



IN THE MATTER OF an application submitted by 462BDWY LAND, L.P. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-781 of the Zoning Resolution to modify the use regulations of Section 42-14(D)(2)(b) to allow Use Group 6 uses (retail uses) on portions of the ground floor and cellar of an existing 6-story building on property located at 462 Broadway (Block 473, Lot 1), in an M1-5B District, within the SoHo Cast-Iron Historic District, Borough of Manhattan, Community District 2.

*197-d (b)(2) eligible

This application was filed by 462BDWY LAND, L.P. on December 16, 2016 for a special permit pursuant to Section 74-781 of the Zoning Resolution to modify the use regulations of Section 42-14(D)(2)(b) of the Zoning Resolution to permit Use Group 6 retail uses on portions of the ground floor and cellar of a six-story building located at 462 Broadway, Manhattan Community District 2.

RELATED ACTION

In addition to the special permit that is the subject of this report, implementation of the proposed development also requires action by the City Planning Commission on the following application which is being considered concurrently with this application:

C 170193 ZSM Special permit to allow large retail establishments (Use Group 6 and/or 10A uses) with no limitation on floor area per establishment.

BACKGROUND

The applicant, 462BDWY LAND, L.P., seeks the grant of City Planning Commission (Commission) special permits, pursuant to Sections 74-781 and 74-922 of the Zoning Resolution, to facilitate the establishment of Use Group 6 retail uses on portions of the ground floor and cellar, and a large retail store over 10,000 square feet (Use Group 6 and/or 10A), in an existing six-story commercial building located at 462 Broadway (Block 473, Lot 1) on the north side of Grand Street

with additional frontages on Broadway and Crosby Street in SoHo, Manhattan Community District 2.

The site has a lot area of approximately 20,127 square feet and is improved with a six-story building with a floor area ratio (FAR) of 5.8 constructed around 1880. The building is described in the 1973 SoHo Cast-Iron Historic District Designation Report as “a massive example of a cast-iron commercial palace done in a French Renaissance vein.”

The building consists of northerly and southerly portions, which can be accessed independently of one another but have always functioned as a single building with only one Certificate of Occupancy. Currently, the building is vacant on the ground floor, cellar, and southerly portions of the second through third floors. The rest of the upper floors contain Use Group 9 trade school uses by the International Culinary Center (“ICC”) and Use Group 6 offices.

The project site is located within an M1-5B zoning district, which permits light industrial and commercial uses as-of-right up to 5.0 FAR and community facility uses up to 6.5 FAR. In an M1-5B district, uses below the level of the second story are restricted to heavy commercial and light manufacturing uses in Use Group 7, 9, 11, 16, or 17A/B/C/E. In an M1 district, certain retail uses in Use Group 6 and/or 10A, such as department stores and clothing stores, in excess of 10,000 square feet per establishment, are also not permitted as-of-right.

The site is located in the SoHo neighborhood, along the major commercial corridor of Broadway. Once a primarily manufacturing neighborhood, over the years the area has evolved into a vibrant mixed-use district. Buildings within the vicinity of the project site, in particular ones along the Broadway corridor, are typically loft buildings ranging from five to seven stories in height, and house retail establishments on the ground floor and commercial offices on the upper floors. Many other buildings have been converted to joint living-work quarters for artists, lofts, or Use Group 2 residential use on the upper floors, and have retail or other commercial uses at street level.

Previously, the ICC occupied more floor space within the building, including a “restaurant” accessory to the Use Group 9 trade school use on the southerly portion of the ground floor, and

additional trade school and accessory office uses on the southerly portions of the second and third floors. According to the applicant, recent changes in the school's business model and the culinary industry rendered the ground floor "restaurant" unnecessary, as students typically take advantage of the externship program to practice culinary trade at restaurants around the city. In December 2015, the ICC vacated the southerly portion of the ground floor, consolidated its trade school and accessory office spaces on the upper floors and vacated the southerly second through third floors. The northerly portion of the ground floor housed various nonconforming and non-permitted retail uses from 1998 to 2016; while it is still leased to a retail tenant ("Joe Fresh"), on-site retail operations have ceased since May, 2016, when Joe Fresh closed the store.

The applicant proposes to use the southerly ground through third floors vacated by the ICC, as well as the cellar, for a single large retail establishment (Use Group 6 and/or 10A) of approximately 28,634 zoning square feet (45,201 gross square feet). To facilitate the proposed project, the applicant seeks two special permits pursuant to Sections 74-781 and 74-922 of the Zoning Resolution.

Special Permit Pursuant to Section 74-781 to Modify the Use Regulations in an M1-5B District

The applicant seeks a special permit pursuant to Section 74-781 (Modifications by special permit of the Commission of uses in M1-5A and M1-5B Districts) to allow retail uses on the southerly portion of the ground floor and the cellar of the building. In an M1-5B district, uses other than those listed in Use Group 7, 9, 11, 16 or 17A/B/C/E may be allowed by special permit pursuant to Section 74-781, provided that the Commission finds that the owner of the space, or a predecessor in title, has made a good faith effort to rent such space to a conforming use at fair market rentals. The good faith marketing period shall have been pursued for a minimum of one year for buildings occupying over 3,600 square feet of lot area.

Special Permit Pursuant to Section 74-922 to Allow a Large Retail Establishment in an M1 District

The applicant also seeks a special permit pursuant to Section 74-922 (Certain large retail establishments) to permit the proposed 28,634-square-foot large retail store (Use Group 6 and/or 10A), which could occupy the cellar, the southerly portions of the ground, second and third floors. In an M1 district, the Commission may permit certain retail uses in Use Group 6 and/or 10A with

no limitation on floor area per establishment by special permit pursuant to Section 74-922, provided that findings related to vehicular traffic movement, transit access, land use compatibility, and neighborhood character are met. The Commission may also prescribe additional conditions and safeguards to minimize adverse effects on the character of the surrounding area.

ENVIRONMENTAL REVIEW

This application (C 170192 ZSM), in conjunction with the related application (C 170193 ZSM), was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 17DCP097M. The lead is the Commission.

