



---

**IN THE MATTER OF** an application submitted by Canal Associates, LP pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-781 of the Zoning Resolution to modify the requirements of Section 42-14(D)(2)(b) to allow Use Group 6 uses (retail uses) on portions of the ground floor and cellar of an existing five-story building on property located at 359 Canal Street (Block 228, Lot 2), in an M1-5B District, Borough of Manhattan, Community District 2.

---

This application was filed on January 10, 2017 for a special permit, pursuant to Section 74-781 of the Zoning Resolution, to modify the use regulations of Section 42-14(D)(2)(b) of the Zoning Resolution to permit Use Group 6 retail uses on portions of the ground floor and cellar of a five-story Interim Multiple Dwelling (IMD) building located at 359 Canal Street.

## **BACKGROUND**

This application for a special permit pursuant to ZR Section 74-781 (Modifications by special permit of the City Planning Commission of uses in M1-5A and M1-5B Districts) was submitted by Canal Associates, LP, a subsidiary of United American Land, the owner of 359 Canal Street (Block 228, Lot 2), to allow a modification of ZR Section 42-14D(2)(b) ("Use Group 17, Special Uses in M1-5A and M1-5B Districts"). The special permit would facilitate the conversion of portions of the cellar and the ground floor of an existing five-story building located at 359 Canal Street (Block 228, Lot 2) into retail use (Use Group 6)..

359 Canal Street is located on a block bounded by Wooster Street to the east, Canal Street to the south, West Broadway to the west, and Grand Street to the north, within the SoHo Cast Iron Historic District. The zoning lot upon which the building sits measures approximately 1,335 square feet with approximately 19 feet of frontage on the north side of Canal Street. The zoning lot has full lot coverage and no rear yard, and a shallow lot depth of approximately 67 feet. Historically, the ground floor and cellar housed retail and other commercial uses. As stated in the 1973 SoHo Cast-Iron Historic District Designation Report, the building was completed in 1855 and its original function was "store and lofts." The building has been under the New York State Loft Board

jurisdiction since 1983, and the upper floors contain four Interim Multiple Dwelling (“IMD”) units. The ground floor and the cellar have been vacant since 2011.

Once characterized primarily by manufacturing uses, the surrounding SoHo and Tribeca neighborhoods have evolved into mixed-use districts. The predominant uses within these districts are ground floor commercial or retail with offices and/or dwelling units above, including Joint Live Work Quarters for Artists (“JLWQA”) and IMDs. Specifically, the buildings surrounding the project site north of Canal Street range from four to seven stories in height and are predominantly mixed-use. North of the site along Wooster Street and West Broadway, buildings typically contain residential, commercial or JLWQAs on the upper floors and with some Use Group 6 retail uses or art galleries on the ground floor.

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

The applicant proposes to convert 1,161 square feet of zoning floor area on the ground floor and 1,335 square feet of gross floor area in the cellar of 359 Canal Street into Use Group 6 retail uses. The proposed special permit pursuant to Section 74-781 permits the modification of the use regulations of M1-5A and M1-5B districts to allow developments to include Use Group 6 uses below the second story. There would be no increase in building floor area and the proposed retail space would adhere to all other zoning regulations but for the use restrictions governing uses below the building’s second level in an M1-5B zoning district.

Section 74-781 of the Zoning Resolution requires the applicant to undertake and document a six-month or one-year marketing effort to rent the subject space to a conforming use at fair market rent prior to filing the land use application. Such efforts shall include, but not be limited to: advertising in local and citywide press; listing the space with brokers and informing local and citywide industry groups. Such efforts shall be pursued for a period of no less than six months for

buildings under 3,600 square feet and one year for buildings over 3,600 square feet prior to the date of application for a special permit. The building at 359 Canal Street occupies less than 3,600 square feet of lot area, so it was required to be marketed for six months.

