

FROM THE DESK OF SAMUEL E. MELLER, ESQ.  
42 Broadway, Suite 1942, New York, NY 10019  
(212) 425-0230 • F: (212) 809-6174 • sem@fkbeatty.com

July 8, 2016

**Via Facsimile to (212) 720-3488**

New York City Planning Commission  
120 Broadway, 31<sup>st</sup> Floor  
New York, NY 10271

Re: Adorama Special Permit, Land Use Application ID: C 160082 ZSM  
38-42 West 18<sup>th</sup> Street  
New York, NY 10011

Dear Commissioners:

I am an attorney and a member of the bars of New York and New Jersey. In the course of my career, I have handled Article 78 matters as well as zoning, special permit and variance applications.

**Because the approval of the 74-711 special permit is an administrative action as opposed to a legislative action, the City Planning Commission is obligated to apply the Mandatory Inclusionary Housing Program if certain conditions are met.** ZR Section 23-933 states that the “Inclusionary Housing Program shall also apply as a condition of City Planning Commission approval of special permits as set forth in ZR Section-74-32...” ZR Section 74-32, entitled “Additional Considerations for Special Permit Use and Bulk Modifications” reads:

“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 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).”

As defined in ZR Section 12-10, #Residential Floor Area# refers to actual residential floor area on a site and not the “Maximum #Residential Floor Area Ratio#” multiplied by the lot area. The term “Maximum #Residential Floor Area Ratio#” is used elsewhere in the MIH text amendment adopted in 2016, but it is not used in ZR Section 74-32.

Condition #1 is met: **The threshold for a “significant increase” is met.** The applicability threshold for program is 10 units or 12,500 square feet of residential floor area. In this instance, the applicant’s Environmental Assessment Statement demonstrates that the special permit is necessary to allow for 26 residential units and 22,367 zoning square feet of residential floor area to be built that otherwise cannot be built absent the special permit.

Condition #2 is met: **Applying MIH at 38-42 West 18th Street would promote the creation and preservation of housing for residents with varied incomes in a redeveloping neighborhood and enhance neighborhood economic diversity.** The 2009-2013 American Community Survey estimates that while 17.3% of NYC's population has income below the poverty rate, only 2.0% of the subject site's census tract (Manhattan 54) population has income below the threshold. The 2009-2013 American Community Survey estimates that while 22.7% of NYC's population is "Black or African American," only 1.5% of the subject site's census tract (Manhattan 54) population identifies as such. The 2009-2013 American Community Survey estimates that while 28.7% of NYC's population is "Hispanic or Latino," only 9.0% of the subject site's census tract (Manhattan 54) population identifies as such. Because the census tract of the subject site is significantly less poor, Black and Hispanic than the City as a whole, the creation of affordable housing in this neighborhood would be fully consistent with the “objectives of the Mandatory Inclusionary Housing Program as set forth of Section 23-29” which are to “promote the creation and preservation of housing for residents with varied incomes in redeveloping neighborhoods and to enhance neighborhood economic diversity and thus to promote the general welfare.”

It is my professional judgement that given the Zoning Resolution and the set of facts in this case, the City Planning Commission’s failure to apply the MIH program to the subject special permit would be an arbitrary or capricious decision and would be annulled by an Article 78 challenge.

Sincerely,

Samuel Meller, Esq.