After a study of the potential impacts of the proposed actions in the Environmental Assessment Statement (EAS) issued on March 3, 2017, a Negative Declaration was issued on March 6, 2017.

UNIFORM LAND USE REVIEW

This application (C 170192 ZSM), in conjunction with the related application (C 170193 ZSM), was certified as complete by the Department of City Planning on March 6, 2017, and was duly referred to Manhattan Community Board 2 and the Manhattan Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Public Hearing

Community Board 2 held a public hearing on this application (C 170192 ZSM), on April 12, 2017, and on April 20, 2017, by a vote of 34 to 0 with no abstentions, adopted a resolution recommending (1) disapproval of the application pursuant to Section 74-922 to allow a large retail establishment over 10,000 square feet, and (2) disapproval of the application pursuant to Section 74-781 to allow retail uses in the cellar and southerly portion of the ground floor, unless the total area for any single retail store including cellar space does not exceed 10,000 square feet, and no eating and drinking establishments and late-night uses are permitted.

Borough President Recommendation

The application (C 170192 ZSM) was considered by the Manhattan Borough President, who issued a recommendation to disapprove the application on May 22, 2017.

City Planning Commission Public Hearing

On May 24, 2017 (Calendar No. 9), the Commission scheduled June 7, 2017, for a public hearing on this application (C 170192 ZSM) and the related application (C 170193 ZSM). The hearing was duly held on June 7, 2017 (Calendar No. 28). There were four speakers in favor of the application and 11 speakers in opposition.

Those speaking in favor included the applicant's land use counsel, the applicant's planning consultant, the property owner, and the project's traffic engineer. The applicant's land use counsel described the proposed project, stating that the application met the special permit findings and should be evaluated based on its own merit and viewed independently from irresponsible retail operators in the neighborhood. The applicant's planning consultant provided historic context for the neighborhood and the zoning restrictions in SoHo. The owner of 462 Broadway provided clarifications about the building's existing conditions and expressed his commitment to working with the neighbors to address their quality of life concerns. The applicant's traffic engineer stated that the proposed retail uses would not generate much additional vehicular traffic given the high level of transit access in the neighborhood, and that the current parking regulations surrounding the site are conducive to curb side loading on Broadway and Grand Street.

Those speaking in opposition included a representative of the State Senator for the 26th District, a representative of the State Assembly Member for the 66th District, a representative of the Manhattan Borough President, two representatives of Community Board 2, a small business owner, and five local residents. The representatives of the State Senator and Assembly Member stated their opposition to the project and expressed concerns regarding existing retail stores in SoHo that may be operating in violation of zoning regulations. The representative of the Borough President and the representatives of Community Board 2 reiterated their written recommendations to disapprove the application. A small business owner in SoHo stated that large retail stores are pricing out local businesses. The five local residents expressed individual concerns about the

introduction of additional large retail use into SoHo, raising quality of life issues including noise generated by off-hour truck deliveries, retail trash, sidewalk congestion and illumination from retail displays.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the grant of this special permit (C 170192 ZSM), in conjunction with the application for a related action (C 170193 ZSM) as modified herein, is appropriate.

Special Permit Pursuant to Section 74-781

The Commission believes that the grant of a special permit pursuant to Section 74-781 of the Zoning Resolution to modify the use regulations of Section 42-14D (2)(b) to allow retail uses on portions of the ground floor and the cellar of an existing 6-story commercial building at 462 Broadway is appropriate.

The Commission believes that the applicant has made the necessary good faith marketing effort for a period of one year. The Commission notes that the applicant initially advertised the southerly ground floor space for conforming uses at a rate of \$400 per square foot (\$100 per square foot in the cellar), which the Commission understands to be far above the fair market rent for manufacturing and industrial uses in the city. The Commission further notes that the applicant subsequently lowered the rental rate to \$90 per square foot on the ground floor (\$75 per square foot in the cellar), and marketed the space by advertising in several local and citywide newspapers, listing the space with a broker, and informing local and citywide industry groups between February 2015 and February 2016 (a period of one year).

While the Commission remains unconvinced that the adjusted rate is an affordable rent level for industrial and manufacturing establishments, the Commission acknowledges the applicant's statement that this rental rate is below the average rent of the ICC, a conforming tenant (Use Group 9) in the building. The Commission also recognizes that the surrounding SoHo neighborhood has

few industrial and manufacturing establishments on the ground floor, and that comparable rents for manufacturing uses in the area are therefore difficult to ascertain.

The Commission believes that the applicant made the necessary good faith effort to lease the space to a conforming use, consistent with the guidelines outlined in Section 74-781 of the Zoning Resolution, and was unable to secure a conforming tenant. The Commission therefore believes that the grant of the requested special permit is appropriate.

Special Permit Pursuant to Section 74-922

The Commission believes that the grant of a special permit pursuant to Section 74-922 to allow a single large retail establishment (Use Group 6 and/or 10A) of approximately 28,634 zoning square feet (45,201 gross square feet), as modified herein, is appropriate.

The Commission notes that the proposed large retail establishment at 462 Broadway would be located along one of the city's premier commercial corridors, which already features a wide range of retail and commercial uses and stores of varied sizes. The Commission believes that allowing retail uses in a space that has been vacant for over a year would enhance this dynamic retail destination and further enliven the corner of Broadway and Grand Street. Accordingly, the Commission believes that the proposed Use Group 6 and/or 10A large retail use would not impair the character or future development in the surrounding area.

The Commission further notes that the proposed retail program at the project site would be supported by the excellent mass transit network that serves the SoHo neighborhood, and would draw a minimum of vehicular traffic to and through local streets. The Commission observes that the project site is easily accessible from multiple subway stations nearby, including Canal Street 6/J/N/Q/R lines, Spring Street 6 line, and Prince Street R/W lines, as well as various bus lines. The Commission acknowledges the concerns raised at the public hearing regarding pedestrian congestion in SoHo, but believes that a high volume of pedestrian traffic is a positive indicator of successful retail streets, and that Broadway and Grand Street with their wide sidewalks (18 feet on

Broadway and 16 feet on Grand Street in front of the project site) are adequate to handle the pedestrian traffic volume to be generated by the proposed retail program.

