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**IN THE MATTER OF** an application submitted by 449 Broadway, LLC 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 requirements 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 5-story building on property located at 449 Broadway (Block 231, Lot 36), in an M1-5B District, Borough of Manhattan, Community District 2.

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This application was filed on June 15, 2017 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) to permit Use Group 6 retail uses on portions of the ground floor and cellar of a five-story building located at 449 Broadway, in the SoHo neighborhood of Manhattan, Community District 2.

## **BACKGROUND**

This application for a special permit pursuant to ZR Section 74-781 (Modifications by special permit of the City Planning Commission of uses in M1-5A and M1-5B Districts) was submitted by 449 Broadway, LLC, a subsidiary of United American Land, the owner of 449 Broadway (Block 231, Lot 36), to allow a modification of ZR Section 42-14D(2)(b) (Use Group 17, Special Uses in M1-5A and M1-5B Districts). The special permit would facilitate the conversion of portions of the cellar and the ground floor of an existing five-story building, located at 449 Broadway (Block 231, Lot 36), to retail use (Use Group 6).

449 Broadway is a through-lot located on the block bounded by Mercer Street, Broadway, Howard Street and Grand Street, within the SoHo Cast Iron Historic District. The zoning lot measures approximately 5,000 square feet, with approximately 25 feet of frontage on the east side of Mercer Street and 25 feet of frontage on the west side of Broadway. The site is improved with a five-story building, which has no certificate of occupancy. According to the applicant, the ground floor and cellar of the building have been vacant since 2010, while the upper floors are currently occupied by as-of-right offices. According to the prior owner, the building was once occupied by a radio

broadcasting company. As stated in the 1973 SoHo Cast-Iron Historic District Designation Report, the building was completed between 1855 and 1856 and its original function was "store."

Once characterized primarily by manufacturing uses, the surrounding SoHo and Tribeca neighborhoods have evolved into mixed-use districts. The predominant uses within these districts are ground floor commercial or retail, with offices and/or dwelling units above, including Joint Live Work Quarters for Artists and Interim Multiple Dwellings. Specifically, the area surrounding the project site generally contains four- to eight-story loft buildings along Broadway, Grand, Mercer, and Howard Streets. The ground floors of most of these buildings are occupied by retail establishments. Broadway, in particular, is developed with clothing stores and boutiques that serve local shopping needs and are also regional shopping destinations.

The project site is located in an M1-5B district, which allows a floor area ratio (FAR) of 5.0 for commercial uses and manufacturing uses and 6.5 for community facility uses. Generally, for buildings in an M1-5B district, the space below the floor level of the second story of a building shall only be occupied by Use Group 7, 9, 11, 16, 17A, 17B, 17C, and 17E uses, which include uses such as repair shops, print stores, jewelry manufacturing, and other light manufacturing uses. Retail uses (Use Group 6) are not permitted as-of-right on the ground floor or cellar of buildings within the M1-5B district.

The applicant proposes to convert 4,194 square feet of zoning floor area on the ground floor and 4,091 square feet of gross floor area in the cellar of 449 Broadway to Use Group 6 retail uses. The proposed special permit, pursuant to Section 74-781, would modify the use regulations of M1-5A and M1-5B districts to allow the proposed development to include Use Group 6 uses below the second story of the project site. There would be no increase in building floor area and the proposed retail space would adhere to all other zoning regulations governing uses below the building's second level in an M1-5B zoning district.

Section 74-781 of the Zoning Resolution requires the applicant to undertake and document a six-month or one-year marketing effort to rent the subject space to a conforming use at fair market rent prior to filing the land use application. 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 be 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 application for a special permit. The building at 449 Broadway occupies more than 3,600 square feet of lot area, so it was required to be marketed for one year.

Between March 2016 and March 2017--a period of the required one year--the applicant advertised the availability of the cellar and ground floor of the building for industrial, service and other uses allowed by Section 42-10 at a rental rate of \$80 per square foot. The applicant's marketing efforts included placing advertisements in the New York Post and The Villager, listing the space with two local brokers, and outreach to various industry groups. According to the applicant, despite these efforts, there were no inquires, requests or demand for long-term use of the vacant space for as-of-right uses as of the date of the application's filing.

## **ENVIRONMENTAL REVIEW**

This application (C 170464 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 lead agency is the Department of City Planning. This application was determined to be a Type II action which requires no further environmental review.

## **UNIFORM LAND USE REVIEW**

This application (C 170464 ZSM) was certified as complete by the Department of City Planning on July 10, 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 on July 12, 2017, and on July 20, 2017, by a vote of 41 in favor, none opposed, and with no abstentions, adopted a resolution recommending approval of the application.

