



IN THE MATTER OF an application submitted by Lafayette Development Associates 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 use regulations of Section 42-14(D)(2)(b) to allow Use Group 6 uses (retail uses) on portions of the ground floor, cellar and subcellar of a proposed 10-story building on property located at 363 Lafayette Street (Block 530, Lot 17), in an M1-5B District, Borough of Manhattan, Community District 2.*

*197-d (B)(2) eligible

This application for a special permit pursuant to Section 74-781 of the Zoning Resolution (ZR) was filed on March 1, 2019. The applicant, Lafayette Development Associates LLC, requests modification of the use regulations of ZR Section 42-14(D)(2)(b) to permit Use Group 6 retail uses below the level of the second story of a newly constructed building located at 363 Lafayette Street, 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) would allow retail uses (Use Group 6) on the ground floor, cellar and subcellar of a newly constructed 10-story building located at 363 Lafayette Street (Block 530, Lot 17). The upper floors of the building would be occupied by uses permitted as-of-right in the M1-5B district, including community facility uses (house of worship) and commercial offices.

363 Lafayette Street occupies the entire western frontage of the block bounded by Lafayette Street to the west, Great Jones Street to the north, Bowery to the east, and Bond Street to the south, within an M1-5B zoning district and the NoHo Historic District Extension. The irregularly-shaped zoning lot measures approximately 5,549 square feet with about 201 feet of frontage on Lafayette Street, 49 feet of frontage on Great Jones Street, and 7 feet of frontage on Bond Street. The construction of the building was completed in fall 2018.

The applicant intends to use 4,803 zoning square feet on the ground floor, 2,992 gross square feet in the cellar, and 3,271 gross square feet in the subcellar of the building for Use Group 6 retail uses and other uses permitted as-of-right in the M1-5B district.

Once characterized primarily by manufacturing and heavy commercial uses that service industry, the surrounding NoHo neighborhood has evolved into a vibrant mixed-use district. Buildings within the vicinity of the project site are typically mixed-use loft buildings ranging from three- to 13-stories in height, with a variety of uses, including ground floor retail establishments, eating and drinking places, commercial offices, Joint Living-Work Quarters for Artists (JLWQA), lofts, or Use Group 2 residential units.

The project site is located in an M1-5B district, which allows a floor area ratio (FAR) of 5.0 for commercial and light manufacturing uses and 6.5 for community facility uses. The M1-5B district limits uses in the space below the floor level of the second story to those listed in Use Groups 7, 9, 11, 16, 17A/B/C/F, which include uses such as repair shops, print stores, jewelry manufacturing, and other light manufacturing uses.

The proposed Use Group 6 retail uses on the ground floor, cellar and subcellar are not permitted as-of-right. ZR Section 74-781 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 include, but are not limited to: advertising in local and citywide press; listing the space with brokers; and informing local and citywide industry groups. These efforts are required to 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 363 Lafayette Street occupies over 3,600 square feet of lot area and therefore was required to be marketed for one year.

Beginning in October 2017 for a period beyond the required one year, the applicant advertised the availability of space for wholesale, light manufacturing and other uses allowed by ZR Section 42-10 at \$80 per square foot (\$40 per square foot for cellar and subcellar). The applicant's marketing efforts included placing weekly advertisements in the New York Times and Downtown Express;

listing the space with a brokerage; and mailing information to various industry groups. Supplemental marketing efforts beyond zoning requirements included a dedicated website with information on the building and floor plans for the ground floor, cellar and subcellar spaces, and follow-up phone calls to the industry groups by the broker. According to the applicant, despite these efforts, there had been no success in securing as-of-right uses for the space as of the date of the application's filing. According to the applicant, one potential conforming tenant made inquiries in response to the advertisement, but determined that the space would not be conducive for the intended use after being shown the space.

ENVIRONMENTAL REVIEW

This application (C 190317 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 Rules of Procedure of 1991 and Executive Order No. 91 of 1977. This application was determined to be a Type II action, which requires no further environmental review.

UNIFORM LAND USE REVIEW

This application (C 190317 ZSM) was certified as complete by the Department of City Planning on April 8, 2019 and was duly referred to Manhattan Community Board 2 and 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 public hearings on this application on May 15, 2019 and June 19, 2019, and on June 20, 2019, by a vote of 37 in favor, 2 opposed, and with no abstentions, adopted a resolution recommending denial of the application unless the applicant's commitments in its letter to Community Board 2, dated May 31, 2019, become part of the special permit approval. The applicant's commitments to Community Board 2 include limiting the use of the subcellar, restricting retail signage and hours of deliveries, garbage management, and making efforts to work with the Community Board and the Department of Transportation (DOT) to alleviate sidewalk congestion at the intersection of Lafayette and Great Jones streets.

