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**IN THE MATTER OF** an application submitted by FSF Soho, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-922 of the Zoning Resolution to allow large retail establishments (Use Group 6 and/or 10A uses) with no limitation on floor area per establishment on portions of the cellar, ground floor, and second floor of an existing 5-story commercial building, on property located at 503 Broadway (Block 484, Lots 1201 & 1202), in an M1-5B District, within the SoHo Cast-Iron Historic District, Borough of Manhattan, Community District 2.

\*197-d (b)(2) eligible

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This application was filed by FSF Soho, LLC on January 23, 2019 for a special permit pursuant to Section 74-922 of the Zoning Resolution (ZR) to allow a large retail establishment (Use Group 6 and/or 10A uses) with no limitation on floor area per establishment on portions of the cellar, ground floor, and second floor of an existing five-story commercial building. The property is located at 503 Broadway (Block 484, Former Lot 17; Condo Lots 1201 & 1202) in an M1-5B District, within the SoHo Cast-Iron Historic District in Manhattan, Community District 2.

## **BACKGROUND**

The applicant, FSF Soho, LLC, seeks the grant of a special permit, pursuant to ZR Section 74-922, to facilitate the legalization of a large retail store of approximately 27,635 square feet of zoning floor area (42,656 gross square feet) in an existing five-story commercial building on a midblock through-lot located between Broadway and Mercer Street, between Broome and Spring streets in SoHo. The site has approximately 125 feet of frontage on the west side of Broadway and approximately 125 feet of frontage on the east side of Mercer Street.

The SoHo neighborhood surrounding the project site evolved from an early commercial and entertainment district, to a textile manufacturing and wholesale center, to the vibrant mixed-use

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<sup>1</sup> Corrected on February 11, 2020 to rectify the information on former tax lot number from “Lot 7” to “Former Lot 17” in the first paragraph of the report.

district it is today. Today, SoHo is characterized by loft buildings ranging from five to seven stories in height (up to 15 stories along Broadway), housing retail establishments on the lower floors and commercial offices on the upper floors. Many buildings or portions thereof have been converted to joint living-work quarters for artists, lofts, or Use Group 2 residential use on the upper floors. Broadway is a major commercial corridor serving local as well as regional shopping needs, and is lined with larger buildings with floor plates that are suitable for and, in many cases, occupied by larger retail stores.

The five-story building located on the site was designed by J. B. Snook for Joseph Loubat in 1878-79, and according to Department of Buildings (DOB) records has historically housed a variety of commercial and light manufacturing uses. The building's most recent Certificate of Occupancy, issued in 2015, lists a large retail establishment (Use Group 10) and accessory uses in the cellar and on the first floor, a factory and salesroom (Use Group 17) on the second floor, a physical culture establishment (Use Group 9) on the third floor, and offices (Use Group 6) on the fourth, fifth and penthouse floors. Additionally, the building has a subcellar that is used for storage and mechanical equipment.

Since 2015, the Zara retail chain has owned the subject commercial condominium unit on the northern portions of the building's cellar through second floors and operated it as a large retail establishment. Prior to Zara's ownership, the space was occupied by the Old Navy retail chain under a 10-year lease. The remainder of the building's upper stories are occupied by different ownership under a separate commercial condominium agreement and are not subject to the requested special permit.

The project site is located within an M1-5B zoning district, which permits light industrial and commercial uses as-of-right up to a floor area ratio (FAR) of 5.0 and community facility uses up to 6.5 FAR. In an M1-5B zoning 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 zoning district, certain retail uses in Use Group 6 and 10A, such as department stores and

clothing stores in excess of 10,000 zoning square feet per establishment, are also not permitted as-of-right.

The project site is easily accessible by public transportation. The Prince Street subway station, with R and W train service, is located one and a half blocks north of the site at the intersection of Broadway and Prince Street. The Spring Street subway station, with 6 train service, is located two blocks east of the site at the intersection of Spring and Lafayette streets. The Broadway-Lafayette subway station, with B, D, F, M and 6 train service, is approximately one quarter mile northeast of the site on West Houston Street. MTA bus stops are located along Broadway, providing southbound M55 bus service. There is a 21-space public parking lot directly west of the site at 81 Mercer Street and a 100-space public parking garage within two blocks of the site at 40 Mercer Street.

