



## CITY PLANNING COMMISSION

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July 23, 2014/Calendar No. 13

C 140263 ZSM

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**IN THE MATTER OF** an application submitted by RVART Owner LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the use regulations of Section 42-14(D)(2)(a) to allow retail uses (Use Group 6 uses) below the floor level of the second story of an existing 3-story commercial building occupying more than 3600 square feet of lot area, on property located at 155 Mercer Street (Block 513, Lot 28), in an M1-5A District, within the SoHo Cast-Iron Historic District, Borough of Manhattan, Community District 2.

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The application was filed by RVART Owner LLC on January 27, 2014, for a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the use regulations of Section 42-14(D)(2)(a) of the Zoning Resolution to permit Use Group 6 retail use below the floor level of the second story of a building located in an M1-5A zoning district in the SoHo area of Manhattan.

### **BACKGROUND**

155 Mercer Street is an existing 3-story, mezzanine, and cellar-level building located on the west side of Mercer Street between West Houston and Prince Streets in the SoHo neighborhood of Manhattan. The building was constructed in 1854 and served as the headquarters for New York City's volunteer fire department. The building, which was aptly named "Firemen's Hall," was later occupied by the FDNY's first paid company, Ladder 20, in 1889. Wide apparatus doors were installed in the 1920s. Subsequently, the building underwent number of changes and by the 1980s all of the ornamental features of the original 1854 façade had been removed. Although not designated as an individual landmark, the building is located in the SoHo Cast-Iron Historic District, which was designated as a Historic District by the Landmarks Preservation Commission in 1973, and the building was noted as being a contributing structure to the architectural and historic character of the area.

The building was most recently occupied by the Joyce SoHo Dance Studio, but is currently vacant. The building contains 15,998 square feet of gross square feet, including 677 square feet on a mezzanine level between the second and third floors. With a lot area of 4,587 square feet and a footprint of 3,857 square feet, the site contains an FAR of 2.52 and rises to a height of

approximately 56' to the top of its parapet. The building is setback 5 feet from the rear lot line, and a spiral staircase in the rear yard leads from the first floor to the cellar level. The building has a 15-foot rear yard that begins at the second level, and two approximately-two-foot side yards. Mercer Street, which the building fronts on, is a narrow street (50 feet) with 12-foot sidewalks on either side.

This stretch of Mercer Street between West Houston and Prince Streets is developed with buildings of varying heights, ranging from a 2-story restaurant two storefronts away, to a 12-story residential building directly across the street. One block east of the site is Broadway, which is generally developed with a mix of 5-7 story buildings and several 10-12 story buildings. The surrounding area is generally characterized by 2-6 story cast-iron and brick commercial buildings, many with ground floor retail uses. However, many buildings to the west contain residential uses on the upper floors, and some have upper-floor Joint Living-Working Quarters for Artists.

The site is located in an M1-5A zoning district, which permits commercial and high-performance manufacturing uses, as well as Joint Living-Working Quarters for Artists. Section 42-14(D)(2)(a) does not allow retail use below the floor level of the second story of a building that occupies more than 3,600 square feet of lot area. Other uses may be permitted below the floor level of the second story by special permit by the City Planning Commission, pursuant to Section 74-781 or, in the case of a building located in a Historic District designated by the Landmarks Preservation Commission, Section 74-711. In order to allow Use Group 6 retail use on the ground and cellar levels of the subject building, the applicant requests a special permit pursuant to Section 74-711 to modify the use regulations of Section 42-14(D)(2)(a), which would permit the entire building to be occupied as a 3-story and cellar retail establishment. As part of the redevelopment, the mezzanine level and a portion of the third floor will be removed. The resulting building will contain 14,589 gross square feet (10,137 gross square feet above grade) and a reduced FAR of 2.18. The building will be occupied by one retail tenant. No changes in bulk are proposed.

Also as part of the redevelopment, the applicant will restore the architectural features and

original brownstone color of the building that have been removed over the past 40 years to more closely resemble the building's original 1854 façade, based on historic photographs and drawings. The existing large, apparatus door will be replaced with glass, and the existing flagpole will be relocated. The application includes a report from the Landmarks Preservation Commission stating that a continuing maintenance program has been established that will result in the preservation of 155 Mercer Street, and that the proposed use modification contributes to a preservation purpose.