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

## **ENVIRONMENTAL REVIEW**

This application (C 170235 ZSM) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The lead agency is the 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 170235 ZSM) was certified as complete by the Department of City Planning on January 17, 2017, and was duly referred to Manhattan Community Board 2 and the Manhattan Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

### **Community Board Public Hearing**

Community Board 2 held a public hearing on this application on February 8, 2017, and on February 16, 2017, by a vote of 32 to 0 with no abstentions, adopted a resolution recommending disapproval of the application with the following conditions:

1. That intent of the project is to complete the legalization of all uses in the building in full compliance with the purposes of IMD law;
2. That legalization work will proceed in a timely fashion and upon leaving the Loft Board's jurisdiction, the units are (and remain) properly registered;
3. That the DOB filing shall include all work needed for a permanent CO for the entire building; and
4. That upon filing for such work, application will be made to the Loft Board for a Letter of No Objection.

### **Borough President Recommendation**

The application was considered by the Borough President, who issued a recommendation to approve the application on March 17, 2017, in support of Manhattan Community Board 2's conditions that the owners complete the legalization of all units in a timely fashion, obtain a permanent Certificate of Occupancy for the entire building, and seek a Letter of No Objection from the Loft Board.

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

On March 8, 2017 (Calendar No. 5), the City Planning Commission scheduled March 22, 2017, for a public hearing on this application (C 170235 ZSM). The hearing was duly held on March 22, 2017 (Calendar No. 16). Three people spoke in favor of the application.

The applicant's land use counsel described the proposed project and reiterated the Community Board and Borough President recommendations. She stated that an active and good faith effort was made to rent the subject space to conforming uses, and that nevertheless no inquiries for conforming uses were received. A representative of the owner spoke in favor of the project and provided information on the legalization progress of the IMD units on the upper floors of the building in response to the Community Board's resolution. A representative of the Manhattan

Borough President reiterated the Borough President's recommendation for approval. There were no other speakers and the hearing was closed.

## **CONSIDERATION**

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

The applicant seeks the grant of a special permit pursuant to Section 74-781 of the Zoning Resolution to modify the use regulations of Section 42-14D (2)(b) to allow Use Group 6 retail uses on the ground floor and the cellar of an existing building at 359 Canal Street. The subject property has been vacant on the ground floor and cellar for about six years, and includes IMDs on the upper floors.

The Commission notes that the applicant's prior application (C 150334 ZSM) for the same special permit was withdrawn on October 8, 2015, due to issues raised during public review regarding flaws in the applicant's marketing efforts, including marketing the space for retail use during the mandated good faith marketing period, which undermined any demonstration of good faith efforts. The Commission understands that, starting in January 2016, the applicant pursued a new round of marketing efforts incorporating comments from the Manhattan Borough President, Community Board 2 and the Commission.

The Commission believes that the applicant has made the necessary good faith marketing effort for a period of eight months, beyond the required six months. Between January and August 2016, the applicant placed weekly advertisements in the Villager and New York Post, listed the space with two brokerage firms that marketed the space through various means including the internet, and informed local and citywide industry groups and relevant city agencies, including NYCEDC, Department of Small Business Services, Workers United NY/NJ Regional Joint Board, the Council of Fashion Designers of America, South Bronx Overall Economic Development Corporation, and the Long Island City Partnership, among others, by mail and by phone. The Commission recognizes that the applicant's new round of marketing efforts are diligent and well-documented compared to similar applications, and sufficiently addressed issues previously raised by

Community Board 2, Borough President and the Commission. Despite such efforts, the applicant did not succeed in securing a conforming tenant.

While the Commission remains unconvinced that \$80 per square foot is an affordable rental rate for industrial and manufacturing establishments, the Commission acknowledges that the surrounding SoHo neighborhood has few industrial and manufacturing establishments, and that comparable rents for manufacturing uses in the area are therefore difficult to find. While not a point of reference in deriving the appropriate industrial rent, the Commission is aware that the retail asking rent is well above the requested rental rate in the surrounding area.