The applicant seeks the special permit pursuant to ZR Section 74-922 to legalize the existing large retail store (Use Group 6 and/or 10A) of approximately 27,635 square feet of zoning floor area (42,656 gross square feet) on the northern portions of the cellar through second floor. In an M1 district, the City Planning 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 190265 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 19DCP182M. The lead agency is the City Planning Commission.

After a study of the potential impacts of the proposed action in the Environmental Assessment Statement (EAS) issued on August 23, 2019, a Negative Declaration was issued on August 26, 2019.

## **UNIFORM LAND USE REVIEW**

This application (C 190265 ZSM) was certified as complete by the Department of City Planning on August 26, 2019 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 190265 ZSM) on October 12, 2019, and on October 24, 2019, by a vote of 40 in favor, none opposed and one abstention, adopted a resolution recommending disapproval of the application.

### **Borough President Recommendation**

The application (C 190265 ZSM) was considered by the Manhattan Borough President, who, on December 12, 2019, issued a recommendation to disapprove the application unless the following conditions are met:

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

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

On November 13, 2019 (Calendar No. 6), the Commission scheduled December 4, 2019, for a public hearing on this application (C 190265 ZSM). On December 4, 2019 (Calendar No. 14), the hearing was held and continued to December 18, 2019 (Calendar No. 21). Seven speakers appeared in favor of the application and two in opposition.

An applicant team that included the applicant's land use counsel, an owner representative, and the Zara store manager at the 503 Broadway location described the proposed project. The land use counsel stated her belief that the application meets the special permit findings and that the legalization of the existing large retail use would be in keeping with prevalent land uses and neighborhood character in the surrounding area. She stated that the current merchandise delivery/pick-up schedule - approximately 14 trips per week, including seven before midnight and seven during overnight hours - is consistent with the NYC Department of Transportation's policy to alleviate traffic congestion. She also stated that the applicant made significant efforts to address Community Board 2's concerns, noting that noise complaints received by Zara were abated by the applicant's efforts to improve overnight deliveries.

The owner representative, president of Zara USA, Inc., described specific improvements implemented in garbage management and pick-up to eliminate visual and physical obstruction of the sidewalk, nighttime delivery noise reduction by adopting quiet delivery techniques, and ongoing community dialogue. He also explained that eliminating overnight delivery hours in favor of a 7 a.m. to 9 p.m. schedule, as recommended by the Borough President, would present significant challenges for the store operation due to Zara's international supply chain and unpredictable factors such as airline delays and time needed for processing at U.S. Customs. The store manager added that the 503 Broadway location employs approximately 200 people and functions as Zara's training and professional development center for employees, and that many customers shopping in the store are local residents.

A representative of the retail workers' union, speaking in favor of the application, stated that Zara provides good jobs and should be allowed to continue.

The Executive Director of SoHo Broadway Initiative (SBI), the local business improvement district (BID) that represents both businesses and residents, also spoke in support of the application. He stated that SoHo is a mixed-use district that is both a premier residential neighborhood and a retail center. He noted that the quality of life issues arise from the confluence of many uses in the area, and stated that the SBI is committed to working with businesses, including Zara, as well as residents to support the local economy while improving quality of life. In response to recommendations by the Community Board and the Borough President to change the delivery schedule and concerns about competition for space at the Mercer Street curb, he stated that there is significant demand for curb space during daytime and that nighttime delivery, if the appropriate quiet-delivery practices and technologies are adopted, can be made quiet and non-disruptive.

A representative of the Real Estate Board of New York testified in favor, citing the need for zoning flexibility in a rapidly-changing retail landscape and asserting that SoHo's status as a shopping destination and its manufacturing zoning designation do not align. A representative of The Door, a nonprofit focusing on youth development, spoke in favor, stating that Zara has been a good partner for job training for disenfranchised youths since 2016.

Those speaking in opposition included a representative of Community Board 2 Land Use Committee and a local resident. The Community Board 2 representative expressed general concerns over large retail establishments and potential quality of life impacts. The local resident expressed support for Community Board 2's and the Borough President's recommendations, and concerns regarding existing retail stores in SoHo that may be operating in violation of zoning regulations.

