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**Gale A. Brewer, Borough President**

June 15, 2016

**Recommendation on  
ULURP Application Nos. C 160082 ZSM – 42 West 18<sup>th</sup> Street  
by 42 West 18<sup>th</sup> Realty Corp.**

**PROPOSED ACTIONS**

42 West 18th Realty Corp. (the “applicant”) seeks approval of a **special permit** pursuant to Section 74-711 of the New York City Zoning Resolution (“ZR”) to effectuate the development of a mixed use building at 42 West 18<sup>th</sup> Street (Block 819, Lot 15) in a C6-4A zoning district in Manhattan Community District Five. The applicant will also restore, on the same zoning lot, the facades of two existing structures that are contributing buildings to the Ladies’ Mile Historic District (Block 819, Lots 14 and 66), and enlarge the existing building on Lot 66. This special permit requests waivers in base and setback, rear yard equivalent, minimum distance between buildings, and height.

In order to obtain a permit pursuant to ZR § 74-711, the following conditions must be met:

- (1) any application pursuant to this Section shall include a report from the Landmarks Preservation Commission stating that a program has been established for continuing maintenance that will result in the preservation of the subject *building* or *buildings*, and that such *use* or *bulk* modifications, or restorative work required under the continuing maintenance program, contributes to a preservation purpose;
- (2) any application pursuant to this Section shall include a Certificate of Appropriateness, other permit, or report from the Landmarks Preservation Commission stating that such *bulk* modifications relate harmoniously to the subject landmark *building* or *buildings* in the Historic District, as applicable; and
- (3) the maximum number of *dwelling units* shall be set forth in Section 15-111 (Number of permitted dwelling units).

In order to grant a special permit, the City Planning Commission (CPC) shall find that:

- (1) such *bulk* modifications shall have minimal adverse effects on the structures or *open space* in the vicinity in terms of scale, location and access to light and air; and
- (2) such *use* modifications shall have minimal adverse effects on the conforming *uses* within the *building* and in the surrounding area.

## PROJECT DESCRIPTION

The project site is comprised of Tax Lots 14, 15, and 66 on Block 819, bounded by West 18<sup>th</sup> Street to the north, Fifth Avenue to the east, West 17<sup>th</sup> Street to the south, and Sixth Avenue to the west. The applicant is seeking a special permit pursuant to ZR § 74-711 in order to construct a new building on Lot 15, enlarge the existing building on Lot 66, and restore the facades of the existing buildings on Lots 66 and 14. Currently, Lots 66 and 14 are occupied by buildings containing commercial uses that will remain and be restored. Lot 15 is being used as a 54-space public parking lot.

### Background

In 2001, the Landmarks Preservation Commission (LPC) issued a Certificate of No Effect (CNE 02-0492) for proposed work on the building located on Lot 14, and a Certificate of Appropriateness (COFA 02-0504) for alterations and additions to the buildings on Lots 14 and 66, as well as the construction of a new building on Lot 15. In 2004, the CPC granted a special permit pursuant to ZR § 74-711 (C 020244 ZSM) for this new building and enlargement to existing buildings pursuant to Uniform Land Use Review Procedure (ULURP).

In 2004, the CPC rezoned the area bounded by Fifth Avenue, West 17<sup>th</sup> Street, Sixth Avenue, and West 22<sup>nd</sup> Street from an M1-6M to a C6-4A district (C 040331 ZMM), and amended ZR § 11-44, 23-633, and 35-24 to clarify zoning text, grandfather the special permit previously approved for the project site (M 020244 ZSM), and allow street wall heights to match adjacent street walls provided that such height does not exceed 150 feet (N 040332 ZRM). This rezoning allowed the conversion to and construction of residential uses as of right within the rezoned area.

The previous special permit was modified in 2004 (M 020244A ZSM). In 2008, the LPC issued a Certificate of Appropriateness approving further design modifications (COFA 08-8225). This special permit was renewed for three years on May 5, 2008 (N 080266 CMM) and for an additional three years on August 8, 2011 (N 110199 CMM). This project did not proceed and the special permit lapsed on February 2, 2014.

On December 3, 2014, the LPC issued a Certificate of Appropriateness (COFA 16-5428) approving the current proposed building and restoration plan for the existing buildings.