At the public hearing, concerns were raised about noise, trash, traffic and illumination impacts of large retail stores. The Commission acknowledges these concerns and recognizes that there are irresponsible large retail operators who have not sought a large retail special permit in the neighborhood. Nonetheless, the Commission remains unconvinced, from a land use perspective, that a single large store would have more impacts than several smaller stores that in aggregate occupy the same amount of floor area. Further, the Commission believes that the logistics of building out and tenanting smaller stores is another factor that warrants consideration. Given the configuration and size of the floor plates in the building, retrofitting the building to accommodate multiple separate stairways and elevators for multiple smaller stores is challenging, if not infeasible, especially in a contributing building in the SoHo Cast-Iron Historic District.

The Commission believes that retail uses, including large retail establishments over 10,000 square feet, are appropriate uses along the Broadway corridor in SoHo, given the existing and historic land use pattern, high level of mass transit access, Broadway and Grand Street's status as truck routes, as well as the characteristics of the building stock. However, the Commission agrees that additional safeguards should be put in place, as appropriate, to ameliorate undesirable conditions that may be aggravated by additional retail related activities at this location.

With regard to loading and unloading, the Commission notes that as certified, the applicant proposed that truck loading and unloading would take place on Crosby Street, where the building's service entrance and freight elevators are located. The Commission shares the concerns of the Community Board, elected officials and community members, and recognizes that off-hour truck loading and unloading, while preferable from a traffic perspective, would likely result in noise disturbances, especially for residents living along the narrow Crosby Street near the project site. Accordingly, the Commission does not believe unrestricted loading and unloading on Crosby Street, as originally proposed by the applicant, is appropriate, and hereby modifies the proposal to impose the following restrictions on loading zones and hours: as specified on the revised zoning lot site plan and ground floor plan, no truck loading or unloading associated with the proposed

large retail establishment shall occur on the Crosby Street frontage between 8pm and 7am, 7 days a week. During those hours, if loading and unloading is necessary, trucks may only be parked along the Broadway or Grand Street frontages, where goods may be delivered into the building using hand trucks through the various building entrances. The Commission is pleased that the applicant has committed to including the above restrictions in its leases with future large retail tenant(s).

FINDINGS

The City Planning Commission hereby makes the following finding pursuant to Section 74-781 (Modifications by Special Permit of the City Planning Commission) of the Zoning Resolution:

that the owner of the space, or a predecessor in title, has made a good faith effort to rent such space to a mandated use at fair market rentals. 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 six months for buildings under 3,600 square feet and one year for buildings over 3,600 square feet, prior to the date of the application for a special permit.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the actions described herein will have no significant impact on the environment; and be it further

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the environmental determination, and the consideration described in this report, the application (C 170192 ZSM) submitted by 462BDWY LAND, L.P. for the grant of a special permit pursuant to Section 74-781 of the Zoning Resolution to modify the use regulations of Section 42-14D(2)(b) to allow Use Group 6 (retail uses) on portions of the ground floor and the cellar of an existing 6-story building on property located at 462 Broadway (Block

473, Lot 1), in an M1-5B District, within the SoHo Cast-Iron Historic District, Borough of Manhattan, Community 2, is approved subject to the following terms and conditions:

1. The property that is the subject of this application (C 170192 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Peter F. Farinella Architect, P.C. filed with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
1	Zoning Analysis	12/14/16
2	Zoning Lot Site Plan	7/5/17
3	Ground Floor Site Plan	7/5/17
4	Cellar Plan	12/14/16
8	Building Section 1	12/14/16
9	Building Section 2	12/14/16
10	Building Section 3	12/14/16

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
4. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.
5. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements,

terms or conditions of this resolution whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted.

6. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 170192 ZSM), duly adopted by the City Planning Commission on July 12, 2017 (Calendar No. 13), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

MARISA LAGO, *Chair*

KENNETH J. KNUCKLES, *Esq.*, *Vice Chairman*

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April 21, 2017

Marisa Lago, *Chair*
City Planning Commission
22 Reade Street
New York, NY 10007

Dear Ms. Lago:

At its Full Board meeting on April 201, 2017, CB#2, Manhattan (CB2, Man.), adopted the following resolution:

462 Broadway (NE corner of Broadway and Grand Streets) CEQR 17DCP097M, C 170192 ZSM and C 170193 ZSM. The applicant is seeking a special permit to allow retail use on the ground floor and cellar of the existing six-story building, and a special permit to allow a large retail establishment of over 10,000 square feet, for a total of 45,201 SF retail.

Whereas:

1. This application seeks **(1)** a special permit pursuant to Section 74-781 of the Zoning Resolution to permit Use Group 6 retail use in the cellar and the southerly portion of the ground floor of the existing six-story building in an M1-5B zoning district, within the SoHo Cast-Iron Historic District; and **(2)** a special permit pursuant to ZR 74-922 to permit Use Groups 6 and 10A large retail establishment over 10,000sf in the cellar and the southerly portions of the ground through third floors of the aforementioned building.
2. The building is divided into a northerly portion (466-468 Broadway aka 26-28 Crosby Street) and a southerly portion (462-464 Broadway aka 22-24 Crosby Street aka 120-130 Grand Street) but the entire premises lies within a single tax lot and operates as a single building (Block 473, Lot 1).
3. The existing uses in the northerly portion of the ground through third floors and the entire fourth through sixth floors will remain unchanged for now. However, the applicant intends to seek an additional land use application to allow UG6 retail use in the northerly portion of the ground floor, with indications that the applicant will also seek a separate 74-922 special permit for retail in excess of 10,000sf in that northerly portion of the building, where an additional 28,500sf of space is now vacant.
4. Loading and unloading for retail operations at 462 Broadway, aka 22-28 Crosby Street, will occur on Crosby Street, where the building's freight elevators are located. However, applicant has stated that there is the possibility that some loading will also place on Grand Street,

dependent upon finalization of plans for retail entrances. Crosby Street is a narrow one-way street with a single traffic lane and residential and JLVQA occupancies to the north, south and east of the intersection of Crosby and Grand Streets. Grand Street is also a one-way street with a single traffic lane, with residential occupancies on upper floors of all buildings directly to the south of 462 Broadway.