## **ENVIRONMENTAL REVIEW**

The application (C 140263 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 designated CEQR number is 14DCP118M. The lead is the City Planning Commission.

After a study of the potential environmental impacts of the proposed action, a Negative Declaration was issued on March 17, 2014. The Negative Declaration included an (E) designation E-338 for hazardous materials to avoid the potential for significant adverse impacts, as described below.

The (E) designation requirement will apply to the project site on Block 513, Lot 28.

The (E) designation text related to hazardous materials is as follows:

### **Task 1**

**The fee owner of the lot restricted by this (E) designation is required to submit to the Office of Environmental Remediation (OER), for review and approval a new or updated Phase II Environmental Site Assessment (Phase II), to adequately identify/characterize the surface and subsurface soils of the subject parcel. A Phase II Investigative Protocol/Work Plan summarizing the proposed soil vapor sampling activities should be submitted to OER for review and approval. The soil vapor sampling should be conducted in accordance with the New York State Department of Health's October 2006**

**Guidance for Evaluating Soil Vapor Intrusion in the State of New York.** The soil vapor samples should be collected and analyzed by a New York State Department of Health Environmental Laboratory Approval Program certified laboratory for the presence of VOC's by the United States Environmental Protection Agency Method TO-15. An Investigative Health and Safety Plan (HASP) should also be submitted to OER for review and approval.

No sampling shall begin until written approval of a protocol is received from OER. The number and location of samples should be selected to adequately characterize the site, specific sources of suspected contamination (i.e., petroleum based contamination and non-petroleum based contamination), and the remainder of the site's condition. The characterization should be complete enough to determine what remediation strategy (if any) is necessary after review of sampling data. Guidelines and criteria for selecting sampling locations and collecting samples are provided by OER upon request.

**Task 2**

A written report with findings and a summary of the data must be submitted to OER after completion of the testing phase and laboratory analysis for review and approval. After receiving such results, a determination is made by OER if the results indicate that remediation is necessary. If OER determines that no remediation is necessary, written notice shall be given by OER.

If OER determines that remediation is necessary based on test results, a proposed remediation plan must be submitted to OER for review and approval. The fee owner of the lot must complete such remediation as determined necessary by OER. The fee owner of the lot shall then provide proper documentation that the work has been satisfactorily completed.

A construction-related health and safety plan must be submitted to OER for approval and then implemented during excavation and construction activities to protect workers and the community from potentially significant adverse impacts associated with contaminated soil, groundwater and/or soil vapor.

With the implementation of the above (E) designation (E-338), no significant adverse impacts related to hazardous materials would occur.

The City Planning Commission has determined that the proposed action will have no significant effect on the quality of the environment.

## **UNIFORM LAND USE REVIEW**

This application (C 140263 ZSM) was certified as complete by the Department of City Planning on March 17, 2014, and was duly referred to Community Board 2 and the Borough President, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules.

### **Community Board Public Hearing**

Community Board 2 held a public hearing on this application on April 24, 2014, and on that date, by a vote of 38 to 0 with 0 abstentions, adopted a resolution stating no objection to the application, with the following comment:

CB#2, Man. has no objection to a special permit pursuant to ZR 74-711 to allow retail use on the ground floor and cellar at 155 Mercer Street, but does express concern about expansion of the Broadway retail atmosphere onto narrow Soho streets, and would prefer conversion of upper levels to other uses.

### **Borough President Recommendation**

This application was considered by the Borough President, who issued a recommendation on June 19, 2014 to approve the application, with the following comment:

The Borough President does share Community Board 2's concerns that the proposed project is just under the zoning square footage necessary to be considered a large scale retail establishment and has concerns as to how the necessary loading of merchandize will impact the traffic and pedestrian flow on Mercer Street, which is a narrow side street. In addition, the proposed project lends itself to the trend of the transformation of the SoHo neighborhood into a large scale flagship store locality that has the potential to have a cumulative negative impact on transportation, the character of the neighborhood, quality of life, and the vitality of retail diversity.

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

On June 11, 2014 (Calendar No. 2), the City Planning Commission scheduled June 25, 2014 for a public hearing on this application (C 140263 ZSM). The hearing was duly held on June 25, 2014 (Calendar No. 16). There were four speakers in favor of the application and none in opposition.

The applicant's representative provided an overview of the proposed redevelopment and program for the building. The project architect described the restorative work being undertaken as part of the redevelopment, and how such improvements would bring the building into a usable and first class, sound condition, as required by the Landmarks Preservation Commission.