On March 22, 2016, the New York City Council approved the Mandatory Inclusionary Housing (MIH) text amendment with modifications. The text amendment makes the production of affordable housing a mandatory condition of residential development when developers build in an area zoned for MIH, whether as a part of a City plan or a private rezoning application. In addition, with regard to special permit use and bulk modifications, ZR § 74-32 states:

Where a special permit application would allow a significant increase in #residential floor area# and the special #floor area# requirements in #Mandatory Inclusionary Housing areas# of paragraph (d) of Section 23-154 (Inclusionary Housing) are not otherwise applicable, the City Planning Commission, in establishing the appropriate terms and

conditions for the granting of such special permit, shall apply such requirements where consistent with the objectives of the Mandatory Inclusionary Housing program as set forth in Section 23-92 (General Provisions).

### **Proposed Development**

The applicant would restore and repair the facades of the two historic buildings on Lots 66 and 14 pursuant to the Certificate of No Effects issued by the LPC (CNEs 17-7108 and 7109). The buildings would be subject to a continuing maintenance plan as described in the modification of use agreement (MOU 17-1707).

The applicant would also alter and remove 184 square feet of floor area from the ground floor of the existing building on Lot 66, and construct a three-story rear enlargement totaling 438 zoning square feet, resulting in a net increase in floor area of 292 zoning square feet of retail and storage space in the existing building.

On Lot 15, the applicant would construct an approximately 84,024 square foot mixed use building with 68,097 square feet of residential use (66 market-rate dwelling units); 15,296 zoning square feet of commercial use; and a below-grade, one-level parking garage with 17 accessory parking spaces and 39 bicycle parking spaces. Lot 15 generates 71,000 zoning square feet of floor area, and utilizes 13,024 zoning square feet of unused development rights from the remainder of the zoning lot. In total, the zoning lot would contain 118,831 zoning square feet of development (8.61 FAR)

The new building on Lot 15 would consist of a north wing fronting on 18<sup>th</sup> Street, and a south wing fronting on 17<sup>th</sup> Street. The north wing, with a frontage of 25 feet, would be 17 stories and 170 feet in height with no front setback. The south wing, with a frontage of 50 feet, would be 16 stories and 166 feet in height with no front setback. The two wings would be connected by a three-story base, with ground-floor retail use on the first floor, and office and retail use on the second and third floors.

According to the Environmental Assessment Study (EAS) for this current special permit application, the no-action condition would allow for 40 residential units with 45,730 zoning square feet of residential floor area and the with-action condition would allow for 66 residential units with 68,097 zoning square feet of residential floor area. Thus, given the no-action condition in the EAS, the special permit would facilitate the development of 26 more market-rate residential units (22,367 zoning square feet of residential floor area).

### **Area Context**

The project site is located in a C6-4A zoning district in the Ladies' Mile Historic District. This approximately five-block area was rezoned from M1-6M in 2004 and allows residential uses as a matter of right. Uses along West 17<sup>th</sup> Street and West 18<sup>th</sup> Street include newly constructed or converted residences, community facilities, and commercial establishments ranging from restaurants to bookstores and salons. The building types include two- to four-story commercial

buildings, five- to six-story commercial buildings, and taller loft buildings that range in height from 140 to 185 feet and rise without setback from the street line.

In 1989, the Landmarks Preservation Commission (LPC) designated the Ladies' Mile Historic District, between West 15<sup>th</sup> Street and West 24<sup>th</sup> Street, and east of Broadway and west of Sixth Avenue. The District's takes its name from a stretch of Broadway that was a fashionable shopping center in the last third of the 19<sup>th</sup> century. The area is defined by a variety of buildings reflecting the changing nature of retailing, commerce, and manufacturing, as well as advances in building technology from the second half of the 19<sup>th</sup> century to the early 20<sup>th</sup> century. The buildings illustrate the history of New York's commercial architecture and its stylistic, structural, and technological responses to changes in business and commerce.

The area is well served by mass transit with multiple subway lines nearby, including the F/M lines at 14<sup>th</sup> Street and Sixth Avenue, the N/Q/R lines at Union Square, and the 1 line at 18<sup>th</sup> Street and Seventh Avenue. The PATH train is also nearby at 14<sup>th</sup> Street and 23<sup>rd</sup> Street, and the crosstown buses run along 14<sup>th</sup> Street and 23<sup>rd</sup> Street as well.

