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Gale A. Brewer, Borough President

December 12, 2019

**Recommendation on ULURP Application No. C 190265 ZSM – 503 Broadway
By FSF Soho, LLC**

PROPOSED ACTION

FSF Soho, LLC (the “Applicant”) seeks a special permit pursuant to §74-922 of the New York City Zoning Resolution (“ZR”) to allow a large retail establishment (Use Group 6 and/or 10A Uses) with no limitation on floor area per establishment on portions of the cellar, ground floor, and second floor of an existing 5-story commercial building, on property located at 503 Broadway (Block 484 Lots 1201 & 1202), in an M1-5B District, within the SoHo Cast Iron Historic District, Borough of Manhattan, Community District 2.

According to the Applicant, they seek this special permit to legalize approximately 14,005 square feet of space on the second floor that has been converted to retail use. The legal conversion of the second floor would become part of the existing Use Group 10A use in the Project Site’s ground floor and cellar. This special permit will allow for the operation of the Project Site as a single Use Group 10A retail clothing establishment, without the limitation on floor area.

Pursuant to ZR §74-922, in M1 Districts, the City Planning Commission may permit department stores with no limitation on floor area per establishment. The Commission may also prescribe additional conditions and safeguards to minimize adverse effects on the character of the surrounding area.

PROJECT DESCRIPTION

Background

According to the Applicant, the Project Site is located within a building, which is on a through lot with 124.94 feet of frontage on the west side of Broadway and 124.81 feet of frontage on the east side of Mercer Street. The building consists of two condominium units: the Project Site (lot 1202), which is owned by the Applicant and another unit (Lot 1201) under separate ownership (the “Commercial Unit”).

The Project Site is located in the northern portion of the building’s cellar through second floor. According to the Applicant, the Project Site occupies approximately 5,000SF of the sub cellar, 15,021SF of the cellar, 13,630SF of the first floor, and 14,005SF of the second floor. The Commercial Unit occupies approximately 18,874SF of the sub cellar, 11,145SF of the cellar, 10,901SF of the ground floor and 10,743 of the second floor. They also occupy the entirety of the third floor (23,637SF), fourth floor (24,374SF), fifth floor (23,946SF), and penthouse

(4,093SF) of the building. The proposed actions within this application will not apply to the Commercial Unit.

According to a final Certificate of Occupancy, dated June 2, 2014 (CO Number 103257654F), the building's permissible occupancy is as follows:

Floor	Use Group	Description of Use
Sub Cellar	6	Storage and Boiler Room
Cellar	10	Storage and Sales Room
First	10	Large Retail Store, Accessory Storage, Offices, and Employee Lounge
Second	17	Factory and Sales Room
Third	9	Physical Culture Establishment
Fourth	6	Office
Fifth	6	Office
Penthouse	6	Office

The Project Site currently operates as the Zara retail establishment. According to the Applicant, customers enter the Project Site on the ground floor located on Broadway. They travel between the Project Site's three floors via a set of escalators located near the center of the store or an elevator near the front of the store along the Projects Area's south wall. The Project Site also contains entrances fronting Mercer Street, but they are not accessible to customers.

According to the Applicant, the Project Site has two elevators located on the Mercer Street portion of the building used by Zara employees and for freight. There are two staircases, one along the northern wall of the Project Site and one towards the southeast corner of the Project Site, that run through the site and are egress stairs. There is also a staircase at the front of the Project Site that connects the second floor with the ground floor of the building; it serves as an emergency exit.

According to the Applicant, the Zara store receives deliveries at the rear of the Project Site, on Mercer Street. This entrance leads directly from the street to the Project Site's cellar. The original building design contemplated deliveries on Mercer Street, where the Projects Site's freight elevator is located, and where special loading entrances were created that accommodate the grade change between Broadway and Mercer Street.