The Vice Chairperson of the Land Use Committee of Manhattan Community Board 2 reiterated the Community Board's concerns with the spread of large retail establishments onto the narrow streets of SoHo. The Director of Community Development of the Office of the Manhattan Borough President reiterated the Borough President's concerns and recommendation of approval.

There were no other speakers and the hearing was closed.

## **CONSIDERATION**

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

The existing building at 155 Mercer Street occupies a lot area of 3,857 square feet area in an M1-5A zoning district, and pursuant to Section 42-14(D)(2)(a) of the Zoning Resolution, in such a building retail uses are not allowed below the floor level of the second story. All other uses that are permitted in an M1-5A zoning district, including Use Group 6 retail uses, are permitted above the floor level of the second story as-of-right. The requested special permit would allow retail uses on the first floor and cellar of the building to facilitate the conversion of the entire 3-story and cellar building to a clothing retail store, to be occupied by one tenant.

The Commission believes that the SoHo neighborhood, with a history of development consisting of a mix of commercial, warehouse, and industrial uses, has seen significant growth in ground floor retail establishments that has positioned the area as a shopping destination for residents and visitors alike. The Commission recognizes the concerns of the Community Board and the Borough President about the presence of large retail establishments on the narrow streets of SoHo, but also concurs with the Community Board and Borough President that, in this instance, the findings of the proposed special permit have been met. The Commission believes that Use

Group 6 retail uses on the ground and cellar levels of this site would be consistent with the established land use trends of the greater SoHo neighborhood and that the proposed use modifications would have a minimal effect on the conforming uses within the building and in the surrounding area.

The Commission believes that the proposed action will facilitate the renovation and preservation of 155 Mercer Street. The Commission further believes that redevelopment and improvement of this building, to be accomplished as a result of this special permit, will enhance the architectural and historical built fabric of the SoHo Cast-Iron Historic District.

## **FINDINGS**

The City Planning Commission hereby makes the following findings pursuant to Section 74-711 (Landmark preservation in all districts) of the Zoning Resolution:

- (1) not applicable
- (2) such use modifications shall have minimal adverse effects on the conforming uses within the building and in the surrounding area.

## **RESOLUTION**

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the environmental determination, and the consideration and findings described in this report, the application of RVART Owner LLC for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the use regulations of Section 42-14(D)(2)(a) to allow retail uses (Use Group 6 uses) below the floor level of the second story of an existing 3-story commercial building occupying more than 3600 square feet of lot area, on property located at 155 Mercer Street (Block 513, Lot 28), in an M1-5A District, within the SoHo Cast-Iron Historic District, Borough of Manhattan, Community District 2, is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 140263 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 Sherida E. Paulsen, filed with this application and incorporated in this resolution:

| <u>Drawing No.</u> | <u>Title</u>               | <u>Last Date Revised</u> |
|--------------------|----------------------------|--------------------------|
| Z-002              | Site Plan                  | 01/15/2014               |
| Z-003              | Zoning Data                | 01/15/2014               |
| Z-005              | Proposed East-West Section | 01/15/2014               |
| Z-006              | Proposed Cellar Floor Plan | 01/15/2014               |
| Z-007              | Proposed Ground Floor Plan | 01/15/2014               |

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. In the event the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this resolution and the restrictive declaration described below and any subsequent modifications to either document shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.
5. 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.

6. Development pursuant to this resolution shall be allowed only after the restrictive declaration attached to the report on this application, with such administrative and technical changes as are acceptable to the City Planning Commission, has been executed and recorded in the Office of the City Register, New York County. Such restrictive declaration shall be deemed incorporated herein as a condition of this resolution.
7. Upon 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.
8. 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 140263 ZSM), duly adopted by the City Planning Commission on July 23, 2014 (Calendar No. 13), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

**CARL WEISBROD, Chairman**  
**KENNETH J. KNUCKLES, ESQ., Vice Chairman**  
**ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,**  
**ALFRED C. CERULLO, III, MICHELLE R. DE LA UZ,**  
**MARIA M. DEL TORO, JOSEPH I. DOUEK, RICHARD W. EADDY,**  
**ANNA HAYES LEVIN, ORLANDO MARIN, Commissioners**

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Bo Riccobono, *First Vice Chair*  
Jo Hamilton, *Second Vice Chair*  
Bob Gormley, *District Manager*