There were no other speakers and the hearing was closed.

## CONSIDERATION

The Commission believes that the grant of a special permit pursuant to ZR Section 74-922 to allow a large retail establishment (Use Group 6 and/or 10A) of approximately 27,635 zoning square feet (42,656 gross square feet), as modified herein, is appropriate.

The Commission notes that the large retail establishment proposed to be legalized at 503 Broadway would be located along one of the city's premier commercial corridors and regional shopping destinations, which features a wide range of retail and commercial uses of varying sizes. The Commission believes that allowing the existing space, which has been occupied by large stores for decades, to legalize as a Use Group 6 and 10A large retail establishment would not impair the character or future development in the surrounding area and aligns with the established character of the Broadway corridor as a dynamic regional retail destination.

The Commission further notes that the proposed retail program would be supported by existing truck routes, including along Broadway, and the extensive mass transit network that serves the SoHo neighborhood, and would draw minimal additional vehicular traffic to and through local streets. The Commission notes that the site is easily accessible via the multiple subway stations located in the vicinity, including the Canal Street 6/J/N/Q/R lines, Spring Street 6 line, and Prince Street R/W lines, as well as several bus lines.

The Commission believes that retail uses, including large retail establishments over 10,000 square feet, are appropriate for the Broadway corridor in SoHo, particularly due to the existing and historic land use patterns, ample mass transit access, the characteristics of the building stock and large floor plates, as well as Broadway's status as a truck route. However, the Commission believes that additional appropriate safeguards must be put in place to ameliorate undesirable conditions that may be aggravated by additional retail related activities at this location.

During the Community Board's and Borough President's review, and at the Commission's public hearing, concerns were raised about the noise, trash, traffic and illumination associated

with large retail stores. The Commission recognizes that retail operators in SoHo have not always operated responsibly in the neighborhood, resulting in challenging quality of life issues that present legitimate reasons for concern. While it is unclear from a land use perspective that a single large store would have more quality of life impacts than several smaller stores that in aggregate occupy the same amount of floor area, the Commission nevertheless believes that supporting SoHo's retail economy and commercial land uses should not compromise reasonable expectations of livability in a mixed-use neighborhood. As recommended by the Envision SoHo/NoHo Report - a summary of findings distilled from a community engagement effort jointly sponsored by the Manhattan Borough President, Council Member for District 1, and the Department of City Planning – strategies beyond zoning to improve quality of life in SoHo provide a necessary counterbalance to efforts on reducing zoning rigidity. These strategies are an integral part of planning efforts to ensure SoHo's success and longevity as a harmonious, dynamic mixed-use neighborhood.

Regarding garbage management and illumination, the Commission is aware that the applicant has implemented and continue to explore additional operational improvements that will help address these issues. These improved practices include retaining garbage inside until pickup time, which occurs between 7 a.m. and noon, as well as eliminating direct and indirect illumination from the store including its signage at night.

With regard to loading, the Commission understands that installing off-street loading berths, as requested by Community Board 2 and the Borough President, is challenging if not infeasible for a contributing building in the SoHo Cast-Iron Historic District. Nonetheless, loading and unloading of merchandise can and should be done in a manner that minimizes noise and disruption during overnight hours. The Commission commends the applicant for being responsive to community concerns, and is aware that, since the filing of this application, new loading and unloading techniques have been adopted to reduce noise and disruption at night. The Commission notes that the applicant has stated that truck loading and unloading of merchandise takes place on Mercer Street 14 times a week, including an average of seven trips in the overnight hours. The Commission recognizes that overnight truck loading and unloading, while



preferable from a traffic perspective, could continue to result in noise disturbances, particularly for residents living along the narrow Mercer Street near the site.

Therefore, the Commission does not believe that unrestricted loading and unloading on Mercer Street is appropriate, and hereby modifies the proposal to impose the following restrictions on loading zones and hours specified on the revised zoning lot site plan: No truck loading or unloading in connection with large retail establishments permitted pursuant to ZR Section 74-922 shall occur on Mercer Street between 10 p.m. and 7 a.m. During those hours, if loading and unloading of merchandise is necessary, the building's Broadway frontage may be used. Because of Broadway's status as a truck route, commercial corridor and wide street, where higher levels of ambient noises are expected, the Commission believes it to be a more appropriate location for overnight deliveries.

