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October 25, 2019

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

Dear Ms. Lago:

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

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

Whereas:

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

CERTIFICATE OF OCCUPANCY ISSUES

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

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

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

SPECIAL PERMIT ISSUES

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

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

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

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

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

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

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

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

QUALITY OF LIFE ISSUES

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

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

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

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

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

IN CONCLUSION

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

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

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

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

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

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

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

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

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

Sincerely,



Carter Booth Chair
Community Board #2, Manhattan



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



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

CB/jt

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