



CITY PLANNING COMMISSION

March 2, 2011/Calendar No. 13

C 100101 ZSM

IN THE MATTER OF an application submitted by 433 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 Section 42-14(D)(2)(b) to allow retail use (Use Group 6 uses) on portions of the ground floor and cellar of a proposed 7-story building on property located at 433 Broadway (Block 231, Lot 14), in an M1-5B District, within the SoHo-Cast Iron Historic District.

The application was filed by 433 Broadway, LLC on September 21, 2009 for a special permit pursuant to Section 74-781 of the Zoning Resolution to modify the use regulations of Sections 42-14D(2)(b) of the Zoning Resolution to permit Use Group 6 uses below the floor level of the second story of a proposed seven-story commercial building located in an M1-5B zoning district in the SoHo area in Manhattan.

BACKGROUND

433 Broadway is the location for a proposed as-of-right seven-story commercial building to be located on the northwest corner of Broadway and Howard Street. The subject building footprint would be 7,195 square feet, contain 37,305 square feet of floor area (approximately 5.0 FAR) with 5,836 square feet of that proposed to be ground floor retail and the remainder of the building proposed to be for office use.

Pursuant to Section 42-14D(2), uses below the floor level of the second story in M1-5B Districts are restricted to Use Groups 7, 9, 11, 16, 17A, 17B, 17C, or 17E (including wholesale, warehouse and light manufacturing uses). Use groups other than those permitted may be allowed by special permit pursuant to Section 74-781 provided that the City Planning Commission finds that the owner of the space, or a predecessor in title, has made a good faith effort to rent such space to a permitted use at fair market rentals. The good faith marketing of the space shall have been pursued for a minimum of six months for buildings occupying less than 3,600 square feet of lot area.

This application seeks to allow a total of approximately 11,309 square feet of retail area; 5,836 square feet of retail space (Use Group 6) on the ground floor and 4,606 square feet of retail space (Use Group 6) on the cellar level.

In 2003 the City Planning Commission approved a special permit pursuant to Section 74-781 to allow 10,045 square feet of Use Group 6 uses on the ground floor and cellar levels (5,439 square feet on the ground floor and 4,606 square feet on the cellar level) of a building to be constructed at 433 Broadway (Calendar No. 20, C 030255 ZSM). The building was not constructed and the approved special permit lapsed.

The applicant has submitted materials regarding the required marketing effort to meet the findings of the earlier approved application. The materials indicate that a concerted marketing effort for the ground floor and cellar spaces began in August 2001 when the application began to run weekly classified advertisements for the space in the New York Times and the Village Voice.

ENVIRONMENTAL REVIEW

This application (C 100101 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 is the City Planning Commission. This application was determined to be a Type II action which requires no further environmental review.

UNIFORM LAND USE REVIEW

This application (C 100101 ZSM) was certified as complete by the Department of City Planning on October 12, 2010, and was duly referred to Community Board 2 and the 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 December 16, 2010, and on that date, by a vote of 41 to 0 with 0 abstentions, adopted a resolution recommending approval of the application.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation on January 18, 2011, approving the application.

City Planning Commission Public Hearing

On January 5, 2011 (Calendar No. 11), the City Planning Commission scheduled January 26, 2011, for a public hearing on this application (C 100101 ZSM). The hearing was duly held on January 26, 2011 (Calendar No. 25). There were three speakers in favor of the application and none in opposition. The applicant's attorney spoke in favor of the application and explained that due to similar market conditions now and then, the nine-year-old good faith marketing effort should be applicable to the granting this application. The chair of the Community Board 2 Land Use Committee also spoke in favor, noting that this proposal is appropriate for this site and that the Board did not chose to ask for a restriction of the use for the space. Finally, a representative of the Borough President reiterated the Borough President's recommendation of approval.

There were no other speakers and the hearing was closed.

CONSIDERATION

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

Approval of the special permit application (C 100101 ZSM) pursuant to Section 74-781 of the Zoning Resolution would modify the use regulations of Sections 42-14D(2)(b) and allow Use Group 6 (retail) uses on the ground floor and cellar level of the subject building.