## **FINDINGS**

The City Planning Commission hereby makes the following finding pursuant to Section 74-922 of the Zoning Resolution:

- (a) that the principal vehicular access for such #use# is not located on a local #narrow street#;
- (b) that such #use# is so located to draw a minimum of vehicular traffic to and through local #streets#;
- (c) Not applicable;
- (d) Not applicable;
- (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;
- (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) Not applicable;
- (i) Not applicable;

## 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 190265 ZSM) submitted by FSF Soho, LLC for the grant of a special permit pursuant to Section 74-922 of the Zoning Resolution to allow large retail establishments (Use Group 6 and/or 10A uses) with no limitation on floor area per establishment on portions of the cellar, ground floor, and second floor of an existing five-story building on property located at 503 Broadway (Block 484, Lots 1201 & 1202), in an M1-5B District, within the SoHo Cast-Iron Historic District, Borough of Manhattan, Community Board 2, is approved subject to the following terms and conditions:

1. The property that is the subject of this application (C 190265 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 ARPAD BASKA ARCHITECT, P.C. filed with this application and incorporated in this resolution:

<u>Dwg.</u> <u>No.</u>	<u>Title</u>	<u>Last Date Revised</u>
CPZ-1	Zoning Analysis	06 Jun 2019
CPZ-2	Zoning Lot Site Plan	13 Jan 2020
CP-02	Existing & Proposed Cellar Plan	19 Mar 2019
CP-03	Existing & Proposed Ground Floor Plan (1 <sup>st</sup> Floor)	19 Mar 2019
CP-04	Proposed Second Floor Plan	06 Jun 2019
CP-05	Proposed Building Section (East-West)	06 Jun 2019
CP-06	Proposed Building Section (North-South)	06 Jun 2019

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 190265 ZSM), duly adopted by the City Planning Commission on January 22, 2020 (Calendar No. 4), 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*

**DAVID BURNEY, ALLEN P. CAPPELLI, ESQ., ALFRED C. CERULLO III,  
JOSEPH DOUEK, RICHARD W. EADDY, HOPE KNIGHT, ANNA HAYES LEVIN,  
ORLANDO MARIN, RAJ RAMPERSHAD**, *Commissioners*

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Antony Wong, Treasurer  
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October 25, 2019

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

Dear Ms. Lago:

At its Full Board meeting on October 24, 2019, CB#2, Manhattan (CB2, Man.), adopted the following resolution:

**\*503 Broadway (between Broome and Spring Sts.)** – DCP 190265 ZSM is an application for a Special Permit pursuant to ZR 74-922 in order to legalize a 42,000sf retail establishment on the cellar, first, and second floors of a condominium in an M1-5B zoning district in SoHo that is part of the SoHo-Cast Iron Historic District.

Whereas:

1. This 74-922 action before the City Planning Commission is in regard to Zara's unpermitted Large Retail operation at 503 Broadway, which has been found to be operating contrary to its Certificate of Occupancy by the NYC Department of Buildings and lacking the required Special Permit.
2. It is not, as the applicant describes it, an application to legalize the conversion of 14,005sf of floor area on the second floor of a large retail establishment.

### CERTIFICATE OF OCCUPANCY ISSUES

3. The earliest Certificate of Occupancy for 503-511 Broadway is CO 28940, dated May 5, 1942. That CO shows that the building was used throughout as a factory and salesroom on floors 1-5, with the cellar limited to storage and salesroom and sub-cellar limited to storage, all consistent with SoHo's predominant manufacturing uses at that time.
4. The next Certificate of Occupancy is Temporary CO 121940, dated May 31, 2001. That TCO shows the first mention of Use Group 10 Large Retail Store across the 26,000sf ground floor. It was put in place to cover Old Navy, a large retail establishment that the owner allowed on the premises in 1998 without first obtaining a new CO for the change

of use. Additionally, no Special Permit for that change of use (from factory to large retail) was ever applied for. The new 2001 TCO shows no change at the second floor, which remains limited to factory use. Similarly, neither the cellar nor sub-cellar show any change from the 1942 CO. The cellar remained limited to storage and salesroom only, with occupancy by 20 persons maximum.

