail use) on portions of the ground floor, cellar, and sub-cellar of a newly constructed 10-story commercial building, located at 363 Lafayette Street (Block 530, Lot 17) in an M1-5B district within the NoHo Historic District Extension, 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 year¹, prior to the date of the application for a special permit.

BACKGROUND

Area Context

The site is located in an M1-5B zoning district, which allows light manufacturing and some commercial uses including warehousing and parking facilities. Commercial uses including retail, office, and art galleries are not permitted below the second floor as-of-right. Uses below the second story are limited to wholesale, business service, warehouse and light industrial uses. Residential development is not permitted as-of-right. Although ground floor, cellar, and sub-cellar retail use is not an as-of-right use pursuant to the Zoning Resolution, it is commonly found throughout the NoHo neighborhood as owners have sought variances and other approvals to allow for ground-floor commercial uses not permitted as-of-right.

The project site is located in the NoHo Historic District Extension in Community District 2, Manhattan. The NoHo Historic District Extension created in 2008, is a three-block extension of the NoHo and NoHo East Historic Districts, created in 2000 and 2003 respectively. The extension is bounded on the west by Lafayette St. on the east by Bowery, on the north by E. Fourth St. and on the south by Bond St. The buildings in this extension were built primarily between the

¹ 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 23,245 zoning square feet.

early nineteenth and early twentieth centuries. The buildings in the district are largely mid-rise loft buildings and include residential and commercial uses.

The project site is bounded by Broadway to the west, Bowery to the east, Great Jones Street to the north and Bond Street to the south. The surrounding block along Lafayette consists primarily of six-story mixed residential and commercial buildings with ground floor retail. There are a few parking lots within the vicinity of the project site, including one immediately across the street on the northeast corner of Great Jones Street.

The project site is served by the No. 6 subway line located at Bleecker and Lafayette Street approximately 500 feet from the project site. The B/D/F/Q Broadway-Lafayette subway stop is located 0.2 miles south of the site at East Houston and Lafayette Street. The M103 bus line runs along Bowery, its closest stop located 0.2 miles east of the project site at Bowery and East 1st Street.

Site Description

The Project Area has a lot area of approximately 5,591 square feet, according to New York City's Zoning and Land Use Map (ZoLa), with approximately 200.83 feet of frontage on Lafayette Street, 49.15 feet of frontage on Great Jones Street, and 6.62 feet of frontage on Bond Street. The building has recently completed construction and is ten stories with a cellar and sub-cellar. According to the applicant, the building has approximately 33,650 square feet of zoning floor area (6.1 FAR), with approximately 4,803 square feet on the ground floor, 2,992 square feet in the cellar, and 3,271 square feet in the sub-cellar level. There is 5,905 square feet of community facility floor area on the second and third floors, and 27,745 square feet of commercial floor area on floors 4-10. According to the applicant, the building is fully leased up on all floors above the ground level.

PROJECT DESCRIPTION

The applicant proposes to convert the 11,066 square feet on the ground floor, cellar, and sub-cellar levels to retail use (Use Group 6). 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 rear cellar of a 10-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 a year. The applicant marketed the space for \$80/per square foot ("psf") for all three levels between October 2017 and November 2018.

The applicant provided a log of outreach and inquiries from October 2017 to November 2018 and copies of the weekly advertisements that alternated between the New York Times and Downtown Express between October 2017 and November 2018, which advertised the ground floor space for \$80/psf.² In January 2019, the applicant began supplemental advertising in the

² According to the applicant's broker, the below grade space was not included in the advertising, despite the applicant seeking conversion of this space to allow for UG6, as "it is not customary to include below grade space in

same newspapers and included the cellar and sub-cellar space with a rental of \$40/psf. The application packet also contained copies of letters mailed by Jones Lang LaSalle. (“JLL”) to citywide, neighborhood and business organizations: New York City EDC, SoHo Broadway Initiative, NoHo Business Improvement District, Lower Manhattan Development Corporation, Pratt Center for Community Development, Workers United, Unite Here, Council of Fashion Designers of America, South Bronx Overall Economic Development Corporation, LIC Partnership, and Greater Jamaica Development Corporation. The application packet also contained a log of calls made and received on behalf of the marketing of the space. Of the 48 calls in the log, 28 were made to JLL Industrial, an internal department within Jones Land LaSalle. Despite these efforts, the applicant was unable to rent the space to a conforming use.