5. The applicant claims that the project would neither generate additional traffic nor alter the existing traffic, but has done no studies and makes no mention of retail merchandise deliveries that will be a part of a proposed oversized retail operation.
6. The UG9 International Culinary Center is downsizing, has vacated its former ground floor space, and has relocated its trade school and accessory office space within the Building to portions of the second through fifth floors. The International Culinary Center was a conforming use in the ground floor space, which the applicant states was moved to the upper floors with a “reduced rent,” and the applicant now seeks to fill the former ICC space on the ground floor with a non-conforming use.
7. The applicant states, in the EAS Supplemental Report (page 16: “Future With-Action Conditions”): “The retail uses that would result from the Proposed Action are particularly appropriate for the location and are consistent with the existing built character and uses within the surrounding neighborhood,” but offers no documentation to back up that claim in regard to which retail uses now in operation in the surrounding area are actually permitted and allowed.
8. A search of LUCATS for special permits that have been granted to allow retail in excess of 10,000sf in the surrounding neighborhood shows only a single special permit on the entire length of Broadway in SoHo: 550-556 Broadway in 2009 (C090362 ZSM).
9. At least five other oversized retail operations are on that same stretch of Broadway, all of which have not obtained the required oversized retail special permit, thereby bypassing community input that is a key part of the special permit process, and where DOB Zoning Resolution Determinations have not been found that could be used to excuse the lack of an oversized retail Special Permit. Those retailers without the 74-922 special permit include:
 - a. Topshop at 478-482 Broadway (multiple buildings horizontally connected; 4 floors above-grade, approx. 37,000sf; opened 2009 and expanded since);
 - b. Zara at 503-511 Broadway (2 floors above-grade, approx. 20,000sf; opened 2016);
 - c. UNIQLO at 546-548 Broadway (2 floors above-grade, approx. 30,000sf; opened 2006)
 - d. American Eagle at 599-601 Broadway ((2 floors above-grade, approx. 18,000sf; opened 2010); and
 - e. Hollister at 600-602 Broadway (3 floors above-grade, approx. 20,000sf; opened 2009).
10. On April 3, 2017 and April 10, 2017, the NYC Department of Buildings served these five retail establishments with ECB Violations for “Category Code 92: Illegal conversion of manufacturing/industrial space; illegal conversion” in regard to “retail store operating ... in a M1-5B zoning district exceeding 10,000sf.” attached for reference is a 1-page spreadsheet showing the Retail Special Permit Status for the M1-5B area on Broadway in SoHo; that spreadsheet also denotes the properties that were served with DOB ECB Violations in April 2017 for operating retail exceeding 10,000sf.
11. Two other retail set-ups in excess of 10,000sf have been allowed to open and are currently in operation along Broadway, apparently by way of internal DOB determinations that were made by that agency without community input:
 - a. Bloomingdales at 502-504 Broadway; and
 - b. Nike at 529-533 Broadway.
12. Applicant claims that prior applications pursuant to Section 74-781, for retail below the 2nd floor along Broadway in the SoHo M1-5B district, contained no controlling language in the CB2 Resolutions, but applicant failed to note that no such application for existing retail on Broadway has come before CB2 in the past five years, and only two such applications for Broadway have come before CB2 in the past decade. The most recent such application

processed by DCP was withdrawn, following recommendation to disapprove, which cited failure to comply with requirement for good faith marketing requirement (449 Broadway; C150337ZSM in 2015). Another such application, for a new building now under construction at 19 E Houston St. (C140300ZSM in 2014), was granted with provisions in regard to size and location of retail, retail illumination, retail deliveries and pedestrian circulation. For reference, see attached spreadsheet, previously noted, for Retail Special Permit Status.

13. Within the “400 Foot Study Area” for 462 Broadway (cited in the EAS and Supplemental Report on Pages 13-15: 2.1.1 Land Use, Existing Conditions), there are over 450 residential units found in buildings that encircle 462 Broadway. Using the occupancy number per residential unit that is cited under EAS guidelines, that adds up to nearly 1,000 residents who will be directly impacted by the effects of this new retail use.
14. The “Land Use Distribution” (EAS, Table 3, page 15) shows the number of 18.8% for “Mixed Residential/Commercial” uses (applicable to the entirety of CB2). However, that number does not accurately describe the residentially occupied uses in the immediate vicinity of 462 Broadway, where a more accurate accounting would show that nearly all of the nearby buildings are “Mixed Residential/Commercial” and approximately 80% of the nearby above-grade floor area is occupied by either JLWQA or residential uses, together encompassing approximately 990,000sf of JLWQA/residential use (as opposed to the 45,000sf of retail use that is the subject of this current proposal for 462 Broadway). For reference, see attached spreadsheet listing nearby residential properties.
15. In 2014, as a result of CB2, Man. and community action and with direction from CPC, an application for retail in excess of 10,000sf at 19 E Houston St. was withdrawn by that applicant (C140302 ZSM). Then, in 2015, at the Board of Standards and Appeals, an amended variance seeking adjustment of retail at 555-557 Broadway (Scholastic), was “granted on condition” with strict limitations on future retail operations (BSA 146-96-BZ).
16. Nearby residents and other community members have raised a number of concerns regarding the negative impact of oversized retail in the M1 Districts of SoHo and NoHo. Negative impacts and adverse effects from retail operations in excess of 10,000sf are now part of the ongoing residential experience in SoHo and NoHo, due to the large number of oversized retail operations now in place along Broadway. Those adverse effects include the following:
 - a. Excessive illumination from retail displays, including massive LED screens that blast light and imagery from the retail premises onto the street and into windows of residences;
 - b. “Off Hours Deliveries” aka After Hours Deliveries of retail merchandise that bring massive trucks to the streets below residential windows, treating the sidewalks like loading docks and resulting in constant noise and disruption almost every night of the week. The documented negative impacts from Off Hours Deliveries, particularly at one oversized retail operation in SoHo (UNIQLO at 546-548 Broadway), has recently compelled the NYC Department of Transportation’s Office of Freight Mobility to use precious public resources to install sound and motion sensing cameras outside that retail operation to chronicle the noise disruptions that have plagued nearby residents for many years, and which that retailer has failed to properly address;
 - c. Massive amounts of retail trash and refuse that are piled on the narrow public sidewalks, often placed outside many hours in advance of the closing of the retail store and thereby in violation of trash regulations, which mandate that commercial refuse should be placed on the sidewalk one hour before a store closes;
 - d. Oversized retail that is pushing out small-scale, individually-owned uses that better serve the local population.