Borough President Recommendation

The application was considered by the Borough President, who issued a recommendation on August 6, 2019 to disapprove the application unless the applicant markets the space for as-of-right uses “through more robust and alternative methods for an additional four-month period”, generally coinciding with the balance of the ULURP process.

City Planning Commission Public Hearing

On July 31, 2019 (Calendar No. 4), the City Planning Commission scheduled August 14, 2019, for a public hearing on this application (C 190317 ZSM). The hearing was duly held on August 14, 2019 (Calendar No. 64). Three speakers testified in favor, and three testified in opposition of the application.

The applicant’s land use counsel described the proposed project, the surrounding area, and the specific marketing efforts pursued for a period of over one and a half years. In response to the Borough President’s recommendation, she stated that the applicant will continue to market the space for as-of-right uses at a lower rate on the Real Deal website, and conduct additional outreach to three additional industry groups suggested by the Borough President. She also confirmed that the applicant will adhere to the conditions referenced in Community Board 2’s resolution to help address the community’s quality of life concerns. She further noted that the application has received support from NoHo-Bowery Stakeholders and other local groups. Additionally, she acknowledged that the space subject to the special permit was referred to as “retail” in a brochure created for marketing the upper floors of the building to potential office tenants and on the engineer’s website, but contended that such references were not an effort to market the space to nonconforming tenants, rather an oversight. A representative of Hilsong Church, development partner on the project and the tenant on the second and the third floors of the building, spoke in favor of the project. He stated that while a house of worship would be an as-of-right use on the ground floor, the church prefers upper floor spaces given the programmatic needs and the irregular shape of the ground floor. An attorney for an unrelated project developed by a subsidiary of the parent company of the applicant also testified in favor.

Three representatives of SEIU 32BJ testified in opposition of the application, citing a prior labor dispute on a project that the applicant was associated with and the applicant's failure to make a good faith effort to market the space for conforming uses. They stated that the applicant referenced the space as "retail" in a marketing brochure that was not submitted to the Department of City Planning, and marketed the space to organizations in areas outside of NoHo and in other boroughs.

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 ZR Section 74-781 to modify the use regulations of Section 42-14D (2)(b) to allow Use Group 6 retail uses below the level of the second story of a primarily commercial building constructed in 2018 at 363 Lafayette Street.

The Commission believes that the applicant has made the required good-faith marketing effort for a period of over one year. The Commission notes that the applicant placed weekly advertisements in two local and citywide newspapers, listed the space with a brokerage firm, and informed 12 local and citywide industry groups and relevant city agencies, including NYC Economic Development Corporation, NoHo Business Improvement District, SoHo Broadway Initiative, Pratt Center for Community Development, Greenpoint Manufacturing and Design Center, Lower Manhattan Development Corporation, Council of Fashion Designers of America, South Bronx Overall Economic Development Corp, Long Island City Partnership, Great Jamaica Development Corp, Workers United NY/NJ Regional Joint Board, and UNITE Here Headquarters, by mail and by phone. Beyond requirements of the zoning, the applicant also listed the space on a website dedicated to marketing the ground floor and cellar spaces. Such marketing efforts proved unsuccessful, as the applicant did not succeed in securing a conforming tenant.

The Commission observes that the subject space is irregularly shaped with a narrowing tail towards Bond Street, which may not be conducive or desirable for many manufacturing and industrial users. The Commission also acknowledges that, while applicable to new buildings, the good faith

marketing provision in ZR Section 74-781, when it was established nearly five decades ago, sought to allow conversions of former industrial space to commercial uses, if such spaces were found to be no longer attractive or suitable for manufacturing and related businesses. The Commission is pleased that the Department has been working with the Borough President Brewer's Office and Councilmember Chin's Office to engage local stakeholders in a dialogue about broader planning and zoning issues in NoHo and SoHo.