COMMUNITY BOARD RECOMMENDATION

On June 20, 2019, Manhattan Community Board 2 (“CB2”) voted to disapprove the application with conditions. The conditions, which include allowing the sub-cellar to be used only as an accessory use, are outlined in a letter sent by the applicant to CB2 dated May 31st. In their resolution, CB2 also requests that DCP provide more guidance to applicants in regard to “good faith marketing” efforts. Thirty-seven members voted in favor of the resolution with two opposed and no abstentions.

BOROUGH PRESIDENT’S COMMENTS

In the past, this office has expressed serious reservations about this special permit in general, and specifically about efforts to satisfy the "good faith marketing" requirement that appear to be cursory attempts to "check the boxes" in terms of advertising and outreach. While we understand market changes have impacted the demand for light manufacturing spaces in Noho, that does not mean there is no need for these uses in the area. A change of use permanently removes such spaces from available stock. For this reason, we have attempted to only approve applications that have demonstrated what we determine to be truly “good faith marketing”; sometimes these applications were approved on the second attempt, after an applicant has solicited and followed feedback from Community Board 2 and this office on their marketing efforts.

While the use options for the space are limited, and we understand the space is oddly shaped which may render it less attractive for as-of-right uses, the existing zoning does allow for uses that would be appropriate to an area that is growing in residential and office use. The following uses are permitted under existing zoning and could potentially thrive given the current conditions of the surrounding community:

- Dry Cleaners (UG16)
- Kennel (UG16)
- Costume/Clothing Rental (UG9)

a newspaper ad of this type, which typically serves as a ‘flex’ space for tenants that lease one of the above grade spaces”

House of Worship (UG4)³

None of these uses are included in any of the advertisements placed by the applicant. The advertisements are vague, indicating only the zoning designation of the area and noting retail, office, or restaurants are not permitted. The applicant placed the advertisements in various publications and made no change to the language throughout this period to encourage more inquiry. The applicant continues to place the same advertisement at this present moment and acknowledges they have had only one true lead: an inquiry by a wine auction house, which is UG9 and permitted under current zoning. Had the applicant met with this office and/or CB2 sooner, we could have worked together to provide guidance in marketing this space.

The appearance that the space was being marketed as retail at the same time is also disconcerting. In some applications where we have recommended disapproval, applicants have advertised the space for retail during their "good faith marketing" period. While this applicant was not actively advertising the manufacturing space for retail, it maintained two websites to market spaces within the building. One was a website set up for the marketing of the ground floor, cellar, and sub-cellar for the uses permitted under existing zoning. An alternate website, 363lafayette.com, was created for the marketing of the upper floor office space. On this website, there was a brochure listing the ground floor space as retail. This brochure was up in October 2017, the same month as the "good faith marketing" of the ground floor space, and was on the site as late as May 2019 of this year. According to the applicant, this was a typographical error. The error existed for nearly two years. We wonder if this "error" went undiscovered for two years because it also inadvertently served to make a building with ground floor retail more appealing to potential lessees.

We conclude that neither the requirements of this Section nor the direction given applicants are sufficient to ensure a robust search for conforming uses. Many of these special permit applications have a recommendation from CB2 and/or this office requesting DCP provide more clarity and encourage applicants to be more strenuous in marketing; for example, to the burgeoning light manufacturing sector in food, technology, and design. We will continue to request this of DCP and hope that through the ongoing Soho-NoHo Neighborhood Study process, solutions can be crafted that encourage property owners to find viable tenants while maintaining the artistic maker economy in the area. It also does not appear that DCP is regularly updating information provided to applicants to assist in their marketing efforts. Our staff did a quick search and discovered other organizations that could have been useful in locating an as-of-right tenant.⁴

However, in the interim, this office would like to see more of an effort made to market the space for the as-of-right uses with enhanced advertising and outreach which could include but not be limited to: more specific advertising for as-of-right uses, retaining a different broker with

³ The project site is also occupied on the second and third floors by a house of worship, which is an as-of-right use on the ground floor. According to the applicant, the tenant was not interested in the lower-level space.

⁴ Other groups the applicant could have considered include Evergreen, Downtown Alliance, Futureworks NYC, New York City Department of Cultural Affairs, Made in NY, and the Association for Neighborhood and Housing Development, which has an Urban Manufacturing Accelerator Fund for developers wishing to assist in the preservation and creation of manufacturing jobs in New York City.

experience in marketing similar spaces in Soho and Noho; lowering asking rent (specifically in the cellar and sub-cellar levels); and confirming removal of any prior marketing and/or project drawings which describe the space as retail or any use that is not permitted under current zoning.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends disapproval of ULURP Application No. C 190317 ZSM unless the site is marketed for as-of-right uses through more robust and alternative methods for an additional four-month period.

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