According to the Applicant, the Project Site receives two types of deliveries – deliveries of new Zara merchandise from Spain (the "New Merchandise Deliveries") and deliveries of back-stock

from a local warehouse (the “Consigna Deliveries”). The New Merchandise Deliveries arrive in a 26-foot box truck, traveling from Houston Street and south on Mercer Street, twice per week, usually around 1 a.m. Each New Merchandise Delivery takes between two and three hours for two to three people to unload. The Consigna Deliveries arrive Tuesdays, Wednesdays, Fridays, Saturdays and Sundays between 2 a.m. and 3 a.m. Consigna Deliveries arrive in a small truck, traveling north on Greene Street, east on Spring Street and south on Mercer Street, and take approximately an hour and a half for two people to unload. Back stock is picked up from the Project Site during Consigna Deliveries as well as back stock pick-ups. During back-stock and Consigna pick-ups and deliveries, the delivery truck parks near the Project Site’s Mercer Street access and all merchandise is in boxes brought into or out of the Project Site using hand trucks.

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 Landmarks 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 Site 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. The SoHo Cast Iron Historic District Extension is to the east of the site. The district was 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 Project Site’s surrounding area consists of a mix of commercial, multi-family elevator mixed used buildings, with a few scattered buildings in industrial/manufacturing use. The majority of buildings in the surrounding area are loft buildings, ranging from three to ten stories. The area is served well by mass transit with the R train located 0.2 miles from the Project Site at the intersection of Broadway and Prince Street and the 6 train 0.1 miles southeast of the site. The M5 bus runs south on Broadway. Citibike bicycle stations are also within close proximity of the site.

COMMUNITY BOARD RECOMMENDATION

At their full board meeting on October 24, 2019, Manhattan Community Board 2 (“CB2”) adopted a resolution disapproving the application with 40 members voting in favor of the resolution and 1 abstention.

In their resolution, CB2 expressed difficulty in evaluating this application because of a lack of documentation from the New York City Department of Buildings (DOB) that substantiates the validity of the Certificate of Occupancy indicating Use Group 10 on the cellar and ground floor. They also noted a conflict between the Applicant’s characterization of the application and the New York City Department of City Planning’s (DCP) instructions for evaluating the application. The Applicant has characterized the special permit as a means to legalize the non-conforming

use on the second floor, but DCP has instructed the City Planning Commission to evaluate the special permit for the entire establishment, including what is presumed legal under the Certificate of Occupancy.¹

CB2 also expressed continued frustration at the lack of enforcement of non-conforming retail uses. The Zoning Resolution does not permit ground floor and cellar retail uses in M1-5B zoning districts yet non-conforming retail are present throughout the area, and there has been lack of enforcement by the Department of Buildings. In their resolution, CB2 stated that this issue has persisted throughout the neighborhoods of SoHo and NoHo for decades.

CB2 also expressed opposition to the waiver from ZR §44-52, which the Applicant is hoping to secure from DOB. This section (ZR §44-52) requires large retail establishments over 25,000SF to have one loading berth and those over 40,000SF to have two loading berths. The Board believes requiring these berths would better contain some of the noise and other impacts from the multiple deliveries large establishments require.

BOROUGH PRESIDENT COMMENTS

Over the course of my tenure as Borough President I have issued many recommendations relating to the growing presence of retail establishments in the SoHo Cast Iron Historic District. Every application contains its own unique set of characteristics, but the general sentiment from my office and the community remains the same: a clearer and smarter approach to addressing the proliferation of retail establishments in this area is needed.

This application raises many concerns and it is far more complicated than anticipated. This office echoes CB2 regarding the conflict on the parameters in which this application should be considered. The Applicant presented to both the Community Board and this office that this special permit is merely to legalize non-confirming retail uses currently on the second floor of their establishment. The building has a Certificate of Occupancy that indicates the large scale retail uses currently taking place on the cellar and ground floors of the Project Site are legal.

One method by which the Certificate of Occupancy could have been issued with the large scale retail designation for the Project Site would have been via a previous special permit obtained through the City Planning Commission or the Board of Standards and Appeals. Another means would be a demonstration to DOB that the space was “grandfathered” due to consistent large scale retail use since 1974.