The Commission reviewed the "retail" references in various materials: an office marketing brochure and a description of the development on the project engineer's website. The Commission believes that these references were not an intentional effort to advertise the ground floor and cellar spaces for retail uses and do not undermine the applicant's efforts to market those spaces to potential conforming tenants. The Commission, however, is displeased by the applicant's failure to pay sufficient attention to details in the process of seeking the special permit approval. The Commission is pleased to learn that the applicant is making additional marketing efforts for conforming uses in response to the Borough President's recommendation.

The Commission also notes that the applicant, in a letter dated May 31, 2019, made commitment to Community Board 2 to implement restrictions and strategies related to subcellar usage, retail signage, delivery schedule, and garbage pick-up. The Commission strongly encourages the applicant to work with the community and DOT to explore sidewalk widening opportunities at the intersection of Lafayette and Great Jones streets.

The Commission believes that the applicant made 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 outlined in ZR Section 74-781 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, 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 190317 ZSM) submitted by Lafayette Development Associates 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 use regulations of Section 42-14(D)(2)(b) to on portions of the ground floor, cellar and subcellar of a proposed 10-story building on property located at 363 Lafayette Street (Block 530, Lot 17), in an M1-5B District, Borough of Manhattan, Community District 2, is approved subject to the following conditions:

1. The property that is the subject of this application (C 190317 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 Morris Adjmi Architects filed with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-101.00	Zoning Analysis	01/02/2019
Z-102.00	Zoning Lot Site Plan	01/02/2019
Z-103.00	Sub-cellar / Cellar Floor Plan	01/02/2019
Z-104.00	Ground Floor Plan	01/02/2019
Z-108.00	Transverse Building Section	01/02/2019
Z-109.00	Longitudinal Building Section	01/02/2019

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 190317 ZSM), duly adopted by the City Planning Commission on September 11, 2019 (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 J. BURNEY; ALLEN P. CAPPELLI, Esq.,

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Dan Miller, *First Vice Chair*
Susan Kent, *Second Vice Chair*
Bob Gormley, *District Manager*



Antony Wong, *Treasurer*
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June 22, 2019

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

Dear Ms. Lago:

At its Full Board meeting on June 20, 2019, CB#2, Manhattan (CB2, Man.), adopted the following resolution:

***363 Lafayette St. (between Bond and W 3 Sts.) - DCP C 190317 ZSM is an application seeking a special permit pursuant to Section 74-781 of the New York City Zoning Resolution to modify the use regulations of Section 42-14(D)(2)(b) to allow Use Group 6 (retail uses) on portions of the ground floor, cellar and sub-cellar of a 10-story building now under construction in an M1-5B district.**

Whereas:

1. CB2's Land Use committee heard this application at its May and June meetings.
2. The site is in a M1-5B zoning district.
3. The building will contain 4803 sf on the ground floor, 2992 sf in the cellar, and 3271 sf in the sub-cellar (a total of 11,066 sf), and so the applicant is required to actively pursue a good faith effort to advertise the space below the second floor for a period of no less than one year to a conforming use at fair market rentals.
4. The applicant began such efforts on October 8, 2017 by retaining Jones Lang Lasalle who for one year advertised the space in local and citywide press, listed the space with brokers, and informed local and citywide industry groups. The ads were legible and JLL properly logged all communication.
5. The advertised rent for the space was \$80 per square foot, routinely suggested by the Department of City Planning for many properties in SoHo/NoHo that go through the 74-781 process, regardless of location and condition.