### **Borough President Recommendation**

The application was considered by the Borough President, who issued a recommendation to approve the application on August 21st, 2017.

### **City Planning Commission Public Hearing**

On August 9, 2017 (Calendar No. 14), the City Planning Commission scheduled August 23, 2017, for a public hearing on this application (C 170464 ZSM). The hearing was duly held on August 23, 2017 (Calendar No. 32). Two people spoke in favor of the application.

The applicant's land use counsel described the proposed project and the requested action. She stated that an active and good faith effort was made to rent the subject space for conforming uses, and that nevertheless no inquiries for conforming uses were received. A representative of the Manhattan Borough President reiterated the Borough President's recommendation for approval and requested further conversations with the Department of City Planning regarding the fair market rental price of manufacturing space in the SoHo/NoHo neighborhoods. There were no other speakers and the hearing was closed.

### **CONSIDERATION**

The Commission believes that the grant of this special permit is appropriate.

The applicant seeks 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 the ground floor and the cellar of an existing building at 449 Broadway. The subject property

has been vacant on the ground floor and cellar for about seven years and includes as-of-right office use on the upper floors.

The Commission notes that the applicant's prior application (C 150337 ZSM) for the same special permit was withdrawn on October 10, 2015, due to issues raised during public review regarding flaws in the applicant's marketing efforts, including marketing the space for retail use during the mandated good faith marketing period, which undermined any demonstration of good faith efforts. The Commission understands that, starting in March 2016, the applicant pursued a new round of marketing efforts incorporating comments from the Manhattan Borough President, Community Board 2 and the Commission.

The Commission believes that the applicant has made the necessary good faith marketing effort for a period of one year. Between March 2016 and March 2017, the applicant placed weekly advertisements in the Villager and New York Post, listed the space with two brokerage firms that marketed the space through various means including the internet, and informed local and citywide industry groups and relevant city agencies, including the NYC Economic Development Corporation, the Department of Small Business Services, Workers United NY/NJ Regional Joint Board, the Council of Fashion Designers of America, the South Bronx Overall Economic Development Corporation, and the Long Island City Partnership, among others, by mail and by phone. The Commission recognizes that the applicant's new round of marketing efforts has been diligent and well-documented compared to those for similar applications, and sufficiently addressed issues previously raised by Community Board 2, Borough President and the Commission. Despite such efforts, the applicant did not succeed in securing a conforming tenant.

With regard to fair market rent, the Commission acknowledges that the surrounding SoHo neighborhood has few industrial and manufacturing establishments, and that comparable rents for industrial uses in the area are therefore difficult to find. The Commission, however, notes that \$80 per square foot is comparable to similar industrial rents in other Manhattan neighborhoods, such as the Garment Center. While not a point of reference in deriving the appropriate industrial rent, the Commission is aware that the retail asking rent is well above the requested rental rate in the surrounding area.

The Commission notes that the building was originally constructed to include a storefront on the ground floor, which historically housed retail and other commercial uses, such as a radio broadcasting company, and that the proposed small retail establishment at 449 Broadway would not be inconsistent with the character of Broadway or Mercer as long-standing local retail corridors.

The Commission believes that the applicant made a 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.

## **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 201 of the New York City Charter, that based on the environmental determination, and the consideration described

in this report, the application (C 170464 ZSM) submitted by 449 Broadway, LLC for the grant of a special permit pursuant to Section 74-781 of the Zoning Resolution to modify the requirements of Section 42-14D(2)(b) to allow Use Group 6 uses (retail uses) on portions of the ground floor and cellar of an existing 5-story building on property located at 449 Broadway (Block 231, Lot 36), 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 170464 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 PKSB Architects filed with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-002	Zoning Analysis	04/10/2015
Z-003	Site Plan	04/10/2015
Z-004	Cellar Floor Plan	04/10/2015
Z-005	Ground Floor Plan	04/10/2015
Z-006	Building Sections	05/12/2015

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 170464 ZSM), duly adopted by the City Planning Commission on October 4, 2017 (Calendar No. 14), 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*  
**RAYANN BESSER, ALFRED C. CERULLO, III,**  
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**CHERYL COHEN EFFRON, HOPE KNIGHT, ANNA HAYES LEVIN,**  
**ORLANDO MARIN, LARISA ORTIZ**, *Commissioners*



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Bob Gormley, *District Manager*



Antony Wong, *Treasurer*  
Keen Berger, *Secretary*  
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## COMMUNITY BOARD NO. 2, MANHATTAN

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July 21, 2017

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

Dear Ms. Lago:

At its Full Board meeting on July 20, 2017, CB#2, Manhattan (CB2, Man.), adopted the following resolution:

**449 Broadway** (between Grand and Howard Streets) DCP 170464 ZSM is an application for a special permit under ZR 74-781 to allow Use Group 6 commercial uses in the cellar and on the ground floor of this five-story building with cellar in an M1-5B zoning district. Existing Use Group 6 office uses will remain on the upper floors.