The Commission notes that the applicant has made the necessary good faith marketing effort for a period of one year. Such efforts included hiring a real estate broker in 2001 to market the space and publishing weekly ads in the Village Voice and The New York Times beginning August 2001. The applicant also listed the space with 55 brokers then doing business in the industrial real estate market. Additional efforts included notifying local and citywide industry groups of the availability of the spaces, including the Industrial Space Bank at the New York City Economic Development Corporation. Finally, the applicant posed a sign on the property containing the same information as found in the newspaper advertisements. Such marketing efforts proved unsuccessful as they did not succeed in obtaining a conforming use. Despite the

years that have passed since the applicant's marketing effort, an updated marketing effort is unlikely to produce a different result, due to continued erosion of the market for permitted uses in the area.

The Commission believes that the applicant did make a good faith effort to lease the space to a conforming use. The Commission notes that the applicant adhered to the good faith marketing guidelines, as outlined in Section 74-781 of the Zoning Resolution, and was unable to secure a conforming tenant.

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 the 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, notifying the New York City Office of Economic Development, 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, 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 and finding described in this report, the application of 433 Broadway, LLC for the grant of a special permit pursuant to Section 74-781 of the Zoning Resolution to modify the use regulations of Section 42-14(D)(2)(b) to allow Use Group 6 uses (retail uses) on the ground floor and cellar of a proposed seven-story building on property located at 433 Broadway (Block 231, Lot 14), in an M1-5B District, Borough of Manhattan, Community District 2 is approved subject to the following terms and conditions:

1. The property that is the subject of this application (C 100101 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 Rothzeid, Kaiserman, Thomson & Bee Architects and Planners filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
A-001.00	Zoning Notes and Diagrams	3/30/2010
A-101.00	Cellar Plans (proposed)	3/30/2010
A-102.00	1 st Floor Plans (proposed)	3/30/2010
A-300.00	Sections	3/30/2010

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 100101 ZSM), duly adopted by the City Planning Commission on March 2, 2011 (Calendar No. 13, is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

AMANDA M. BURDEN, FAICP, Chair
KENNETH J. KNUCKLES, Esq., Vice Chairman

ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,
ALFRED C. CERULLO, III, BETTY Y. CHEN, MARIA M. DEL TORO,
RICHARD W. EADDY, ANNA HAYES LEVIN, SHIRLEY A. MCRAE,
KAREN A. PHILLIPS, Commissioners

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Bo Riccobono, *First Vice Chair*
Sheelah Feinberg, *Second Vice Chair*
Bob Gormley, *District Manager*



Erin Roeder, *Treasurer*
Susan Kent, *Secretary*
Elaine Young, *Assistant Secretary*

COMMUNITY BOARD No. 2, MANHATTAN

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December 17, 2010

Amanda Burden, *Chair*
Department of City Planning
22 Reade Street
New York, New York 10007

Dear Chair Burden:

At its Full Board meeting on December 16, 2010, CB#2, Manhattan (CB#2-Man.), adopted the following resolution:

433 Broadway, (Block: 231, Lot:14) Department of City Planning Special Permit pursuant to Section 74-781 of the New York City Zoning Resolution for modification of Section 42-14D(2)(b) to allow for retail / commercial use, Use Group 6, on the cellar and ground floors, of a proposed seven story building in an M1-5B district.

WHEREAS, the surrounding area was posted and there was no community opposition to this application, And

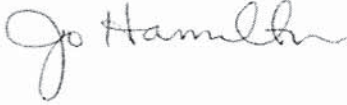
WHEREAS, The proposed usage will be consistent and compatible with the other proposed uses in this building and in the surrounding buildings and will have no adverse impacts on the neighborhood.

THEREFORE BE IT RESOLVED, that CB#2, Man. is satisfied that the applicant has met the requirements for this special permit,

THEREFORE BE IT FURTHER RESOLVED, that CB#2, Man. supports this application for a City Planning special permit pursuant to Section 74-781 to permit Use Group 6 commercial / Retail uses in the ground floor and cellar of an existing seven-story building located in an M1-5B district.

Vote: Unanimous, with 41 Board members in favor.