6. For example, almost two years ago, on July 12, 2017, CB2's Land Use committee heard a presentation for a 74-781 application for retail at ground and cellar levels at 449 Broadway. At that meeting, that project's land use attorney told the committee that the rent for both ground floor and cellar had been set in concert with DCP at \$80 per square foot.
7. CB2 is concerned as to how often DCP revises the suggested \$80 rate and how attractive and reflective of current market conditions this rate is.
8. Efforts by the City to preserve the Garment District, another struggling manufacturing zone, have resulted in suggested rents of only \$35 per square foot.
9. Since the applicant's original newspaper ads referenced only the floor area of the ground floor, in January 2019, DCP asked JLL to place supplemental advertisements for the cellar and sub-cellar in two newspapers at \$40 per square foot. In the past, there was no charge for manufacturing space below ground floor level as it was largely unimproved and for storage only, so even a charge of \$40 seems excessive.
10. By letter, the applicant at 363 Lafayette notified the NYC Economic Development Corp. and 11 industry organizations, five of which are not even in Manhattan. The letters to these groups did not quote a price per square foot nor make it clear why they were being written: Was it to entice the group itself to move or to solicit the group's help in notifying its constituents of the availability of the space?
11. Members of SEIU 32BJ attended both meetings to protest this application. The CB2 office also received 156 phone calls and five emails, most of which identified themselves as from the union.
12. Representatives of SEIU 32BJ stated that JLL advertised the ground floor as retail space in a marketing brochure starting in October, 2017—the same month the applicant started its good faith marketing effort and a year before applying for the special permit. Also, as early as August 2018, the building's architect and engineer both described the property on their websites as having ground floor retail space. SEIU 32BJ also stated that JLL did not currently list 363 Lafayette as a property for lease on its website and they questioned why the house of worship (a conforming ground-floor use in the zoning district) took space on the second and third floors and not on the ground floor.
13. In a letter dated June 5, Greenwich Village Society for Historic Preservation noted that only "wholesale and light manufacturing" were highlighted as conforming uses in the advertisements for the space.
14. CB2 has a track record of approving 74-781 applications in cases where the applicant has attempted to respect the process and follow the guidelines.
15. Following the May meeting, the applicant addressed many of the committee's quality of life concerns in a letter dated May 31, 2019 in which they formally agree to:
 - a. Limit the use of the sub-cellar to accessory uses.
 - b. Prohibit illuminated or animated signage on the rear wall of the one-story extension.

- c. Impose additional signage guidelines on future retail tenants that would constrain them from requesting more signage from LPC than would be permitted in these signage guidelines.
- d. No exterior retail signage on Great Jones St.
- e. Exterior signage on Lafayette St. would consist of non-illuminated, pin-mounted, stainless steel lettering mounted in the sign bands above the retail entrances and in up to two bays on the one-story "tail" of the retail space.
- f. Insert a provision in the retail lease(s) that restricts retail deliveries to daytime hours and prohibits the retail tenant(s) from blocking the sidewalk with garbage.
- g. Work with CB2, NYC DOT, and others to widen the sidewalk at this intersection to alleviate congestion (such as was done in the past at 19 E. Houston St.)

Therefore, be it resolved that CB2 recommends that this application be denied unless the stipulations in the May 31, 2019 letter become part of the CPC's permit approval.

Be it further resolved that CB2 strongly calls on DCP to provide better guidance to applicants with respect to market conditions, marketing plans, and range of possible uses, including:

- a. Updating the list of recommended places to advertise.
- b. Updating the list of recommended industry groups to contact and specifying the contents and purpose of the letter that applicants must write to them.
- c. Revising the recommended price per square foot to adequately reflect the prevailing market conditions for the site of each application.
- d. Eliminating the square foot charge for cellar and sub-cellar space for conforming uses.

Be it finally resolved that CB2, which represents the community and has intimate knowledge of its neighborhoods and market conditions, be permitted to review such marketing plans and guidelines at the beginning, rather than at the end, of the process.

Vote: Passed with 37 Board members in favor and 2 Board members opposed (S. Russo, S. Wittenberg).

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

A handwritten signature in cursive script that reads "Frederica Sigel".

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

CB/jt

c: Hon. Carolyn Maloney, Congresswoman
Hon. Brian Kavanagh, State Senator
Hon. Deborah Glick, Assembly Member
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 6, 2019

**Recommendation on ULURP Application C 190317 ZSM – 363 Lafayette Street
By Lafayette Development Associates LLC.**

PROPOSED ACTION

Lafayette Development Associates LLC (“the applicant”) seeks a special permit pursuant to Section 74-781 of the Zoning Resolution (“ZR”) to permit Use Group 6 (retail use) on portions of the ground floor, cellar, and sub-cellar of a newly constructed 10-story commercial building, located at 363 Lafayette Street (Block 530, Lot 17) in an M1-5B district within the NoHo Historic District Extension, in Community Board 2, Manhattan.

In order to grant the special permit pursuant to § 74-781, the City Planning Commission (“CPC”) must find that the owner of the space has made a good faith effort to rent such space to a permitted use at a fair market rate. Such efforts shall include, but not be limited to, advertising in local and citywide press, listing the space with brokers and informing local and citywide industry groups. Such efforts shall have been actively pursued for a period of no less than one year¹, prior to the date of the application for a special permit.

