



CITY PLANNING COMMISSION

May 23, 2007 | Calendar No. 23

C 070125 ZSM

IN THE MATTER OF an application submitted by L & M Arts 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 22-00 (General Provisions) to allow Use Group 6 uses (art gallery) in the cellar, 1st floor, 2nd floor and 3rd floor of an existing 5-story building on property located at 45 East 78th Street (Block 1393, Lot 25), in a R8 District within the Special Limited Height District (LH-1A) and C5-1 District within the Special Madison Avenue Preservation district, within the Upper East side Historic District, Borough of Manhattan, Community District 8.

The application (C 070125 ZSM) was filed by L & M Arts LLC on September 28, 2006, for a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the use provisions of Section 22-00 to allow Use Group 6 uses (Art Gallery) in the cellar, 1st floor, 2nd floor and 3rd floor of an existing 5-story building on property located at 45 East 78th Street (Block 1393, Lot 25), in a R8 District within the Special Limited Height District (LH-1A) and C5-1 District within the Special Madison Avenue Preservation District, within the Upper East Side Historic District.

BACKGROUND

The subject property is located on the north side of East 78th Street just east of Madison Avenue and is improved with five-story building in red brick with marble details on the façade. The building's certificate of occupancy allows Use Group 2 (residential) on all floors. The cellar through third floor of the building has been occupied, since 1993, by commercial art gallery uses consisting of office and administration space, art storage, conference rooms and galleries. These uses are not permitted in an R8 district. The upper floors (4 and 5) are used by a non-profit foundation, a non-profit society and a residential unit, all of which are as-of-right uses.

Immediately to the west of the subject site is a ground floor commercial use. Adjacent to the site to the east is a 5-story building containing residential and commercial uses including and art gallery. Other ground floor uses on the block include medical offices, an art gallery, and retail. The surrounding area within the Upper East Side Historic District is composed of mansions, town houses, apartment houses and private carriage houses as well as several institutional buildings erected by around the turn of the 20th century. Madison Avenue is lined with small retail businesses and galleries with high pedestrian traffic.

The applicant is requesting a special permit pursuant to Section 74-711 to modify the use regulations of Section 22-00 (General Provisions) to allow Use Group 6 uses (art gallery) in the cellar, 1st floor, 2nd floor and 3rd floor. In order to grant the special permit, the Commission must find that such use modifications have minimal adverse effects on the conforming uses within the building and in the surrounding area.

Section 74-711 also requires a report from the Landmarks Preservation Commission (LPC) 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.

On September 29, 2006, the Landmarks Preservation Commission issued a report stating that a program for continuing maintenance has been established for the building and a restrictive declaration will be filed against the property. The designated building is a neo-federal style residence designed by Arthur C. Jackson and built in 1913-14. As part of the continuing maintenance program, the applicant has agreed to perform restorative work including repair work of brick and marble elements on the primary and secondary façades bringing the building up to a sound first class condition. On December 12, 2006, the Landmarks Preservation Commission issued a Certificate of Appropriateness.

ENVIRONMENTAL REVIEW

This application (C 070125 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 07DCP036M. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on February 5, 2007.

UNIFORM LAND USE REVIEW

The application (C 070125 ZSM) was certified as complete by the Department of City Planning on February 5, 2007, and was duly referred to Community Board 8 and the 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 8 held a public hearing on the original application (C 070125 ZSM) on February 21, 2007, and on that day, by a vote of 33 in favor, 1 opposed, 1 abstention, adopted a resolution recommending approval with the following condition:

Future occupation of the above referenced space be limited to gallery and residential use.

Borough President Recommendation

The application (C 070125 ZSM) was considered by the Borough President, who issued a recommendation for approval of the application on March 21, 2007, subject to the following condition:

The Manhattan Borough President recommends conditional approval of ULURP Application No. C 070125 ZSM provided that the restrictive declaration for the property clarifies that the use waiver is permitted only for a gallery.

City Planning Commission Public Hearing

On April 11, 2007 (Calendar No. 7), the City Planning Commission scheduled April 25, 2007, for a public hearing on the application (C 007125 ZSM). The hearing was duly held on April 25, 2007 (Calendar No. 24). There were four speakers in favor of the application

The applicant's architect described the building and the restorative work to be undertaken. The District Manager of Community Board 8 read the Community Board's resolution, which suggests limiting the use of the building to gallery and residential use. The Director of Land Use for the Manhattan Borough President discussed the Borough President's recommendation to restrict the commercial use to gallery use. A representative of the applicant also appeared in favor and indicated that the applicant would not be opposed to a restriction of uses. The representative also noted that the 4th and 5th floor of the building are currently occupied by two non-profit foundations, both as-of-right community facility uses, and that any restriction should include these uses.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes the application for a special permit (C 070125 ZSM) is appropriate.

The Commission notes that the existing art gallery has been located in the subject building since 1993 and that the owner of the art gallery is also the owner of building. East 78th Street contains a mix of uses that include residential and institutional buildings with ground floor commercial uses. Commercial uses, including an art gallery about the subject site on either side and the Commission believes that all uses allowed within Use Group 6 would be appropriate within the first, second, and third floors of the applicant's building. In addition, the building is located just east of Madison Avenue, a primary retail thoroughfare on the Upper East Side. The existing art

gallery use is compatible with the surrounding uses and will have minimal adverse effects on the land use patterns in the surrounding area.

FINDINGS

The City Planning Commission hereby makes the required findings pursuant to Section 74-711 of the Zoning Resolution:

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

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action 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 200 of the New York Charter, that based on the environmental determination, and the consideration and findings described in this report, the application submitted by L & M Arts 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 22-00 (General Provisions) to allow Use Group 6 uses (art gallery) in the cellar, 1st floor, 2nd floor and 3rd floor of an existing 5-story building on property located at 45 East 78th Street (Block 1393, Lot 25), in a R8 District within the Special Limited Height District (LH-1A) and C5-1 District within the Special Madison Avenue Preservation district, within the Upper East side Historic District, Borough of Manhattan, Community District 8, is approved, subject to the following conditions:

- 1) The property that is the subject of this application (C 070125 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 Acheson Doyle Partners Architects, P.C., filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
CPC0.0	Site Plan & Zoning Analysis	12/20/06
CPC0.1	Photographs & Key Plan	12/20/06
CPC1.0	Proposed & Existing Cellar & Basement	12/20/06
CPC1.1	Proposed & Existing First & Second	12/20/06
CPC1.2	Proposed & Existing Mezzanine & Third	12/20/06
CPC1.3	Proposed & Existing Fourth & Fifth	12/20/06

- 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) Development pursuant to this resolution shall be allowed only after the attached Restrictive Declaration, executed by Robert E. and Adrian G. Mnuchin on May 2, 2007 and the terms of which are hereby incorporated in this resolution, shall have been recorded and filed in the Office of the Register of the City of New York, County of New York

- 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) 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 report and resolution and any subsequent modifications 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.

- 7) 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 and the attached restrictive declaration 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 or of the attached restrictive declaration.
- 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 070125 ZSM), duly adopted by the City Planning Commission on May 23, 2007, (Calendar No. 23), is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

AMANDA M. BURDEN, AICP, Chair

KENNETH J. KNUCKLES, Esq., Vice Chair

ANGELA M. BATTAGLIA, P.E., IRWIN G. CANTOR, ANGELA R. CAVALUZZI, R.A.,

BETTY CHEN, RICHARD W. EADDY, LISA A. GOMEZ, JOHN MEROLO, NATHAN

LEVENTHAL, KAREN PHILLIPS, DOLLY WILLIAMS,

Commissioners