The Commission notes that the building was originally built to include a storefront on the ground floor, which historically housed retail and other commercial uses, and that the proposed small retail establishment at 359 Canal Street would not be inconsistent with the character of Canal Street as a long-standing local retail corridor.

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

## **FINDINGS**

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

that the owner of the space, or a predecessor in title, has made a good faith effort to rent such space to a mandated use at fair market rentals. Such efforts shall include but not be limited to: advertising in local and citywide press, listing the space with brokers and informing local and citywide industry groups. Such efforts shall have been actively pursued for a period of no less than six months for buildings under 3,600 square feet and one year for buildings over 3,600 square feet, prior to the date of the application for a special permit.

## RESOLUTION

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

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 201 of the New York City Charter, that based on the environmental determination, and the consideration described in this report, the application (C 170235 ZSM) submitted by Canal Associates, LP for the grant of a special permit pursuant to Section 74-781 of the Zoning Resolution to modify the use regulations of Section 42-14D(2)(b) to allow Use Group 6 retail use on the ground floor and the cellar of an existing building, on property located at 359 Canal Street (Block 228, Lot 2), in an M1-5B District, within the SoHo Cast Iron Historic District, Borough of Manhattan, Community 2, is approved subject to the following terms and conditions:

1. The property that is the subject of this application (C 170235 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by PKSB Architects filed with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-000	Zoning Analysis	12/21/2016
Z-001	Site Plan & Zoning Analysis	12/21/2016
Z-002	Cellar Floor Plan	12/21/2016
Z-003	Ground Floor Plan	12/21/2016
Z-004	Building Section	12/21/2016

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 170235 ZSM), duly adopted by the City Planning Commission on April 26, 2017 (Calendar No. 15), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

**MARISA LAGO**, *Chair*

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

**RAYANN BESSER, IRWIN G. CANTOR, P.E., ALFRED C. CERULLO, III,  
JOSEPH I. DOUEK, RICHARD W. EADDY, CHERYL COHEN EFFRON,  
HOPE KNIGHT, ANNA HAYES LEVIN, ORLANDO MARIN, LARISA ORTIZ,**  
**Commissioners**



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



Antony Wong, *Treasurer*  
Keen Berger, *Secretary*  
Erik Coler, *Assistant Secretary*

## COMMUNITY BOARD NO. 2, MANHATTAN

3 WASHINGTON SQUARE VILLAGE

NEW YORK, NY 10012-1899

[www.cb2manhattan.org](http://www.cb2manhattan.org)

P: 212-979-2272 F: 212-254-5102 E: [info@cb2manhattan.org](mailto:info@cb2manhattan.org)

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

February 17, 2017

Purnima Kapur, Executive Director  
City Planning Commission  
22 Reade Street  
New York, NY 10007

Dear Ms. Kapur:

At its Full Board meeting on February 16, 2017, CB#2, Manhattan (CB2, Man.), adopted the following resolution:

**C 170235 ZSM 359 Canal Street** (between Wooster Street and West Broadway) application for special permit to allow retail uses below the second floor in a M1-5B zoning district

### Whereas:

1. This is a five-story building located within an M1-5B zoning district with 6675 square feet of floor area.
2. The applicant seeks a special permit in accordance with NYC ZR Section 74-781 to allow Use Group 6 retail and service establishment uses in portions of the ground floor and cellar of the building.
3. The upper floors of the project area are interim multiple dwellings (IMD) that have been under the jurisdiction of the Loft Board since 1983. Specifically:
  - a. The second and fourth floors are buyer (tenants sold their Loft Law rights); these floors must stay residential but are market-rate.
  - b. The third and fifth floors must stay residential and are rent-regulated.
4. The upper floors will remain JLWQA.
5. There is no Certificate of Occupancy for the project area.
6. The Alt1 permit to legalize the residential units that was current in 2015 is still current, but the work has not been completed.
7. The applicant presented evidence of a satisfactory effort to rent the space at market rates to conform to the requirements for the special permit, but research revealed the following on the entities contacted by the applicant:
8. The cellar and ground floor of the building have been vacant since 2011.