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



Jo Hamilton, Chair
Community Board #2, Manhattan



David Reck, Chair
Land Use and Business Development Committee
Community Board #2, Manhattan

JH/fa

cc: Hon. Jerrold L. Nadler, Congressman
Hon. Thomas K. Duane, NY State Senator
Hon. Daniel L. Squadron, NY State Senator
Hon. Deborah J. Glick, Assembly Member
Hon. Scott M. Stringer, Man. Borough President
Hon. Christine C. Quinn, Council Speaker
Hon. Margaret Chin, Council Member
Sandy Myers, CB2 Liaison, Man. Borough President's office
Lolita Jackson, Manhattan Director, CAU
Vivian Awner, Community Board Liaison, Dept. of City Planning
Lorna Edwards, Land Use Review Unit, Dept. of City Planning
Jeff Mulligan, Executive Director, Board of Standards & Appeals
Magdi Mossad, P.E., Man. Borough Commissioner, NYC Department of Buildings
Applicant

Community/Borough Board Recommendation

CITY PLANNING COMMISSION
22 Reade Street, New York, NY 10007
FAX # (212) 720-3356

Application # C 100101 ZSM
CEQR #
Community District No. 02 Borough: Manhattan
Community District No. ___ Borough: ___
Project Name: 433 Broadway

INSTRUCTIONS

1. Complete this form and return one copy to the Calendar Information Office, City Planning Commission, Room 2E, at the above address.

2. Send one copy of the completed form with any attachments to the applicant's representative at the address listed below, one copy to the Borough President, and one copy to the Borough Board, when applicable.

Docket Description:

IN THE MATTER OF an application submitted by 433 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 Section 42-14(D)(2)(b) to allow retail use (Use Group 6 uses) on portions of the ground floor and cellar of a proposed 7-story building on property located at 433 Broadway (Block 231, Lot 14), in an M1-5B District, within the SoHo-Cast Iron Historic District, Borough of Manhattan, Community District 2.

Plans for this proposal are on file with the City Planning Commission and may be seen at 22 Reade Street, Room 3N, New York, NY 10007.

Applicant(s):

433 Broadway, LLC
118 Spring Street, 2nd Floor
New York, New York 10012

Applicant's Representative:

Deirdre A. Carson, Esq.
Greenberg Traurig LLP
200 Park Avenue
New York, New York 10166

Community Board No. 2 Borough: Manhattan

Borough Board

Date of public hearing: 12/9/10

Location: P.S. 130, 143 Bayten St., Auditorium

Was a quorum present? YES NO

A public hearing shall require a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.

Vote adopting recommendation taken: 12/16/10

Location: P.S. 41, 116 W. 114th St., Auditorium

RECOMMENDATION

Approve

Approve With Modifications/Conditions

Disapprove

Disapprove With Modifications/Conditions

Explanation of Recommendation-Modification/Conditions (Attach additional sheets if necessary)

See attached resolution

Voting

In Favor:

Against:

Abstaining:

Total members appointed to the board:

41
Robert Garmley

50

District Manager

Community/Borough Board Officer

Title

12/27/10

Date

v.012006w

* Indicates application was certified by the CPC pursuant to Section 197-C(c) of the City Charter.



THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

SCOTT M. STRINGER
BOROUGH PRESIDENT

January 18, 2011

**Recommendation on
ULURP Application No. C 100101 ZSM – 433 Broadway
by 433 Broadway, LLC**

PROPOSED ACTION

433 Broadway, LLC,¹ seeks approval for a **special permit pursuant to Section 74-781 of the Zoning Resolution** (“ZR”) to modify the use regulations of ZR § 42-14D(2)(b) to allow Use Group 6 (retail and service establishments) uses on the ground-floor and cellar levels of a new building to be constructed at 433 Broadway (Block 231, Lot 14). The proposed building site is located in an M1-5B zoning district and is within the SoHo-Cast Iron Historic District in Manhattan Community District 2.

In order to grant the special permit, the City Planning Commission (“Commission”) must find that the owner of the space, or a predecessor in title, has made a good faith effort to rent such space to a permitted use at fair market rate. Such efforts shall include but not be limited to, advertising in local and citywide press, listing the space with brokers, notifying the New York City Office of Economic Development, and informing local and citywide industry groups. Such efforts shall have been actively pursued for a period of no less than one year for buildings over 3,600 square feet, prior to the date of the application for a special permit.

PROJECT DESCRIPTION

The applicant seeks approval to permit retail uses (Use Group 6) on the ground-floor and cellar levels of a new commercial building to be constructed at 433 Broadway. The proposed project site is a 7,462-SF vacant lot located at the northwest corner of Broadway and Howard Street. The project site previously contained a single-story brick building, which was demolished in the spring of 2004. Since that time, the property owner has used the vacant lot as an outdoor flea market.