5. A series of over two dozen TCOs issued under separate job 102100496 were filed to legalize the Physical Cultural Establishment on the third floor, a non-conforming use also put in place by the owner without the necessary permits. To rectify that illegality, the BSA granted a variance per determination 163-99-BZ on June 28, 2000, as is cited on the final CO for the PCE, 102100496F (Jan. 14, 2015). While that CO shows UG 10 Large Retail Store across the entire ground floor, it also maintains the 1942 limitations for storage and salesroom in the cellar and factory/salesroom use on the second floor.
6. Another separate, final CO 101792650F was issued on Sept. 5, 2014 under 1998 Job 101792650, with this job description: "1st flr. in space occupied by Old Navy Clothing Co. (Store #5928) in order to convert occupancy to retail store on 1st flr." That CO clearly shows that the 15,000 sf cellar, currently operating as Zara's men's section, remains as it had been since 1942 ("Storage and Sales Room") and is limited to a maximum occupancy of 20 persons.
7. The appearance on the certificates of occupancy of Use Group 10 in the cellar is inexplicable, as it did not occur as a result of a direct application to DOB. Rather, that change seems to have been put in place through a series of piecemeal information pulled from various DOB job filings covering entirely separate jobs for work elsewhere in the building. It first appears on 2009 TCO 101792650T002 for work for Old Navy, which did not even occupy the cellar. It appears again, despite the lack of any specific job filing to allow for it, on 2013 TCO 103205803T001 for the "addition of a penthouse," which had no relation to any change to retail use in the cellar.
8. There is no evidence to support the applicant's suspicion of possible "grandfathered" retail use in the building. No evidence of prior retail use has been provided, and long-time residents with knowledge of the area have noted that the premises had no retail use during the many years prior to the arrival of Old Navy in 1998.
9. When the process by which a change of use is procured can be documented and results in a legitimate change of use on the CO, CB2 agrees that we are entitled to rely on the CO. However, in this instance, that is hardly the case.
- 10. In summary: There is no paper trail to substantiate the conversion of the cellar and first floor from Use Group 17 to Use Group 10.**

## **SPECIAL PERMIT ISSUES**

11. In 2015, CB2 identified 159 retail stores facing Broadway between Bleecker and Canal in the SoHo & NoHo M1-5B zoning district; 10 of those stores were identified as large retail stores.

12. From 1996 to 2019, only four large retail stores had completed the 74-922 Special Permit public review process and obtained legal permission from CPC to operate as a large retail:
  - a. 632 Broadway (1996 – NoHo): Conversion to UG 10A [C 950614 ZSM]
  - b. 610 Broadway (2003 – NoHo): New Building UG 10A [C 030134 ZSM]
  - c. 550-556 Broadway (2009 – SoHo): Conversion to UG 10A [C 090362 ZSM]
  - d. 300 Lafayette Street (2013 – SoHo): New Building UG 10A [C 140095 ZSM]

From 2017 to 2019, four different large retail establishments along Broadway in SoHo were found to be operating without legal allowances:

- e. 478 Broadway: ECB Violation 35322068M
- f. 503 Broadway: ECB Violation 35311036H
- g. 546 Broadway (aka 88 Crosby): ECB Violation 35311032K
- h. 599 Broadway: ECB Violation 35226369J

An additional half dozen locations along Broadway contain large retail stores that have been installed over the past 15 years without a Special Permit.