BACKGROUND

Area Context

The site is located in an M1-5B zoning district, which allows light manufacturing and some commercial uses including warehousing and parking facilities. Commercial uses including retail, office, and art galleries are not permitted below the second floor as-of-right. Uses below the second story are limited to wholesale, business service, warehouse and light industrial uses. Residential development is not permitted as-of-right. Although ground floor, cellar, and sub-cellar retail use is not an as-of-right use pursuant to the Zoning Resolution, it is commonly found throughout the NoHo neighborhood as owners have sought variances and other approvals to allow for ground-floor commercial uses not permitted as-of-right.

The project site is located in the NoHo Historic District Extension in Community District 2, Manhattan. The NoHo Historic District Extension created in 2008, is a three-block extension of the NoHo and NoHo East Historic Districts, created in 2000 and 2003 respectively. The extension is bounded on the west by Lafayette St. on the east by Bowery, on the north by E. Fourth St. and on the south by Bond St. The buildings in this extension were built primarily between the

¹ 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 23,245 zoning square feet.

early nineteenth and early twentieth centuries. The buildings in the district are largely mid-rise loft buildings and include residential and commercial uses.

The project site is bounded by Broadway to the west, Bowery to the east, Great Jones Street to the north and Bond Street to the south. The surrounding block along Lafayette consists primarily of six-story mixed residential and commercial buildings with ground floor retail. There are a few parking lots within the vicinity of the project site, including one immediately across the street on the northeast corner of Great Jones Street.

The project site is served by the No. 6 subway line located at Bleecker and Lafayette Street approximately 500 feet from the project site. The B/D/F/Q Broadway-Lafayette subway stop is located 0.2 miles south of the site at East Houston and Lafayette Street. The M103 bus line runs along Bowery, its closest stop located 0.2 miles east of the project site at Bowery and East 1st Street.

Site Description

The Project Area has a lot area of approximately 5,591 square feet, according to New York City's Zoning and Land Use Map (ZoLa), with approximately 200.83 feet of frontage on Lafayette Street, 49.15 feet of frontage on Great Jones Street, and 6.62 feet of frontage on Bond Street. The building has recently completed construction and is ten stories with a cellar and sub-cellar. According to the applicant, the building has approximately 33,650 square feet of zoning floor area (6.1 FAR), with approximately 4,803 square feet on the ground floor, 2,992 square feet in the cellar, and 3,271 square feet in the sub-cellar level. There is 5,905 square feet of community facility floor area on the second and third floors, and 27,745 square feet of commercial floor area on floors 4-10. According to the applicant, the building is fully leased up on all floors above the ground level.

PROJECT DESCRIPTION

The applicant proposes to convert the 11,066 square feet on the ground floor, cellar, and sub-cellar levels to retail use (Use Group 6). 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 rear cellar of a 10-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 a year. The applicant marketed the space for \$80/per square foot ("psf") for all three levels between October 2017 and November 2018.

The applicant provided a log of outreach and inquiries from October 2017 to November 2018 and copies of the weekly advertisements that alternated between the New York Times and Downtown Express between October 2017 and November 2018, which advertised the ground floor space for \$80/psf.² In January 2019, the applicant began supplemental advertising in the

² According to the applicant's broker, the below grade space was not included in the advertising, despite the applicant seeking conversion of this space to allow for UG6, as "it is not customary to include below grade space in

same newspapers and included the cellar and sub-cellar space with a rental of \$40/psf. The application packet also contained copies of letters mailed by Jones Lang LaSalle. (“JLL”) to citywide, neighborhood and business organizations: New York City EDC, SoHo Broadway Initiative, NoHo Business Improvement District, Lower Manhattan Development Corporation, Pratt Center for Community Development, Workers United, Unite Here, Council of Fashion Designers of America, South Bronx Overall Economic Development Corporation, LIC Partnership, and Greater Jamaica Development Corporation. The application packet also contained a log of calls made and received on behalf of the marketing of the space. Of the 48 calls in the log, 28 were made to JLL Industrial, an internal department within Jones Land LaSalle. Despite these efforts, the applicant was unable to rent the space to a conforming use.

COMMUNITY BOARD RECOMMENDATION

On June 20, 2019, Manhattan Community Board 2 (“CB2”) voted to disapprove the application with conditions. The conditions, which include allowing the sub-cellar to be used only as an accessory use, are outlined in a letter sent by the applicant to CB2 dated May 31st. In their resolution, CB2 also requests that DCP provide more guidance to applicants in regard to “good faith marketing” efforts. Thirty-seven members voted in favor of the resolution with two opposed and no abstentions.