### Whereas:

1. The building is in the SoHo-Cast Iron Historic District.
2. The applicant proposes that 4091 sf of floor space in the cellar and 4194 sf of zoning floor area on the ground floor will be used for Use Group 6 commercial use. The building's bulk will remain unchanged.
3. The applicant previously sought a special permit for the same use at the same site but withdrew the application on October 8, 2015 due to irregularity in advertising.
4. ZR-781 requires that the owner of a building with a floor plate of over 3600 square feet pursue a good faith marketing effort to rent the space to a permitted use at a fair market rate for a period of not less than one year prior to the date of application for the special permit.
5. On March 31, 2016, the applicant began advertising the availability of the cellar and ground floor for conforming uses. The applicant also wrote letters to 12 local and citywide industry groups to notify them of the availability of the space for conforming uses, based on an outdated list from DCP that does not include nationwide MLS services such as LoopNet or CoStar.
6. The rent set for the development site in concert with DCP was \$80 per square foot, applied to both the ground floor and cellar space.
7. At the CPC hearing on July 10, the commissioners questioned whether \$80 per sf is a viable rate for manufacturers and whether the list of 12 organizations approved by CPC is still appropriate.

8. On December 22, 2016 with respect to the ULURP application for 34 Howard St., the Borough President addressed her concerns with the required good faith marketing effort and wrote of the need for DCP “to work with our office on improving the process for this special permit.”
9. On March 17, 2017 with respect to fair market price and the ULURP applications for 357, 359 and 361 Canal St. and again on May 22, 2017 with respect to same for 462 Broadway, the Borough President frowned on rates of \$70 and \$80 per sf for manufacturing (rates discussed and set with DCP) and wrote, “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 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.”
10. The Borough President was also opposed to charging for cellar space in the case of 462 Broadway.
11. All marketing efforts were presented as unsuccessful.
12. Applicant included the ads, letters, and the inquiries log.
13. The building does not have a Certificate of Occupancy.

**Therefore, be it resolved that CB2, Man. recommends approval** of this application and once again urges DCP to overhaul its outdated “good faith marketing” program and adjust the rates it counsels applicants to set.

Vote: Unanimous, with 41 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. 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



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**Gale A. Brewer, Borough President**

**August 21, 2017**

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

**PROPOSED ACTION**

449 Broadway, LLC<sup>1</sup> (“the applicant”) seeks a special permit pursuant to Section 74-781 of the New York City Zoning Resolution (“ZR”) to modify the use regulations of ZR §42-14(D)(2)(b) to allow Use Group 6 (retail uses) on the ground floor and cellar of an existing 5-story building located at 449 Broadway, Block 236, Lot 36, within an M1-5B zoning district in the SoHo-Cast Iron Historic District of Manhattan Community District 2.

In order to grant the special permit, the City Planning Commission (“CPC”) must find that the owner of the space<sup>2</sup> 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 year<sup>3</sup>, prior to the date of the application for a special permit.

**PROJECT DESCRIPTION**

The applicant seeks approval to allow Use Group 6 (retail use) on the ground floor and cellar of a 5-story commercial building at 449 Broadway with frontages on both Mercer and Broadway. The project will consist of 4,091 square feet of retail use in the cellar, 4,194 square feet of retail use on the first floor, and proposes no change of use of Use Group 6 office space to floors 2 through 5.

The project site’s lot area is 5,000 square feet and is located on the north side of Broadway bounded by Howard Street, Mercer Street and Grand Street. The project site is within an M1-5B district which permits light manufacturing, commercial and community facility uses; joint-live working quarters are permitted as a light manufacturing use. Use Group 7, 9, 11, 16, 17A, 17B, 17C and 17D are permitted below the second story as-of-right. The manufacturing and

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<sup>1</sup> 449 Broadway, LLC is associated with Canal Street Associates, L.P which is a New York Foreign Limited Partnership Company registered on January 17, 2008 and represented by member, Albert Laboz.