17. CB2, Man. has made many attempts, along with Manhattan Borough President Gale Brewer and Councilmember Margaret Chin, to address ongoing issues connected with retail special permits in the M1 districts of SoHo and NoHo, chronicled in a comprehensive letter sent to DOB Commissioner Rick D. Chandler on February 9, 2015. For reference, a copy of that 02/09/2015 letter is attached.
18. Assurances by Mayor de Blasio and the Department of City Planning to study the current zoning of SoHo and NoHo, originally set to start in the summer of 2016, could have helped to identify problems that come with oversized retail, and identified solutions for how to address those problematic situations. However, based on statements made by DCP representatives during the Feb. 21, 2017 review session for 462 Broadway, all indications are that the promised zoning study of SoHo and NoHo will not take place in the near future. Therefore, enforcement of existing retail zoning becomes all the more important so as to assure that the essential character of the surrounding area will not be impaired. As noted by Commissioner Anna Levin during that same CPC review session: "We all know there are problems with the Special Permit format ... but this one really highlights the problem" (CPC Review Session on Feb. 21, 2017, video timecode 02:18:30).
19. Questions about the "good faith efforts" used to market the space within 462 Broadway were raised by City Planning Commissioners during the review sessions, and it should be noted that while the northerly portion of the building (aka 466-468 Broadway, now vacant) is not part of this application, that space (for which the applicant states it will seek a separate special permit to allow for retail use) is currently being marketed for non-conforming retail use. Signs are now seen in the windows at 466-468 Broadway, stating "Retail Space For Lease" and showing the listing brokers' contact info. This same space was previously leased to non-conforming retailers (Daffy's, 1998-2012 and Joe Fresh, 2013-2015). The applicant acknowledges that the 466-468 space was leased, in an "illegal" manner, to those retail operations for over 15 years. Attached is a photograph taken on April 9, 2017 showing one of those "retail space for lease" signs with clear identification of the 466-468 Broadway premises.
20. There was no any evidence of any attempt made to market directly for "advanced manufacturing" uses, a conforming use described by Wikipedia as "involving the use of technology to improve products and/or processes," with the relevant technology being described as "advanced," "innovative," or "cutting edge." A common example of advanced manufacturing is 3D printing.
21. At CB2's Land Use meeting on April 12, 2017, applicant returned to present a revised plan removing the third floor portion of the proposal (9,983sf), thereby leaving approximately 35,000sf (including the basement) that applicant seeks to convert to retail use. However, despite committee and community requests, the applicant did not agree to limit individual retail operations to a maximum of 10,000sf, inclusive of cellar space.
22. At the same meeting, applicant agreed to sit down with residential neighbors to solve noise problems from the existing mechanicals on the roof of 462 Broadway—problems that have been ongoing for an extended period of time but that were never properly addressed by the applicant, despite outreach from the neighbors.
23. Applicant also agreed to include—and enforce—acceptable illumination and hours of delivery and trash pickup in leases with retail tenants. However, the applicant's offer to put "reasonable" controls in place for future retail tenants were unspecified. Further, it was pointed out that there is little chance of enforcing any such lease provision, or any real way of achieving a cure for problem, if the current application were to be granted without inclusion of language that would establish controls for retail operations at this property.
24. Applicant agreed to no late-night uses and no eating and drinking establishments on the premises.

25. It is noted that ZR Section 74-922 includes this directive: "The Commission may prescribe additional conditions and safeguards to minimize adverse effects on the character of the surrounding area."
26. During the two public hearings held before the CB2's Land Use committee, scores of nearby residents and small business owners appeared and spoke in opposition to the applications. CB2 is unaware of anyone in support of either of the applications.

Therefore,

1. With respect to a special permit pursuant to ZR 74-922 to permit Use Groups 6 and 10A large retail establishment over 10,000sf, CB2, Man. recommends denial.
2. With respect to a special permit pursuant to ZR 74-781 to permit Use Group 6 retail use in the cellar and the southerly portion of the ground floor (below the second story), CB2, Man. recommends denial unless the total area for any single retail store, including cellar space, does not exceed 10,000 square feet.
3. Should applicant meet the criteria, CB2, Man. recommends denial of eating and drinking establishments and late-night uses.

Vote: Unanimous, with 34 Board members in favor.

Please advise us of any decision or action taken in response to this resolution.

Sincerely,



Terri Cude, Chair
Community Board #2, Manhattan



Anita Brandt, Chair
Land Use & Business Development Committee
Community Board #2, Manhattan

TC/fa

c: Hon. Jerrold L. Nadler, Congressman
Hon. Yiu-Line Niou, NYS Assembly Member
Hon. Deborah Glick, Assembly Member
Hon. Daniel Squadron, NY State Senator
Hon. Gale A. Brewer, Manhattan Borough President
Hon. Margaret Chin, Council Member
Sylvia Li, Dept. of City Planning

SoHo M1-5B Broadway: RETAIL Special Permit Status; 1988 - 2017 (per LUCATS)