BOROUGH PRESIDENT’S COMMENTS

In the past, this office has expressed serious reservations about this special permit in general, and specifically about efforts to satisfy the "good faith marketing" requirement that appear to be cursory attempts to "check the boxes" in terms of advertising and outreach. While we understand market changes have impacted the demand for light manufacturing spaces in Noho, that does not mean there is no need for these uses in the area. A change of use permanently removes such spaces from available stock. For this reason, we have attempted to only approve applications that have demonstrated what we determine to be truly “good faith marketing”; sometimes these applications were approved on the second attempt, after an applicant has solicited and followed feedback from Community Board 2 and this office on their marketing efforts.

While the use options for the space are limited, and we understand the space is oddly shaped which may render it less attractive for as-of-right uses, the existing zoning does allow for uses that would be appropriate to an area that is growing in residential and office use. The following uses are permitted under existing zoning and could potentially thrive given the current conditions of the surrounding community:

- Dry Cleaners (UG16)
- Kennel (UG16)
- Costume/Clothing Rental (UG9)

a newspaper ad of this type, which typically serves as a ‘flex’ space for tenants that lease one of the above grade spaces”

House of Worship (UG4)³

None of these uses are included in any of the advertisements placed by the applicant. The advertisements are vague, indicating only the zoning designation of the area and noting retail, office, or restaurants are not permitted. The applicant placed the advertisements in various publications and made no change to the language throughout this period to encourage more inquiry. The applicant continues to place the same advertisement at this present moment and acknowledges they have had only one true lead: an inquiry by a wine auction house, which is UG9 and permitted under current zoning. Had the applicant met with this office and/or CB2 sooner, we could have worked together to provide guidance in marketing this space.

The appearance that the space was being marketed as retail at the same time is also disconcerting. In some applications where we have recommended disapproval, applicants have advertised the space for retail during their "good faith marketing" period. While this applicant was not actively advertising the manufacturing space for retail, it maintained two websites to market spaces within the building. One was a website set up for the marketing of the ground floor, cellar, and sub-cellar for the uses permitted under existing zoning. An alternate website, 363lafayette.com, was created for the marketing of the upper floor office space. On this website, there was a brochure listing the ground floor space as retail. This brochure was up in October 2017, the same month as the "good faith marketing" of the ground floor space, and was on the site as late as May 2019 of this year. According to the applicant, this was a typographical error. The error existed for nearly two years. We wonder if this "error" went undiscovered for two years because it also inadvertently served to make a building with ground floor retail more appealing to potential lessees.

We conclude that neither the requirements of this Section nor the direction given applicants are sufficient to ensure a robust search for conforming uses. Many of these special permit applications have a recommendation from CB2 and/or this office requesting DCP provide more clarity and encourage applicants to be more strenuous in marketing; for example, to the burgeoning light manufacturing sector in food, technology, and design. We will continue to request this of DCP and hope that through the ongoing Soho-NoHo Neighborhood Study process, solutions can be crafted that encourage property owners to find viable tenants while maintaining the artistic maker economy in the area. It also does not appear that DCP is regularly updating information provided to applicants to assist in their marketing efforts. Our staff did a quick search and discovered other organizations that could have been useful in locating an as-of-right tenant.⁴

However, in the interim, this office would like to see more of an effort made to market the space for the as-of-right uses with enhanced advertising and outreach which could include but not be limited to: more specific advertising for as-of-right uses, retaining a different broker with

³ The project site is also occupied on the second and third floors by a house of worship, which is an as-of-right use on the ground floor. According to the applicant, the tenant was not interested in the lower-level space.

⁴ Other groups the applicant could have considered include Evergreen, Downtown Alliance, Futureworks NYC, New York City Department of Cultural Affairs, Made in NY, and the Association for Neighborhood and Housing Development, which has an Urban Manufacturing Accelerator Fund for developers wishing to assist in the preservation and creation of manufacturing jobs in New York City.

experience in marketing similar spaces in Soho and Noho; lowering asking rent (specifically in the cellar and sub-cellar levels); and confirming removal of any prior marketing and/or project drawings which describe the space as retail or any use that is not permitted under current zoning.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends disapproval of ULURP Application No. C 190317 ZSM unless the site is marketed for as-of-right uses through more robust and alternative methods for an additional four-month period.

A handwritten signature in black ink that reads "Gale A. Brewer". The signature is written in a cursive, flowing style.

Gale A. Brewer
Manhattan Borough President