The proposed new building is six stories high with a seventh-story penthouse (approximately 97

¹ Edward Omri is the managing member of 433 Broadway, LLC, and owner of the subject property.

feet total in height) and will contain approximately 37,274 SF of zoning floor area. The second through seventh floor penthouse are anticipated to be used as offices, an as-of-right use. Subject to the approval of this special permit, the applicant additionally proposes to include 11,309 SF of retail uses on the ground-floor and cellar levels. The proposed mass and design of the building are otherwise as of right under zoning.

The project site is located within an M1-5B zoning district. This zoning district does not permit Use Group 6 uses below the second story of any building as of right². Use Group 6 uses include retail and service establishments that primarily serve local shopping needs. Offices are conforming uses on and above the second floor of buildings in M1-5B districts.

Current land uses surrounding the project site consist of buildings with ground-floor retail and office and residential uses on the upper floors. The ground-floor retail establishments along Broadway are primarily apparel and home décor stores. Howard Street is more residential in character as the street terminates to the west, and there are significantly fewer ground-floor storefronts than on Broadway.

In June 2003, the Commission granted a special permit pursuant to ZR § 74-781 to the applicant to facilitate the construction of a nearly identical building project at the subject site.³ The special permit has since lapsed as no substantial construction has taken place at the site, and the owner did not renew the special permit.

COMMUNITY BOARD'S RECOMMENDATION

At its Full Board meeting on December 16, 2010, Manhattan Community Board 2 recommended approval of this application by unanimous vote of 41 in favor.

BOROUGH PRESIDENT'S COMMENTS

Manufacturing districts within Manhattan's SoHo neighborhood have become increasingly mixed-use. As the neighborhood continues to move away from manufacturing uses, it is important that the Commission monitors this shift and its ultimate impact on the character of the neighborhood. Additionally, as-of-right uses should be given priority to maintain the integrity of the neighborhood's zoning.

Special permits pursuant to ZR § 74-781 allow certain use modifications on levels below the second story of buildings located within M1-5A and M1-5B zoning districts. The modification is permitted only after the Commission has found a good faith marketing effort was made to rent such space for a mandated use at a fair market rate. Since the proposed building will be over 3,600 SF, the applicant was required to market the space for a minimum of one year.

The applicant conducted a marketing effort for the subject space from August 2001 to August 2002 as part of its previous special permit application. During that one year period, the applicant

² In M1-5B zoning districts, only Use Groups 7, 9, 11, 16, 17A, 17B, 17C or 17E (generally wholesale, warehouse and light manufacturing uses) are permitted as-of-right below the second story of a building.

³ The special permit was granted under the application C 030255 ZSM.


placed advertisements in *The New York Times* and *The Village Voice*, and listed the space with brokers who specialized in industrial real estate properties. The applicant also reached out to local and citywide industry groups that included the Chambers/Canal Civic Association, the Association of Commercial Property Owners, the Garment Industry Development Corporation, the Chinese American Planning Council, Local 23-25 UNITE, and the Association of Graphic Arts. Further, the applicant notified the Industrial Space Bank of the New York City Economic Development Corporation. Lastly, the applicant posted an advertisement of the available space at the property site. With these efforts, the applicant was unable to rent the space for as-of-right uses at a fair market rate at the time of the initial special permit application.

The applicant re-submitted good faith marketing materials provided for its previously approved special permit regarding the subject space. ZR § 74-781 states that good faith marketing for the affected space needs to take place “...no less than...one year..., prior to the date of the application...” Therefore, the applicant’s previous marketing effort could apply to meet the finding for this special permit application. Given the current economic climate and general decline in demand for conforming manufacturing uses in this neighborhood, the applicant’s marketing effort is appropriate in this case.

BOROUGH PRESIDENT’S RECOMMENDATION

The application for a use modification to allow Use Group 6 on the cellar and ground floor has community support and meets the required finding for the requested permit, namely that the owner of the space has made a good faith effort, prior to the date of the application, to rent such space to a conforming use at fair market rate.

Therefore, the Manhattan Borough President recommends approval of ULURP Application No. C 100101 ZSM to grant a special permit pursuant to ZR § 74-781.



Scott M. Stringer
Manhattan Borough President