9. Retail space is limited to 1335 sf of floor space in the cellar and 1161 sf of zoning floor area on the ground floor.
10. The applicant's adjoining property at 357 Canal has a 13'-9"-wide potential entrance on Wooster St, which if combined with this property and 361 Canal could overtax this narrow street.
11. No bars or nightclubs are planned.
12. There was no public opposition to this application expressed at the meeting and CB2 is not aware of local opposition to legalization of street level retail uses in this area.

**Therefore, be it is resolved** that CB2, Man. has no objection to allowing Use Group 6 at this location, but recommends denial of this application unless the following are included as conditions of approval:

1. That intent of the project is to complete the legalization of all uses in the building in full compliance with the purposes of IMD law.
2. That legalization work will proceed in a timely fashion and upon leaving the Loft Board's jurisdiction, the units are (and remain) properly registered.
3. That the DOB filing shall include all work needed for a permanent CO for the entire building, and
4. That upon filing for such work, application will be made to the Loft Board for a Letter of No Objection.

Vote: Unanimous, with 36 Board members in favor.

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

Sincerely,



Terri Cude, Chair  
Community Board #2, Manhattan



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

TC/fa

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



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

1 Centre Street, 19th floor, New York, NY 10007  
(212) 669-8300 p (212) 669-4306 f  
431 West 125th Street, New York, NY 10027  
(212) 531-1609 p (212) 531-4615 f  
[www.manhattanbp.nyc.gov](http://www.manhattanbp.nyc.gov)

Gale A. Brewer, Borough President

**March 17, 2017**

**Recommendation on ULURP Application No. 170235 ZSM – 359 Canal Street  
by Canal Associates, LP**

**PROPOSED ACTION**

Canal Associates, L.P.<sup>1</sup> (“the applicant”) seeks a special permit pursuant to Section 74-781 of the New York City Zoning Resolution (“ZR”) to modify the use regulations of ZR §42-14(D)(2)(b) to allow Use Group 6 (retail uses) on the ground floor and cellar of an existing 5-story building located at 361 Canal Street, Block 228, Lot 2, within an M1-5B zoning district in the SoHo-Cast Iron Historic District of Manhattan Community District 2.

In order to grant the special permit, the City Planning Commission (“CPC”) must find that the owner of the space<sup>2</sup> has made a good faith effort to rent such space to a permitted use at a fair market rate. Such efforts shall include, but not be limited to, advertising in local and citywide press, listing the space with brokers and informing local and citywide industry groups. Such efforts shall have been actively pursued for a period of no less than one year<sup>3</sup>, prior to the date of the application for a special permit.

**PROJECT DESCRIPTION**

The applicant seeks approval of the special permit pursuant to ZR §74-781 to allow Use Group 6 (retail use) on the ground floor and cellar of a five-story mixed residential and commercial building at 359 Canal Street. The project will consist of 1,335 square feet of retail use in the cellar, 1,161 square feet of retail use on the first floor, and proposes no change of use to the four interim dwelling units located on floors two through five.

The project site’s lot area is 1,335 square feet and is located on the north side of Canal Street between West Broadway and Wooster Street. The project site is within an M1-5B district which permits light manufacturing, commercial and community facility uses; J1WQA are permitted as a light manufacturing use. The manufacturing and commercial maximum floor area ratio (FAR)

---

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

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

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

is 5.0 and the community facility FAR is 6.5. Use Group 7, 9, 11, 16, 17A, 17B, 17C and 17D are permitted below the second story as-of-right. Retail use is not permitted as of right.