13. Even before taking ownership at 503-511 Broadway, the applicant knew that a Special Permit to include the second floor was required. Zara is named in a Dec. 2, 2013 letter from the NYS Attorney General to 503 Broadway Condominium. The July 21, 2014 Condominium Declaration, under Article 10 (“Alteration of Units”), includes multiple pages that cite the need for a change of use to retail per ZR 74-922. Therefore, any doubt on the part of the applicant as to the necessity of obtaining a change of use from factory to large retail should be viewed with great skepticism.
14. Instead of proceeding directly to secure that change of use, the applicant states that it intended to follow an interim plan by filing with DOB for “separate, as-of-right UG 6 retail establishments (i.e., less than 10,000sf) on the second floor. Such separate establishment approvals had been granted by DOB in the past.” However, due to “changes in the Applicant’s management and a lack of institutional continuity,” these plans were never filed.
15. Had papers been filed, this argument should have found to be without merit since the Dec. 5, 2005 DOB “Interpretation of Establishment under ZR 32-15: Use Group 6A & 6C” includes a number of conditions that did not exist on Zara’s second floor, i.e.:
  - a. “Each establishment shall be independently operated”;
  - b. “Each establishment shall be separated – vertically and horizontally – from other establishment”;
  - c. “Each establishment shall have its own cash registers and toilet facilities”;
  - d. “Each establishment shall have its own entrances and exits”
  - e. “Common area provided if any should be accessible to each establishment without passing through the other establishment.”

16. It is specious for the applicant to now claim that they were eligible for UG6 when they clearly did not meet the requirements. In any event, per former DOB Commissioner Rick Chandler, "That policy is over."
17. Zara did nothing, even when an ECB violation was issued by DOB to 503 Broadway as a zoning violation for illegal oversized retail in 2017. That violation was dismissed due to confusion caused by incomplete filings of the two condo entities following Zara's purchase of the premises on Jan. 13, 2015. Regardless of this detail, the DOB violation put Zara on notice that their operation was illegal and that they needed to apply for the 74-922 Special Permit.
18. Still Zara did nothing, until a second ECB violation was issued by DOB in July 2018 (35311036H) for "occupancy contrary to that allowed by the Certificate of Occupancy." That was heard on Feb. 14, 2019 at the Office of Administrative Trials and Hearings. It was not until April 2019, more than four years after Zara took ownership of the retail condo unit at 503 Broadway and more than three years after Zara opened its unpermitted large retail store, that it filed this application to cure the illegal condition for operating in contradiction to the CO. Prior to this current action no application has ever been filed for any Special Permit per ZR 74-922 to allow for a change of use from factory to large retail. And at no time has there ever been an application submitted per ZR 74-781 to legally change any of the area below the second story from factory use to any size, or type, of retail.
19. The applicant refers to the legalization of the 14,005 sf on second floor as representing a one-third increase in the size of the large retail establishment. If the ground floor contains 14,000sf and the cellar contains 15,000sf (total: 29,000sf), then an increase of 14,005sf is actually an almost 50% increase.
20. Despite repeated requests by the applicant's attorneys and CB2, DOB was unable to substantiate any legal change of use.
21. During several recent requests for Special Permits for large retail, Councilmember Chin saw fit to reject oversize retail at 19 E Houston St. and limit 462 Broadway to a maximum of 10,000 sf (including cellar).
22. Many changes of use and waivers of zoning requirements are issued during internal DOB deliberations without public review or input. CB2 questions whether DOB should rely on self-certification to establish that the necessary requirements have been met for a change of use to large retail during the Special Permit process.
23. The combination of self-certification, widespread non-conforming uses and inconsistencies in DOB job filings (including citations on COs) has completely transformed SoHo and was the impetus for the joint efforts of the community and our elected officials to enforce the M1-5B zoning regulations for the past several years. Necessary corrective actions can take place only if specific irregularities are fully investigated when they come to light.



24. **In summary: There are so many unanswered questions relevant to the use groups listed on the 2014 Certificate of Occupancy that it is premature to consider this Special Permit application without further investigation.**