We know for certain no special permit was granted for this change of use. Community Board 2 as well as this office reached out to DOB soon after this application was certified, to request information as to why this Certificate of Occupancy was issued if no special permits were obtained, and there is no clear documentation available that indicates that the Project Site was

¹In the City Planning Commission Public Review Session from August 26, 2019, the planner presenting the project to the commission indicates the special permit should be considered “more broadly” and presents site plans of the ground floor that would be in the “proposed waiver area for retail establishment”
<https://www.youtube.com/watch?v=rfCDCZmcqQM&t=3876s>

“grandfathered” as large scale retail. DOB requested historical documentation stored off-site and have reviewed the documents available to them and they have indicated that they cannot conclude the Certificate of Occupancy was issued in error, despite there not being clear documentation of consistent large scale retail use since 1974.

This, coupled with the persistent lack of enforcement by DOB in this area regarding non-conforming retail, further aggravates the situation around the legalization of large scale retail. This office and Council Member Margaret Chin’s office, have reached out to DOB over the past few years with documentation of non-complying sites compiled by our offices as well as by CB2. While this did result in some enforcement and attempts to correct violations by property owners, there are still large scale retail establishments in the area that have not obtained a special permit, and it is unclear if they are “grandfathered”. There is concern that this application, if approved, could set a bad precedent, whereby property owners can file jobs to obtain a Certificate of Occupancy and may obtain one indicating retail uses without special permit or clear proof of retail uses since 1974.

If the current Certificate of Occupancy was invalidated due to this lack of documentation, or did not exist, we are still evaluating this application to permit large scale retail uses for the entirety of the retail establishment, and not just the non-conforming second floor space as the Applicant has indicated. This special permit, if granted, would result in a new Certificate of Occupancy that would demonstrate that the entirety of the space is permitted large scale retail and there would be no doubt that the certificate was not obtained correctly.

As per ZR §74-922 , the Commission must determine if the Applicant meets the findings required for the special permit including but not limited to:

- (b) that such *use* is so located to draw a minimum of vehicular traffic to and through local *streets*;

The use of the Project Site, particularly as it relates to this specific retailer, Zara, does draw a considerable amount of vehicular traffic to and through residential streets. As the Applicant indicated in their application, at least 4 days a week they receive deliveries in the very early morning hours. This office has heard extensively from residents at 77 Mercer Street, a residential building directly across the street from the Project Site, about the noise and disruption from these overnight deliveries. They have provided extensive video and photographic documentation of these occurrences. The Applicant has made efforts to reduce the impacts such as idling trucks, radio playing from these trucks as they unload and the noise from using truck lifts. However, the problem is on-going.

- (c) that adequate reservoir space at the vehicular entrance, and sufficient vehicular entrances and exits, are provided to prevent congestion;

Mercer Street, where the loading and unloading of merchandise for Zara takes place, is a narrow street. The Project Site has no loading berths and trucks currently park or double park for deliveries. While the early hour timing of these deliveries seeks to reduce congestion, unloading merchandise from the street by hand does not seem to be efficient. Operations like these should be contained within a loading berth.

- (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;

Unfortunately this use, primarily due to its delivery frequency, scheduling, and process, does produce an adverse effect on the residential uses in the district.

The Applicant has indicated that without the Special Permit, the second floor could be operated as-of-right as two Use Group 6 retail establishments. However, this would require separate entrances for this space, which would be very complicated, as it would likely require changes to the façade. This would also impact the amount of retail floor area available to the Applicant. If the Applicant does not pursue a waiver to ZR §44-52 and considers installing loading berths instead, there will likely be a similar impact to their retail floor area. However, the berths would mitigate some of the quality of life issues experienced by their neighbors and would not require the Applicant to operate their space as separate retail establishments.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends disapproval of ULURP Application No. C 109265 ZSM unless the following conditions are met:

- The Applicant does not seek a waiver for the number of loading berths required per ZR §44-52 and installs the required number of loading berths to contain delivery operations;
- The Applicant limits deliveries to more reasonable hours between 7am and 9pm;
- DOB make a more concentrated effort, in partnership with CB2, this office, and the council member's office, to review all large scale retail developments to ensure legality and continue regular enforcement until property owners implement permanent remedies that legalizes the uses within their spaces.



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