### **Proposed Actions**

The applicant seeks a **special permit** pursuant to ZR § 74-711 to allow:

- (1) Location of a building not in compliance with the applicable base and setback regulations set forth in ZR § 35-24 and ZR § 23-633. The south wing of the new development on Lot 15 would rise to a height of 166 feet with no setback, which exceeds the maximum permitted base height of 125 feet without setback.
- (2) Rear yard equivalent that does not comply with ZR § 23-532. The Zoning Resolution requires a rear yard equivalent of 60 feet on a through lot. The residential space in the proposed building on Lot 15 would encroach into the rear yard equivalent by 10 feet, resulting in a 50 feet rear yard equivalent.
- (3) Location of building portions that do not comply with ZR § 23-711 regarding minimum distance between windows on a zoning lot. The minimum required distance between buildings is 60 feet on a single zoning lot. The building on Lot 15 would have a distance of 50 feet between its north and south wings.
- (4) Portion of the building with a street frontage of less than 45 feet in width to exceed permitted maximum height pursuant to ZR § 23-692. The maximum permitted height for a building with less than 45 feet of frontage on a narrow street (60 feet in width) is 60 feet. The building on Lot 15 would have a north wing of 170 feet.

### **COMMUNITY BOARD RECOMMENDATION**

At its Full Board meeting on May 12, 2016, Manhattan Community Board 5 (CB5) approved a resolution recommending **denial**, *unless* the Mandatory Inclusionary Housing Program is applied in accordance with the Zoning Resolution as defined in ZR § 23-92, and furthermore found that

the waiver of rear yard requirements would result in a negative impact to adjacent buildings. The resolution passed with a vote of 40 in favor; 1 opposed; and 3 abstaining.

## **BOROUGH PRESIDENT’S COMMENTS**

The applicant proposes an attractive and thoughtful project that respects the visual character of the Ladies’ Mile neighborhood. The construction of the new building would complete the streetwall on West 17<sup>th</sup> and West 18<sup>th</sup> Streets, and the design of both façades relate well to the context of the streetscapes. The restorative work on the existing buildings will reinforce their historic and architectural character and that of the historic district. This project clearly serves a preservation purpose for the applicability of ZR § 74-711.

However, this project is troubling with regard to the application of the Mandatory Inclusionary Housing program. The New York City Department of City Planning’s Zoning Division and Counsel’s office have concluded that this special permit application does not result in MIH being applied because the requested bulk waivers simply facilitate the use of residential floor area that is already permitted, instead of creating newly permitted residential floor area.

In my testimony on the MIH text amendment before the City Planning Commission on December 16, 2015, the first reason I gave as to why I was able to support the proposed text amendment was that “[i]n addition to neighborhood rezonings, it would apply to all special-permit applications – the best part of it – by private developers to add more than 10 residential units of housing to any area where this housing couldn’t otherwise be built.”

The language of the text amendment indicates as much. Section 23-933 on Mandatory Inclusionary Housing Areas states that the “Inclusionary Housing Program shall also apply as a condition of City Planning Commission approval of special permits as set forth in Section 74-32 (Additional Considerations for Special Permit Use and Bulk Modifications). . . .” Then in section 74-32 entitled “Additional Considerations for Special Permit Use and Bulk Modifications” the text reads that “[w]here a special permit application would allow a significant increase in #residential floor area# . . . , the City Planning Commission, in establishing the appropriate terms and conditions for the granting of such special permit, shall apply such requirements where consistent with the objectives of the Mandatory Inclusionary Housing program as set forth in Section 23-92 (General Provisions).

The text does not make reference to an increase in residential FAR being required for the applicability of MIH, nor does it state an increase in permitted residential floor area is required. I believe that it is important to apply MIH to any special permit that will enable more than ten units of housing or 12,500 square feet of residential floor area to be built where it could not have been built absent the approval of the special permit.

The bulk permit sought in this application facilitates more residential units and should fall within the requirements for application of the MIH program. However, the applicant has also provided us with a scenario where that residential floor area can be realized in existing structures. While important to note, its importance is in showing the difference between reallocating floor area

within existing structures, which should not be subject to MIH, versus waivers that allow for additional floor area. It remains my belief that the MIH requirements should, at a minimum, apply to the additional floor area facilitated by this special permit approval, in the manner of an enlargement.

Furthermore, I recognize that the requested waivers would have an adverse impact on nearby buildings on the block. The height of the towers on 17<sup>th</sup> and 18<sup>th</sup> Streets and the 50-foot rear yard equivalent would decrease access to light and air for the neighboring building at 32 W 18<sup>th</sup> Street in particular. I would also like to join SEIU 32BJ and CB5 in asking 42 West 18<sup>th</sup> Realty Corp to commit to creating high quality building service jobs and paying their building service workers the prevailing wage.

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

Therefore, the Manhattan Borough President recommends **denial** of ULURP Application No. C 160082 ZSM **unless** the Mandatory Inclusionary Housing Program is applied in accordance with ZR § 23-92.

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