Antony Wong, *Treasurer*  
Susan Kent, *Secretary*  
Keen Berger, *Assistant Secretary*

## COMMUNITY BOARD NO. 2, MANHATTAN

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May 21, 2014

Richard Barth, Director  
City Planning Commission  
22 Reade Street  
New York, NY 10007

Dear Mr. Barth:

At its Full Board meeting on April 24, 2014, CB#2, Manhattan (CB#2-Man.), adopted the following resolution:

**155 Mercer Street, west side of Mercer between Prince and West Houston Streets.** An application to the City Planning Commission for a special permit pursuant to ZR 74-711 to allow retail use on the ground floor and cellar of an existing 3-story building in an M1-5A district in the Soho Cast Iron Historic District.

**A resolution stating no objection to an application to allow retail use on the ground floor and cellar of a three story building in an M1-5A zone.**

### Whereas:

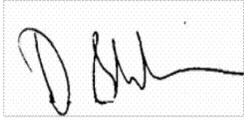
1. A presentation was made to the Land Use committee by Jerald Johnson of Fox Rothschild LLC and Sherida Paulsen of PKSB Architects;
2. The application includes the required report from the Landmarks Preservation Commission affirming that a program for continuing maintenance has been established and that the restorative work performed contributes to a preservation purpose;
3. The application makes a credible case that proposed use modifications will have minimal adverse impact on conforming uses in the area;
4. The loss of the existing conforming use, a dance studio, is regrettable, but the intended preservation purpose of the provisions of 74-711 are served;
5. The three stories of retail are just barely below the 10,000 square foot maximum permitted and continue an unfortunate trend transforming the neighborhood character with a predominance of large, multi-level, flagship retail stores;
6. The retail on the second and third stories are as-of-right;
7. No one from the public spoke for or against the application.

**Therefore it is resolved** that CB#2, Man. has no objection to a special permit pursuant to ZR 74-711 to allow retail use on the ground floor and cellar at 155 Mercer Street, but does express concern about expansion of the Broadway retail atmosphere onto narrow Soho streets, and would prefer conversion of upper levels to other uses.

Vote: Unanimous, with 38 Board members in favor.

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

Sincerely,



David Gruber, Chair  
Community Board #2, Manhattan



Tobi Bergman, Chair  
Land Use & Business Development Committee  
Community Board #2, Manhattan

DG/fa

c: Hon. Jerrold L. Nadler, Congressman  
Hon. Sheldon Silver, Assembly Speaker  
Hon. Deborah Glick, Assembly Member  
Hon. Daniel Squadron, NY State Senator  
Hon. Brad Hoylman, NY State Senator  
Hon. Gale A. Brewer, Manhattan Borough President  
Hon. Margaret Chin, Council Member  
Hon. Rosie Mendez, Council Member  
Edwin Marshall, Dept. of City Planning

# Borough President Recommendation

**City Planning Commission**  
22 Reade Street, New York, NY 10007  
Fax # (212) 720-3356

## INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representative as indicated on the Notice of Certification.

**Application: C 120201 ZSM**

### Docket Description:

**IN THE MATTER OF** an application submitted by pursuant to Sections 197-c and 201 of the New York City Charter for the grant of special permits pursuant to the following sections of the Zoning Resolution:

Section 74-711 - to modify use regulations of ZR §§ 42-00 and 42-14D(2)(a) to allow a Use Group 6 (retail and services uses);

to allow retail and services uses on the ground floor and cellar of an existing building at 155 Mercer Street, Block 513, Lot 28, located in an M1-5A zoning district within the in the SoHo-Cast Iron Historic District, in Community Board 2, Manhattan.

COMMUNITY BOARD NO: 2

BOROUGH: Manhattan

## RECOMMENDATION

- APPROVE
- APPROVE WITH MODIFICATIONS/CONDITIONS (List below)
- DISAPPROVE
- DISAPPROVE WITH MODIFICATIONS/CONDITONS (Listed below)

EXPLANATION OF RECOMMENDATION – MODIFICATION/CONDITIONS (Attach additional sheets if necessary)

See Attached

*John Brewer*

*June 19 2014*

\_\_\_\_\_  
BOROUGH PRESIDENT

\_\_\_\_\_  
DATE



OFFICE OF THE PRESIDENT  
BOROUGH OF MANHATTAN  
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Gale A. Brewer, Borough President