#### QUALITY OF LIFE ISSUES

25. The restrictions on retail in SoHo that were introduced in April 1976 were designed to protect manufacturing uses from retail competition for space—not protect manufacturing from residential use. Manufacturing and residential (which preceded retail) coexisted peacefully.
26. CB2 is not categorically opposed to large retail uses; each case is considered on its own merits. For example, we approved Banana Republic at 550 Broadway in 2009 and 300 Lafayette in 2013.
27. Since it first opened, Zara has had two non-permitted, internally-illuminated signs on the exterior of the façade above the entranceways. Both those signs are in contradiction to what the LPC permitted under CNE 15-8477 (06/04/14). LPC enforcement action regarding that non-compliant condition is ongoing.
28. The applicant asserts that out of 89 buildings on Broadway in the SoHo-Cast Iron Historic District, 75 originally functioned as a “store” or “stores”, yet fails to note that early designations as “store” in DOB records pertained to both wholesale and retail operations. Applicant further states that 38 of these “stores” were built through their block with entrances on Broadway and service/freight entrances on Crosby or Mercer, as if this justifies their use as oversized retail.
29. The applicant claims that its use as an oversized retail store will not impair the essential character or the future use and development of the surrounding area, but the majority of large and oversized retail along and around Broadway in SoHo that they point to resulted from illegal conversions and internal DOB determinations without public input, thereby robbing the community of the requisite public review process set forth in the zoning resolution.
30. The applicant fails to differentiate between the very few large retail stores that have gone through the required process to obtain a Special Permit and the numerous large retail establishments that did not. The applicant now points to the latter group, including themselves, as an example of how they fit in.
31. In an apparent effort to minimize the impacts of its non-permitted large retail store on nearby residents, the applicant erroneously claims that there is a negligible residential population along Broadway in SoHo. Based on the 2010 census, more than 1300 people reside in 62 buildings within 400 feet of the applicant's property. Only 30 buildings--less than one-third of nearby buildings--within the 400-foot range are commercial and office only, with no residential.
32. Based on data from both PLUTO and the 2010 US Census, Block 484 on which the Zara is located, holds 70 residential units with a residential population of over 150 persons.

The two blocks immediately facing Zara, across both Broadway to the east and Mercer Street to the west, contain an additional 208 residential units and the eight blocks surrounding Zara contain another 648 residential units. All told, that is over 900 residential units with approximately 1,500 residential occupants on the blocks in the immediate vicinity of Zara's non-permitted Large Retail operation.

33. All but one of the oversized establishments along Broadway do their truck loading and offloading on Broadway. The Zara store receives deliveries at the rear of the building on Mercer St. where the freight elevator is located.
34. Many nearby residents are negatively impacted by Zara disruptive night time merchandise deliveries. The application documents the fact that deliveries arrive between 2 am and 3 am five days a week and twice a week between 1 am and 4 am. Back stock is picked up twice a week between 10 pm and 11 pm. All this activity lasts for hours, during which time residents in neighboring buildings report incessant talking, metal-wheeled equipment moving across the public sidewalks, trucks idling below residential windows, truck drivers playing loud music in the middle of the night. (In 2017, in the case of 462 Broadway, due to negative impacts on nearby residents on Crosby St., a comparably narrow street to Mercer St. to the east of Broadway, CPC chose to limit deliveries to between 7am and 8pm [462 Broadway: C 170192 ZSM; CPC Report, Pages 8-9 for July 12, 2017]).
35. Residents living in proximity to 503 Broadway started to contact Zara seeking relief from these delivery conditions starting in 2016. Despite their pleas, the disruptive conditions have persisted.
36. On June 5, at the applicant's request, CB2 Land Use chairs and CB2 chair met with the project's land use attorneys and Zara representatives. Zara indicated no knowledge of any ongoing complaints and requested documentation from the residents and expressed a willingness to address their quality of life complaints. Following that meeting, CB2 forwarded letters and a video that illustrated the sources of the disruption.
37. Three months later, at the CB2 Land Use meeting on Sept. 11, resident representatives spoke emphatically against these ongoing conditions. There were no supporters of Zara's application at either of these meetings.
38. Per ZR 44-52, one loading berth is required for stores greater than 25,000sf (including cellar); a second loading berth is required for stores above 40,000sf. Therefore, if this Special Permit is granted, DCP will require the addition of two loading berths.
39. Per ZR 44-50, the purpose of a loading berth is "to provide needed space off public streets for loading and unloading activities, to restrict the use of the streets for such activities, to help relieve traffic congestion in manufacturing and industrial areas within the City, and thus to promote and protect public health, safety, and general welfare."
40. Per its application, Zara intends to ask for a waiver from its obligation to contain deliveries and other disruptive actions within its own premises. Loading and unloading without the required off-street loading berths will necessarily monopolize the public

sidewalk for these commercial activities and exemplifies the applicant's lack of concern for its residential neighbors.