## **Background**

The subject building was designed by the architect W.T. Beers in 1855 as a store and loft building and embodies the commercial period of the historic district. According to the SoHo Cast-Iron Historic District report, the building was constructed with a marble and iron façade and the fifth floor of the building was added in 1866. The ground floor has historically been used for commercial use which is captured in Department of Finance photographs from 1983 and 1988 showing a lot which permits lot. The applicant purchased the building in January of 1986 and believes counterfeit goods were the use on the ground and cellar floors but the space has remained vacant since 2011. In 1992, the building registered with the New York City Loft Board to lawfully convert the second, third, fourth and fifth floors to residential use pursuant to the Loft Law (Article 7C of the Multiple Dwelling Law) which has not been completed. The building currently does not have a Certificate of Occupancy but the applicant expects to obtain a Temporary Certificate of Occupancy by the end of summer 2017.

On May 15, 2015, the City Planning Commission certified application No. 150334 ZSM for a special permit pursuant to ZR § 74-781 for this property with two concurrent applications. After Manhattan Community Board 2 (“CB2”) and the Manhattan Borough President’s review period, the applicant withdrew their applications on October 5, 2015 because the site was advertised for retail use while it was under review. The application packet states the retail real estate listings online of the space were not authorized by the applicant and the applicant had them removed by January 6, 2016.

## **Area Context**

The project site is located in a M1-5B zoning district in the SoHo-Cast Iron Historic District in Community District 2, Manhattan. The SoHo-Cast Iron Historic District was designated by the Landmark’s Preservation Commission in 1973 as an effort to preserve the city’s cultural and historic heritage of the brick, stone, mixed iron and masonry commercial construction of the post-Civil War period. The SoHo-Cast Iron Historic District consists of 26 blocks containing 500 buildings and is the largest concentration of full and partial cast-iron façades in the world. The district is bounded by West Houston Street, Crosby Street, Howard Street, Broadway, Canal Street and West Broadway. The project area 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. To the east of the site is the SoHo-Cast Iron Historic District Extension, designated in 2010, as an effort to preserve the continuity of the streetscape of cast iron architecture along Crosby and Howard Streets developed in the post-Civil War era.

The neighborhood generally consists of two to six-story buildings that are either mixed commercial/residential uses or mixed commercial/office uses with ground floor retail. The dominant zoning district in the area is M1-5B north of Canal and C6-2A south of the site below

Canal Street. Beginning at the midblock of West Broadway at Canal Street, is an M1-5A district that extends to the midblock of West Broadway and Thompson Street.

The area is well served by mass transit with the A/C/E subway entrance one block west at Canal and Avenue of the Americas, the No. 1 subway line at Canal and Varick, and additional trains farther east of the site at the intersection of Canal, Broadway and Lafayette. The M20 bus runs south on West Broadway and the M5 bus runs north on Avenue of the Americas. Citibike bicycle stations are also within close proximity of the site.

### **Proposed Actions**

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

In the beginning of January 2016, the applicant hired brokerage firms familiar with the industrial marketplace: Brian Leary at Cpex Real Estate and Justin DiMare at Newmark, Grubb, Knight and Frank. These brokers advertised the space on their websites including the asking price of \$80 a square foot (which was determined by the brokers in coordination with DCP as a fair market rent), the building site's address, the zoning district and permitted/unpermitted uses with the broker names and contact number. The brokers received interest from non-conforming users: liquor store, photography studio and beauty parlor and other non-serious leads. The applicant also provided two copies of the email list the brokerage firm CPEX used to market the space. The applicant has provided copies of weekly advertisements published in *The Villager* and *New York Post* beginning March 31, 2016 stating the type of space for amount of space for lease, the permitted use, the location and address of the building and that retail and office is not permitted.<sup>4</sup> The applicant packet states the applicant only received three phone calls during the first marketing period, which is captured in the call log: two callers were soliciting advertisements with another newspaper and the other stated the space was too small for their needs.