<sup>2</sup> The building is owned by United American Land, LLC a New York City family owned real estate development and investment company that converts commercial spaces to luxury residences and commercial properties to retail uses. The principals are Albert Laboz, Jason Laboz and Jody Laboz. United American Land has owned this building since the late 1980’s and currently has two other similar applications (Nos. C 170236 ZSM and C 170237 ZSM) calendared at the same time.

<sup>3</sup> A period of no less than six months is required for buildings under 3,600 square feet and a period of no less than one year for buildings over 3,600 square feet; the subject building is approximately 6,200 square feet in size.

commercial maximum floor area ratio (FAR) is 5.0 and the community facility FAR is 6.5. Retail use is not permitted as of right.

The subject building was constructed by an unknown architect between 1855 and 1856 as a store and loft building embodying the commercial period of the area. The building façade is marble with iron cornices and three bays. Previously, the building was used as a radio broadcasting station. The building does not have a Certificate of Occupancy and the cellar and ground floors have been vacant since the building was purchased in October 2010.

## **Background**

The subject building was constructed by an unknown architect between 1855 and 1856 as a store and loft building embodying the commercial period of the area. The building façade is marble with iron cornices and three bays. Previously, the building was used as a radio broadcasting station. The building does not have a Certificate of Occupancy and the cellar and ground floors have been vacant since the building was purchased in October 2010.

On May 15, 2015, the City Planning Commission certified application No. 150337 ZSM for a special permit pursuant to ZR § 74-781 for this property with two concurrent applications. On October 5, 2015, after Manhattan Community Board 2 (“CB2”) and the Manhattan Borough President’s review period, the applicant withdrew their applications because the site was advertised for retail use while it was under review. The application packet includes emails confirming the retail real estate listings online of the space were not authorized by the applicant and had them removed by January 8, 2016.

## **Area Context**

The project site is located in a M1-5B zoning district in the SoHo-Cast Iron Historic District in Community District 2, Manhattan. The SoHo-Cast Iron Historic District was designated by the Landmark’s Preservation Commission in 1973 as an effort to preserve the city’s cultural and historic heritage of the brick, stone, mixed iron and masonry commercial construction of the post-Civil War period. The SoHo-Cast Iron Historic District consists of 26 blocks containing 500 buildings and the largest concentration of full and partial cast-iron façades in the world. The district is bounded by West Houston Street, Crosby Street, Howard Street, Broadway, Canal Street and West Broadway. The project area is north of the Tribeca East Historic District, historically the commercial and industrial center of the city. Designated in 1992, the district which includes ornate store and loft buildings developed in the mid-19<sup>th</sup> to early 20<sup>th</sup> century. To the east of the site is the SoHo-Cast Iron Historic District Extension, designated in 2010, as an effort to preserve the continuity of the streetscape of cast iron architecture along Crosby and Howard Streets developed in the post-Civil War era.

The neighborhood generally consists of five to eight story buildings with residential, commercial and manufacturing uses on the upper floors and ground floor retail. The dominant zoning district in the area is M1-5B with C6-2A and M1-5 south of Canal Street. The area is served well by mass transit with the R, train one block south of the site at the intersection of Broadway and

Canal Street and the N/Q, J/Z and 6 trains two blocks southeast of the site. The M5 bus runs south on Broadway. Citibike bicycle stations are also within close proximity of the site.

### **Proposed Actions**

The applicant seeks a special permit pursuant to ZR § 74-781 for a use modification in an M1-5B zoning district to allow Use Group 6 on the ground floor and cellar of an existing 5-story building. Such use change is only permitted after the CPC has found the applicant has made a good faith effort to rent the space as a conforming use at a fair market rate for one year.

In late December of 2015 and early January 2016, the applicant hired brokerage firms familiar with the industrial marketplace: Brian Leary at Cpex Real Estate and Brett Bedevian of Newmark, Grubb, Knight and Frank. These brokers advertised the space on their websites including the asking price of \$80 a square foot (which was determined by the brokers as a fair market rent), the building site size, permitted/unpermitted uses with the broker names and contact number. The applicant also provided copies of the marketing activity lists each brokerage firm used to solicit interest the space. The applicant has provided copies of weekly advertisements published in *The Villager* and *New York Post* beginning March 31, 2016 stating the type and amount of space for lease, the permitted use, the location and address of the building and that retail and office is not permitted. The applicant packet states the brokers did not receive an offer to rent the space.