41. Per the applicant, there is no space anywhere in their three-story, 42,000 sf store dedicated to the storage of merchandise. Creation of such a space would alleviate the need for so many deliveries per week. Without storage space, the impacts of the three-story, 42,000 sf store, almost all of which is devoted to retail sales areas, are magnified.
42. Per ZR 44-55, a loading berth waiver can be granted by the determination of the DOB without public review or input. Therefore, this Special Permit review is CB2's only opportunity to speak to this issue.
43. **In summary: SoHo is a mixed-use district where significant protections for residential occupancy were put in place by numerous amendments to the City's zoning regulations well before the recent influx of retail. These protections must be respected and enforced.**

#### IN CONCLUSION

44. Applicant fails to meet the following Findings for a 74-922 Special Permit because:
  - b. Such use is drawing considerable vehicular traffic through that local street.
  - c. There is not adequate reservoir space at the vehicular delivery entrance so as to prevent congestion.
  - f. Such use is impairing the essential mixed-use character of the area.
  - g. Such use is producing adverse effects, which are interfering with the mixed uses in the adjacent buildings.
45. Because, in its present iteration, Zara's three-story retail store cannot adequately solve the quality of life issues that plague its neighbors, and because City agencies have not demonstrated that they can consistently enforce remedies for these issues or ensure that future owners will be bound to protect residential neighbors, then:

**Therefore, be it resolved that CB2 recommends denial of the Special Permit for a 42,000 sf retail establishment on three floors.**

**Be it further resolved that if this application were solely about the legalization of only the second floor, CB2 would recommend denial.**

**Be it further resolved that CB2 recommends that the Use Group 10 uses in the cellar and on the ground floor that cannot be documented on the current Certificate of Occupancy be considered invalid and the applicant be encouraged to reapply for a Special Permit.**

**And be it finally resolved that while this process is in progress, CB2 recommends that the applicant be immediately required to:**

1. **Limit merchandise deliveries and trash pickup to the hours between 7 am and 8 pm;**
2. **Employ best practices to limit noise and contain garbage;**

3. Convert enough of its interior space from selling floor to storage so as to reduce the number of pickups and deliveries of merchandise to a maximum of twice a week;
4. Construct two off-street loading berths per ZR 44-52. Any waiver of this requirement should require a public process to approve;
5. Bring all signage into permanent compliance with LPC regulations;
6. Designate a community liaison with contact number.

Vote: Passed with 40 Board members in favor with and 1 abstewntion (J. Liff).

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

Sincerely,



Carter Booth Chair  
Community Board #2, Manhattan



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



Frederica Sigel, Co-Chair  
Land Use & Business Development Committee  
Community Board #2, Manhattan

CB/jt

- c:
- Hon. Jerrold Nadler, Congressman
  - Hon. Brian Kavanagh, State Senator
  - Hon. Deborah Glick, Assembly Member
  - Hon. Gale A. Brewer, Manhattan Borough President
  - Hon. Margaret Chin, Council Member
  - Andrew Cantu, Dept. of City Planning



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**Gale A. Brewer, Borough President**

December 12, 2019

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

**PROPOSED ACTION**

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

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

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

**PROJECT DESCRIPTION**

**Background**

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

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

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

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

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

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

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

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

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

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

### **Area Context**

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

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

### **COMMUNITY BOARD RECOMMENDATION**

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

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

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

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

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

## **BOROUGH PRESIDENT COMMENTS**

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

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

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

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

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<sup>1</sup>In the City Planning Commission Public Review Session from August 26, 2019, the planner presenting the project to the commission indicates the special permit should be considered “more broadly” and presents site plans of the ground floor that would be in the “proposed waiver area for retail establishment”

<https://www.youtube.com/watch?v=rfCDCZmcqQM&t=3876s>



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

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

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

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

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

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

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

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

- (g) that such *use* will not produce any adverse effects which interfere with the appropriate *use* of land in the district or in any adjacent district;

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

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

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

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

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



Gale A. Brewer  
Manhattan Borough President