On February 5, March 3<sup>rd</sup> and 4<sup>th</sup>, 2016 the applicant's land use attorney, Akerman mailed leaders to industry groups and organizations stating the location and size of the site, the rental price per square foot and contact and phone number by certified mail with a return receipt request<sup>5</sup>. The mailings included: two letters to divisions of the NYC Economic Development Corporation, Department of Small Business Services, two letters to two NYC Business Solutions\* offices, Pratt Center for Community Development, Greenpoint Manufacturing and Design Center, UNITE HERE Headquarters\*, South Bronx Overall Economic Development Corporation\*, Long Island City Partnership\*, Greater Jamaica Development Corporation\*, the Lower Manhattan Development Corporation, Workers United NY/NJ Regional Joint Board\*, and the Council of Fashion Designers of America\*. Akerman also contacted the organizations by phone on February 18<sup>th</sup>, March 2<sup>nd</sup>, 3<sup>rd</sup> and 11<sup>th</sup> of 2016 to advertise the space; of these 12 organizations, four asked to be emailed the listing. The application packet further states that five

---

<sup>4</sup> The application states the advertising period in newspapers originally began on November 19, 2015 but there was an unintentional interruption in one newspaper publication of the advertisement.

<sup>5</sup> Of the requested return receipts, the applicant's attorney received eight which are indicated by an asterisk (\*).

of these organizations stated on the phone calls that they do not work with rental spaces, are not involved with spaces in Manhattan, do not assist with as-of-right tenancy, and another stated they only work with hospitality tenancy. As reported by the applicant, despite these efforts, they were unable to rent the space for a conforming use.

## **COMMUNITY BOARD RECOMMENDATION**

When the application for this site previously went before Manhattan Community Board 2 (“CB2”) in 2015 (C 150334 ZSM), the board voted to recommend denial of the application based upon a complete lack of a good faith marketing effort and asked that any approval be conditioned upon the applicant, within a reasonable time period, complete the legalization of all uses in the building, include in its Department of Buildings filing all work needed for a permanent CofO, and apply to the Loft Board for a Letter of No Objection.

At its Full Board meeting on February 16, 2017, CB2 voted unanimously to deny the special permit unless certain conditions were met. The resolution states CB2 believes the applicant did a satisfactory effort to rent for a conforming use and does not object to UG6 at this location; however, CB2 stated the owners should complete the legalization of all units in a timely fashion, obtain a permanent Certificate of Occupancy for the entire building and that receive a Letter of No Objection from the Loft Board.

## **BOROUGH PRESIDENT’S COMMENTS**

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

In August of 2015, I submitted a recommendation of disapproval for this property and a concurrent application for 357 Canal Street because the advertisements at the time were vague, did not directly reference the property advertised, and there was insufficient community outreach to market the ground floor and cellar spaces for a conforming use. The effort was inadequate. However, the extent of the marketing effort for the application before us demonstrates that a much more robust and thorough effort was made.

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

The applicant responded to the concerns raised in my previous application about the marketing effort undertaken. However, there is another factor in determining whether the marketing effort is adequate which we have raised before and remains unaddressed. And that factor is that the effort to market must be at a “fair market price.” Since I have been in office it appears that the prices used for the marketing of these spaces has ranged from approximately \$70 to \$80 per square foot (see, e.g. 34 Howard Street C 17102 ZSM)). However, since we have begun looking at data for a study of SoHo and NoHo, as well as information on proposals around manufacturing in the Garment District, it is becoming increasingly doubtful to me that \$80 is a realistic or “fair” market price to ask for manufacturing space. Because the applicant discussed this price with DCP and our office prior to its second good faith marketing period, and because this space was designed as a retail store, I believe in this instance the conditions for this special permit have been met. However, if we are going to keep reviewing §74-781 special permits in the absence of a study, we must insist that the Department of City Planning set an appropriate manufacturing price per square foot or provide applicants with an appropriate range and that such a price or range be based upon what manufacturers might pay for space in lower Manhattan, and not some type of formula based upon the commercial and retail value of the space.

#### **BOROUGH PRESIDENT’S RECOMMENDATION**

**Therefore, the Manhattan Borough President recommends approval of ULURP application No. C 170237 ZSM in support of Manhattan Community Board 2’s condition that the owners complete the legalization of all units in a timely fashion, obtain a permanent Certificate of Occupancy for the entire building and that the property receive a Letter of No Objection from the Loft Board.**

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