Year	Address		Block	CPC Date	Land Use ID #	Zoning District	Special Permit Retail Allowance		Notes	
	Number						74-781	74-922		
	Low	High					Below 2nd Floor	> 10K SF		
1988	561	563	Broadway	498	14-Sep-88	C 850237 ZSM	M1-5B	x		Retail Ground Fl; JLWQA Units: 16
1990	508		Broadway	483	12-Sep-90	C 900578 ZSM	M1-5B	x		2,100 SF Retail @ Cellar & Ground Floor
1998	512	514	Broadway	483	05-Aug-98	C 980238 ZSM	M1-5B	x		Retail: Subcellar, Cellar, 1st; JLWQA: 14 Units
1999	473		Broadway	474	20-Oct-99	C 990413 ZSM	M1-5B	x		Retail: Ground Floor; JLWQA: 10 Units
1999	475		Broadway	474	20-Oct-99	C 990414 ZSM	M1-5B	x		Retail: Ground Floor; JLWQA: 10 Units
2003	433		Broadway	231	04-Jun-03	C 030255 ZSM	M1-5B	x		Retail at Fl C & 1: 1,045 SF [New Building]
2003	583	587	Broadway	512	03-Dec-03	C 030324 ZSM	M1-5B	x		Retail at Subcellar, Cellar & Ground Floor
2004	502	504	Broadway	483	NONE	No Application	M1-5B			Bloomingtondale: No SP / DOB Determinations ?
2005	546	548	Broadway	497	37084	C 040382 ZSM	M1-5B	x	O	UNIQLO: 74-781 C & 1; but > 35K w/o 74-922
2005	541		Broadway	498	02-Feb-05	C 040351 ZSM	M1-5B	x		Retail Cellar: 3,540 sf; 1st: 3,289 sf
2009	550	556	Broadway	497	02-Dec-09	C 090362 ZSM	M1-5B	x	X	Banana Republic: Retail 18,113 SF; Fl 1 & 2
2009	600	602	Broadway	511	NONE	No Application	M1-5B		O	Hollister: No 10K Special Permit
2009	478	482	Broadway	473	NONE	No Application	M1-5B		O	TopShop: No Permits; Multi-Floor 42K SF Retail
2010	599	601	Broadway	512	NONE	No Application	M1-5B		O	American Eagle: No 10K Special Permit
2012	577		Broadway	512	04-Jan-12	C 080064 ZSM	M1-5B	x		Retail at Subcellar, Cellar & Ground Floor
2014	19		East Houston	511	20-Aug-14	C 140300 ZSM	M1-5B	x		Retail at Cellar, Ground & 2nd Floors
2014	19		East Houston	511	20-Aug-14	C 140302 ZSM	M1-5B			74-922 Application Withdrawn 09/29/2014
2015	449		Broadway	236	28-Oct-15	C 150337 ZSM	M1-5B	x		MBP: Disapprove (Bad Marketing); Withdrawn
2016	503	511	Broadway	484	NONE	No Application	M1-5B		O	ZARA: No Special Permit; In Violation of C of O
2016	529	533	Broadway	498	NONE	No Application	M1-5B			NIKE: 45K Retail w/o SPs; DOB Determinations?
										Denotes 10K+ Retail WITHOUT 74-922 Spec Permit
									O	Denotes DOB ECB Vio 04/17: Retail > 10K SF
										Denotes buildings currently under construction
									X	Denotes One (1) Existing Permitted 10K+ SF Retail

NOTE: This chart does NOT include Special Permits regarding Bulk / Height or Special Permits for JLWQA UG 17D units / Residential UG2 units

ALSO NOTE: Many Special Permit applications from 1988 - 2005 were linked with permit applications to allow for JLWQA UG 17D units

No Special Permits have been sought since 2005 for allowance of any JLWQA UG 17D units along Broadway

Residential Occupancy: Percentage per Square Foot & Floor Area [data: DCP ZoLa]

Primary Address			Secondary Address			Block	Lot	Gross SF	Lot SF	Resid. SF	Total Floors	Resid. Floors	Resid. Floor %	Resid. Units
Number		Street 1	Number		Street 2									
Low	High		Low	High										
462	468	Broadway	22	28	Crosby Street	473	1	133,841	20,150		6	0		0
472		Broadway				473	6	7,650	1,669	6,120	5	4	80.00%	4
476		Broadway	38		Crosby Street	473	8	62,624	7,445	51,238	11	9	81.82%	22
478	482	Broadway	40		Crosby Street	473	10	55,015	9,932	11,003	5	1	20.00%	1
484	486	Broadway	437		Broome Street	473	14	30,031	4,796	10,010	6	2	33.33%	3
435		Broome Street				473	15	12,742	2,517	5,097	5	2	40.00%	2
433		Broome Street				473	16	9,216	2,626	2,304	4	1	25.00%	1
431		Broome Street				473	17	8,803	2,565	0	5	0	0.00%	0
429		Broome Street			Crosby Street	473	18	13,000	2,625	10,400	5	4	80.00%	4
30	36	Crosby Street				473	6	55,693	11,700	55,693	7	7	100.00%	13
23	29	Crosby Street	134	140	Grand Street	473	51	71,413	12,616	59,511	6	5	83.33%	17
31		Crosby Street				473	28	12,283	2,600	10,528	7	6	85.71%	12
33		Crosby Street				473	29	11,858	2,597	10,164	7	6	85.71%	12
35		Crosby Street				473	30	9,100	1,551	7,800	7	6	85.71%	12
37		Crosby Street				473	31	8,621	1,526	7,389	7	6	85.71%	8
37 B		Crosby Street				473	130	8,400	2,044	8,400	6	6	100.00%	6
39		Crosby Street	425	427	Broome Street	473	33	38,090	5,970	32,649	7	6	85.71%	13
423		Broome Street				473	35	19,250	3,320	16,500	7	6	85.71%	6
419	421	Broome Street				473	36	36,332	6,188	30,277	6	5	83.33%	4
184		Lafayette Street				473	41	9,480	2,525	7,584	5	4	80.00%	20
182		Lafayette Street				473	42	17,000	2,920	14,167	6	5	83.33%	5
180		Lafayette Street				473	43	17,400	2,450	14,914	7	6	85.71%	6
178		Lafayette Street				473	44	10,584	2,525	8,820	6	5	83.33%	20
176		Lafayette Street				473	45	8,150	2,577	6,520	5	4	80.00%	14
450		Broadway				232	8	13,760	3,120	8,256	5	3	60.00%	3
452		Broadway	16		Crosby Street	232	9	42,111	8,812	33,689	5	4	80.00%	25
458		Broadway		123	Grand Street	232	12	29,370	3,009	26,107	9	8	88.89%	8
125	127	Grand Street			Grand Street	232	13	14,800	4,022	11,100	4	3	75.00%	6
129	131	Grand Street	20		Crosby Street	232	15	15,802	4,004	12,642	5	4	80.00%	4
133		Grand Street	19	21	Crosby Street	233	8	7,950	2,010	5,963	4	3	75.00%	3
147	149	Grand Street				233	15	9,350	2,880	7,013	4	3	75.00%	6
1	3	Crosby Street	28		Howard Street	233	33	10,999	2,175	4,400	5	2	40.00%	2
97	105	Grand Street	35		Mercer Street	230	30	20,940	4,188	16,752	5	4	80.00%	6
31	33	Mercer Street				230	31	30,000	7,163	24,000	5	4	80.00%	12
29		Mercer Street				230	32	11,124	2,483	8,899	5	4	80.00%	4
53		Mercer Street				474	14	6,851	2,500	4,567	3	2	66.67%	2
45		Mercer Street				474	18	11,500	2,500	9,200	5	4	80.00%	4
43		Mercer Street	43R		Mercer Street	474	19	7,265	2,516	5,449	4	3	75.00%	3
104		Grand Street	39		Mercer Street	474	21	7,500	1,250	6,000	5	4	80.00%	3
100	102	Grand Street				474	22	17,675	3,100	14,729	6	5	83.33%	6
463	469	Broadway	106	114	Grand Street	474	38	117,024	21,370	108,022	13	12	92.31%	41
471		Broadway				474	37	13,652	2,845	10,922	5	4	80.00%	4
473		Broadway	46		Mercer Street	474	36	36,495	5,298	31,933	8	7	87.50%	13
475		Broadway	48		Mercer Street	474	36	32,928	5,260	28,812	8	7	87.50%	14
443	451	Broome Street	487		Broadway	474	30	70,759	5,600	65,316	13	12	92.31%	25
489		Broadway	442	444	Broome Street	484	28	10,710	2,142	8,568	5	4	80.00%	8
491	493	Broadway	446		Broome Street	484	26	57,486	4,200	47,905	12	10	83.33%	13
438		Broome Street				483	38	14,253	3,357	11,402	5	4	80.00%	7
432	436	Broome Street	42		Crosby Street	483	35	50,285	8,275	43,101	7	6	85.71%	10
430		Broome Street	41		Crosby Street	482	7503	10,822	2,229	8,658	5	4	80.00%	4
426	428	Broome Street	426	428	Broome Street	482	1	31,365	6,032	25,092	5	4	80.00%	13
424		Broome Street				482	41	17,654	2,675	15,132	7	6	85.71%	6
TOTAL								1,253,165		990,715	320	246	76.88%	460
Residential SF area as % of nearby building SF area										79.06%				
Proposed Retail SF area as % of Nearby Retail SF area										4.54%				