June 19, 2014

**Recommendation on ULURP Application ULURP No. C 140263 ZSM – 155 Mercer Street**

**PROPOSED ACTION**

RVART Owner LLC<sup>1</sup> (“the applicant”) seek a special permit pursuant to Section 74-711 of the Zoning Resolution (“ZR”) to modify use regulations of ZR §§ 42-00 and 42-14D(2)(a) to allow a Use Group 6 (retail and services uses) on the ground floor and cellar of an existing building at 155 Mercer Street, Block 513, Lot 28, (The Project Site), located in an M1-5A zoning district in the SoHo-Cast Iron Historic District, in Community Board 2, Manhattan.

Pursuant to ZR § 74-711, applicants may request a special permit to modify the use regulations of zoning lots that contain landmarks or are within Historic Districts as designated by the Landmarks Preservation Commission (“LPC”). In order for the City Planning Commission (“CPC”) to grant use modifications, the applicant must first meet the following conditions:

- 1) LPC has issued a report stating that the applicant will establish a continuing maintenance program for the preservation of the building and that such modification or restorative work will contribute to a preservation purpose;<sup>2</sup>
- 2) The application shall include a Certificate of Appropriateness, other permit, or report from LPC stating that such bulk modifications relate harmoniously to the subject landmark building in the Historic District<sup>3</sup>;
- 3) The maximum number of permitted dwelling units is as set forth in ZR § 15-111.<sup>4</sup>

Further, in order to grant a special permit, the City Planning Commission shall find that:

- 1) The 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;
- 2) Such modifications shall have minimal adverse effects on the conforming uses within the building and in the surrounding area.

**PROJECT DESCRIPTION**

The applicant proposes the rehabilitation and restoration of a historic SoHo fire house, previously used as a dance studio, and conversion of the space to a single-tenant retail establishment. The proposed

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<sup>1</sup> RVART Owner LLC is subsidiary of Thor Equities which is owned by Joseph J. Sitt

<sup>2</sup> The LPC voted to issue such a report on May 7, 2013.

<sup>3</sup> The LPC issued a Certificate of Appropriateness on August 15, 2013 and no bulk modifications are being proposed in this application.

<sup>4</sup> No dwelling units are being proposed in this application.

area of the building to 14,589 square feet of gross floor area and 9,998 zoning square feet. The proposed project will not enlarge the building and no new structures will be added

### **COMMUNITY BOARD'S RECOMMENDATION**

At its Full Board meeting on April 24, 2014, Manhattan Community Board 2 voted to recommend the approval of the application by unanimous vote of 38 in favor. The Community Board found the applicant met the preservation requirements of the § 74-711 Special Permit. Community Board 2 did express concerns that the proposed project would be just below the 10,000 zoning square feet maximum permitted. It also expressed concern that this application adds to the changing character of the retail sector of the neighborhood, replacing smaller businesses with larger scale flagship stores. Despite these concerns they found that the proposed project had minimal negative impact on the conforming uses in the surrounding area.

### **BOROUGH PRESIDENT'S COMMENTS**

The conditions and findings have been met for the requested special permit. The applicant has presented a thorough restoration and maintenance plan for the ground floor and façade of the building. The building is not being enlarged and the request of Use Group 6 retail is an appropriate use for the SoHo neighborhood, which to a large extent has already undergone a transition to a mixed-use environment.

In addition, on March 17, 2014 the City Planning Commission issued a negative declaration report that determined that the proposed project would not have a significant effect on the surrounding environment. Finally the applicant does not propose to include any residential units in the proposed project but instead retain the building as a single commercial retail tenancy.

The Borough President does share Community Board 2's concerns that the proposed project is just under the zoning square footage necessary to be considered a large scale retail establishment and has concerns as to how the necessary loading of merchandize will impact the traffic and pedestrian flow on Mercer Street, which is a narrow side street. In addition, the proposed project lends itself to the trend of the transformation of the SoHo neighborhood into a large scale flagship store locality that has the potential to have a cumulative negative impact on transportation, the character of the neighborhood, quality of life, and the vitality of retail diversity.

These concerns notwithstanding, the applicant met the conditions and findings for the special permit requested pursuant to ZR § 74-711.

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

**Therefore, the Manhattan Borough President recommends approval of ULURP Application No. 140263 ZSM**



Gale A. Brewer

Manhattan Borough President