On February 5, 2016, the applicant's land use attorney, from the law firm Akerman, LLP (Akerman), mailed leaders to industry groups and organizations stating the location and size of the site, the rental price per square foot and contact and phone number by certified mail with a return receipt request<sup>4</sup>. The mailings included: two letters to divisions of the NYC Economic Development Corporation, the Department of Small Business Services, two letters to two NYC Business Solutions\* offices, Pratt Center for Community Development, Greenpoint Manufacturing and Design Center, UNITE HERE Headquarters\*, South Bronx Overall Economic Development Corporation\*, Long Island City Partnership\*, Greater Jamaica Development Corporation\*, the Lower Manhattan Development Corporation\*, Workers United NY/NJ Regional Joint Board, and the Council of Fashion Designers of America. Akerman also included a log documenting when letters were mailed, when voicemails were left, and with whom they spoke to market the space on February 5<sup>th</sup>, 18<sup>th</sup>, and March 3<sup>rd</sup> of 2016. The log states that four representatives asked to be emailed the listing, two representatives referred Akerman to two other organizations which received certified mailings after stating they could not assist; one stated they do not assist with tenancy in Manhattan, and another representative stated they cannot assist with tenancing the space. As reported by the applicant, despite these efforts, they were unable to rent the space for a conforming use.

### **COMMUNITY BOARD RECOMMENDATION**

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

When the application for this site previously went before Manhattan Community Board 2 (“CB2”) in 2015 (C 150337 ZSM), the board voted to recommend denial of the application based upon a complete lack of a good faith marketing effort and asked that any approval be conditioned upon the applicant, within a reasonable time period, completing the legalization of all uses in the building, include in its Department of Buildings filing all work needed for a permanent CofO, and apply to the Loft Board for a Letter of No Objection.

At its Full Board meeting on July 20, 2017, CB2 voted unanimously to approve the application. The resolution cites concerns raised by the Manhattan Borough President Gale A. Brewer in previous recommendations regarding the fair market rent sought for manufacturing use in recent 74-781 special permit applications and in this one. The recommendation also urges the Department of City Planning to overhaul this special permit process including adjusting the suggested rent sought in consultation with the applicants.

### **BOROUGH PRESIDENT’S COMMENTS**

The special permit pursuant to ZR § 74-781 allows certain use modifications on levels below the second story of buildings located in an M1-5A and M1-5B zoning district. Since the subject building is over 3,600 square feet, the applicant was required to make a good faith effort to market the space for the conforming manufacturing use for one year at a fair market rate.

In August of 2015, I submitted a recommendation of disapproval for this property and two concurrent applications because the advertisements at the time were vague, did not directly reference the property advertised, and there was insufficient community outreach to market the ground floor and cellar spaces for a conforming use. The effort was inadequate. However, the extent of the marketing effort for the application before us demonstrates that a much more robust and thorough effort was made.

In January 2016, the applicant hired two brokers who advertised the space on their websites including the asking price of \$80 a square foot, the building site’s address, the zoning district and the permitted/unpermitted uses with the brokers’ contact information. There were weekly advertisements in *The Villager* and the *New York Post* beginning in March 2016 which included the same information as the brokers’ advertisements. The applicant has provided evidence of their marketing efforts to local and citywide industry groups of the availability of the space by providing copies of these letters and copies of the returned certified receipts.

The applicant responded to the concerns raised in my previous application about the marketing effort undertaken. However, there is another factor in determining whether the marketing effort is adequate which we have raised before and which remains holistically unaddressed in this application and the others. And that factor is that the effort to market must be at a “fair market price.” Since I have been in office it appears that the prices used for the marketing of these spaces has ranged from approximately \$70 to \$80 per square foot. However, since we have begun looking at data for a study of SoHo and NoHo, as well as information on proposals around manufacturing in the Garment District, it is becoming increasingly doubtful to me that \$80 is a realistic or “fair” market price to ask for manufacturing space. I must insist the Department of

City Planning set an appropriate manufacturing price per square foot or provide applicants with an appropriate range and that such a price or range be based upon what manufacturers might pay for space in lower Manhattan, and not some type of formula based upon the commercial and retail value of the space. Given this unresolved issue and the commitment for a study, I also respectfully ask that the Department of City Planning advise applicants to not proceed with marketing efforts until we receive a written explanation on the analysis for determining such a range and we have met to discuss any questions on that formulation.

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

Regardless, because the applicant discussed this price with DCP and our office prior to its second good faith marketing period, and because this space was designed as a commercial space, I believe in this instance the conditions for this special permit have been met.

#### **BOROUGH PRESIDENT'S RECOMMENDATION**

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

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



Gale A. Brewer  
Manhattan Borough President