CITY OF NEW YORK

GALE A. BREWER
MANHATTAN BOROUGH PRESIDENT
1 CENTRE STREET, 19TH FLOOR
NEW YORK, NY 10007

MARGARET S. CHIN
COUNCIL MEMBER, DISTRICT 1
NEW YORK CITY COUNCIL
250 BROADWAY, SUITE 1882
NEW YORK, NY 10007

TOBI BERGMAN
CHAIR, COMMUNITY BOARD 2
MANHATTAN
3 WASHINGTON SQUARE VILLAGE
NEW YORK NY 10012

February 9, 2015

Rick D. Chandler, P.E., Commissioner
NYC Department of Buildings
280 Broadway, 7th Floor
New York, NY 10007

Dear Commissioner Chandler:

We write to share our concern that unchecked large retail development has increasingly become a threat to the future of SoHo and NoHo.

While a M1-5 zoning district may no longer be ideal for the area, it has successfully supported the redevelopment of a declining and dilapidated manufacturing area to a thriving world-renowned mixed-use neighborhood of residences, offices, and stores. SoHo and NoHo in turn served as the bedrock of the extraordinary revitalization of downtown Manhattan in the late 20th Century.

The past few years has seen a surge of enlargements of non-conforming retail establishments, especially on Broadway but increasingly on narrow streets as well that were never intended to house the larger establishments we see there today. As a result, sidewalks are congested, tractor-trailers unload through the night, and illegal illuminated signs cast a glare from storefronts and second story windows, all causing unsustainable negative impacts on legal residential, office, and retail uses. This trend represents a significant threat to the very successful mix of conforming and legal non-conforming uses and to stable real estate values. This is not unlike the negative impacts of "too much success" on the Times Square office market, the focus of a recent New York Times article, but there at least the development is not contrary to the requirements of the Zoning Resolution.

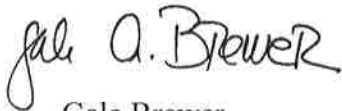
Manhattan Community Board 2 (CB2) has heard expressions of concern from residents, owners, and businesses in the area, including a new group formed by SoHo businesses concerned about the impact of the transformation of the area into a mall-like district dominated by large brand-name stores (letter enclosed herewith). These design stores and many others support the special character of the area that contributes so much to the economic diversity and success of New York City.

While the Department of City Planning agrees zoning changes for the neighborhood should be studied, our research suggests that the current problems are exacerbated not by zoning but by inconsistencies between DOB plan examiner interpretations and approvals and the applicable zoning rules. The discrepancies in use classifications have allowed stores to be built and to function in exceedance of 10,000 square feet without special permits pursuant to Section 74-922 of the Zoning Resolution. These inconsistencies also allow enlargement and structural modification of stores with non-conforming uses, such as the enlargement of ground floor non-conforming retail stores to include additional floors below the floor level of the second story.

The M1-5 zoning was never intended to support large retail and includes provisions to limit its growth, and yet the expansion of these uses appears to be escalating rapidly. We are enclosing a list of buildings where existing or planned stores exceed 10,000 square feet. We would like to work with you to review and correct the status of these buildings and others and to come to a better understanding of the current policies of your agency affecting current and upcoming developments.

CB2 Manhattan has already reached out to the Manhattan Borough Commissioner office to make an appointment with you to discuss these concerns. We appreciate your assistance with this effort.

Sincerely,



Gale Brewer



Margaret Chin



Tobi Bergman

Encl: List of proposed and existing large retail establishments
Community Board 2 Resolution Re: Establishment of Design District

M1 District Retail Survey (SoHo and NoHo) - Select Properties: Bleecker Street to Canal Street

Page 1

#	Street	Block	Lot	Lot SF	Gross SF	STORE	UG	C/O	C/O TYPE	# ISSUANCES of TCO
628-630	Broadway	522	8	9,500	66,500	Urban Outfitters		NONE	N/A	
622-624	Broadway	522	5	14,235	99,470	Best Buy	6,10	2004	Final	
129-131	Greene	514	7502	5,093	23,168	In Conversion	10	1981	Final	
600-602	Broadway	511	16	10,005	65,192	Hollister	PCE	2012	Final	
552-556	Broadway	497	12	12,538	67,440	Banana Republic	6, 10A	2014	Temporary	28x
546-548	Broadway	497	9	17,460	95,498	Uniqlo	6,2,17D	2012	Final	
529-533	Broadway					NEW CONST.	N/A	NONE	N/A	
503-511	Broadway	484	17	24,960	140,000	Old Navy (formerly)	10,6,17,9	01/14/15	Final	
520-522	Broadway	483	15	5,000	48,235	Michael Kors		NONE	N/A	
502-504	Broadway	483	7	16,670	113,912	Bloomingdale's	6	2006	Final	
477-479	Broadway	474	33	10,525	63,150	Pearl River Mart	6	10/14-1/20/15	Temporary	19x
478-482	Broadway	473	10	9,932	55,015	Topshop	6,17D	2012	Temporary	14x
433-439	Broadway	231	14	7,470	46,217	NEW CONST.		NONE	N/A	

159 Lots facing onto Broadway

 150 of those Lots have Retail Below the 2nd Floor $150 / 159 = 94\%$
For the Special Permit required for retail below the 2nd floor:

150 Lots with Ground Floor Retail

 1st floor retail spaces that have obtained the required Special Permit: 10 $10 / 150 = 7\%$
For the Special Permit required for retail in excess of 10,000 sf:

Stores identified as oversized: 19

 Stores with Special Permit allowing oversized: 2 $2 / 19 = 10.5\%$

M1 District Retail Survey (SoHo and NoHo) - Select Properties: Bleecker Street to Canal Street

Page 2

#	Street	SPECIAL PERMIT	Year Issued	LAND USE ID	CEQR #	CPC REPORT	NOTES
628-630	Broadway						
622-624	Broadway						
129-131	Greene						Per C/O 1st Floor: Storage Zoned M1-5A
600-602	Broadway						Fl 4, 5, 6: Physical Culture Establishment (PCE GYM)
552-556	Broadway	SPECIAL PERMIT FOR A RETAIL ESTABLISHMENT GREATER THAN 10,000SF IM AN M1-5B DIST.	2009	C 090362 ZSM	09DCP068M	http://www.nyc.gov/html/dcp/pdf/cpc/090362.pdf	
546-548	Broadway	SPEC PERMIT TO ALLOW RETAIL USE ON THE 1ST FLR & CELLAR	2005	C 040382 ZSM	04DCP035M	http://www.nyc.gov/html/dcp/pdf/cpc/040382.pdf	
529-533	Broadway						
503-511	Broadway						UG9-Physical Culture Establishment
520-522	Broadway						
502-504	Broadway						
477-479	Broadway						PARTIAL STOP WORK ORDER ON THIS PROPERTY
478-482	Broadway						
433-439	Broadway	SPECIAL PERMIT TO PERMIT UG-6 USES ON THE GROUND FLOOR & CELLAR, & 2-6 FOR OFFICE	2011	030255 ZSM		http://www.nyc.gov/html/dcp/pdf/cpc/100101.pdf	

Tobi Bergman, Chair
Terri Cude, First Vice Chair
Susan Kent, Second Vice Chair
Bob Gormley, District Manager



Antony Wong, Treasurer
Keen Berger, Secretary
Susan Wittenberg, Assistant Secretary

COMMUNITY BOARD No. 2, MANHATTAN

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Greenwich Village ♦ Little Italy ♦ SoHo ♦ NoHo ♦ Hudson Square ♦ Chinatown ♦ Gansevoort Market

January 16, 2015

Mirko van den Winkel
EVP Moroso USA
146 Greene Street
New York, NY 10012

Re: SoHo Design District

Dear Mr. van den Winkel,

Thank you for your presentation to the Community Board 2 Land Use Committee last week regarding the proposed alliance of furniture, lighting, industrial design and other small and mid-sized design showrooms and retail businesses located in the SoHo Historic District.

Community Board 2 strongly encourages your group to pursue the "SoHo Design District" concept and supports the continued presence in SoHo of creative and artistic businesses in this precious historic district. We recognize the special contributions of your businesses to the character of SoHo and also that the current business climate may threaten your survival.

Our board has prioritized attention to the changing character of retail in SoHo and its impacts on residents and more traditional businesses in a successful mixed use area. We look forward to working with you in the future.

Sincerely,

Tobi Bergman
Chair
Community Board 2 (Manhattan)

Anita Brandt
Chair
CB2 Land Use Committee

C: Hon. Jerrold Nadler, 10th Congressional District
Hon. Daniel Squadron, 26th Senate District
Hon. Deborah Glick, 66th Assembly District
Hon. Gale Brewer, Manhattan Borough President
Hon. Margaret Chin, 1st Council District

CBRE

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www.manhattanbp.nyc.gov

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. JMWQA 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).

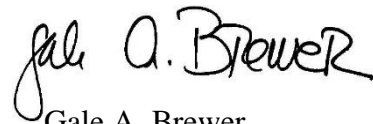
⁵ Department of Buildings issued Environmental Control Board (ECB) violations on April 3, 2017 and April 10, 2017 for non-permitted retail exceeding 10,000 square feet at 478 Broadway (Topshop), 503 Broadway (Zara), 546 Broadway (Uniqlo), 599 Broadway (American Eagle), 600 Broadway (Hollister), and 622 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 fluid and cursive, with the first name "Gale" written in a stylized, lowercase manner.

Gale A. Brewer
Manhattan Borough President