



CITY PLANNING COMMISSION

October 12, 2010 / Calendar No. 3

C 100140 ZSM

IN THE MATTER OF an application submitted by 70th Street Holdings, 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 requirements of Section 23-691 (Limited Height Districts), Section 23-692 (Height limitations for narrow buildings or enlargements), Section 23-663(b) (Required rear setbacks for tall buildings in other districts), and Section 23-462(c) (Side yards for all other residential buildings) to facilitate a 1-story rooftop enlargement of an existing 4-story residential building on property located at 45 East 70th Street (Block 1385, Lot 29), in an R8B District, within a Limited Height District (LH-1A), within the Upper East Side Historic District, Borough of Manhattan, Community District 8.

The application for the special permit was filed by 70th Street Holdings, LLC on November 4, 2009, to modify certain bulk regulations to facilitate the enlargement of an existing four-story building located at 45 East 70th Street (Block 1385, Lot 29) by constructing a one-story rooftop addition, within the Upper East Side Historic District in Community District 8, Manhattan.

BACKGROUND

The subject site is located at 45 East 70th Street (Block 1385, Lot 29), on the north side of East 70th Street between Park and Madison avenues within the Upper East Side Historic District. 45 East 70th Street is currently developed with a four-story, 14,280 square-foot, single-family building on a 4,218 square-foot zoning lot. The existing building has a roof height of 53 feet, contains a 30-foot rear yard and contains no side yards.

The subject building was designed by Aymar Embury II in 1929 as a single-family residence in the neo-French Classic style. The building's style, scale, design and materials are characteristic

of the special historical and architectural qualities of the Upper East Side Historic District, which make it a contributing building to the historic district.

The area surrounding 45 East 70th Street is typical of Upper East Side residential neighborhoods where low density five- to six-story residential buildings occupy midblocks and taller, higher density multi-family apartment buildings occupy the avenues. The neighborhood is characterized by a mix of residential and mixed-use buildings, as well as office, retail and other uses, including community facility and institutional buildings such as the Asia Society, the Frick Collection and a number of foreign consulate offices. The lot, Lot 32, immediately to the east of the subject building is developed with a 17-story (212-foot high) residential building, which is separated from 45 East 70th Street by a 10-foot open space. A five-story (72-foot high) townhouse abuts the west side of 45 East 70th Street. The buildings to the rear of the subject site range from 6 to 19 stories in height and contain 30-foot rear yards. The buildings directly across the street are four and five stories in height.

The subject zoning lot is located within the R8B zoning district/Limited Height District (LH - 1A). The R8B zoning district allows a maximum residential FAR of 4.0; the current building is constructed to an FAR of 3.39.

The applicant requests a special permit pursuant to Section 74-711 of the Zoning Resolution to modify height, rear yard line setback and side lot line requirements to allow for an enlargement to the building that would create a new fifth floor. The proposed enlargement would add 1,661

square feet of floor area to the existing building, thus increasing the height of the building from 53 feet to 64 feet and increasing the FAR from 3.39 to 3.78.

To facilitate the proposed development, a waiver is requested to modify the maximum allowable height, rear yard line setback and side lot line requirements. Pursuant to Section 23-691 of the Zoning Resolution, the maximum allowable height within the LH-1A zoning district is 60 feet. The proposed building enlargement would result in a building height of 64 feet. Secondly, the applicant requests modification of the rear wall height requirements of Section 23-663 (b), which limits the maximum rear wall height of a building to 60 feet, after which a setback of 10 feet is required. The proposed rear wall of the development would reach a height of 53 feet and provide a setback of three feet before reaching a total building height of 64 feet; therefore, the applicant is proposing a 3-foot setback at a height of 60 feet, rather than a 10-foot setback. Lastly, the applicant requests modification to Section 23-462 (c) which requires that open areas at any level along a side lot line measure at least 8 feet. The applicant is proposing to build to the westerly side lot line; however, along the easterly side lot line, the proposed development would provide an open area that varies in width from 4 feet to 9 1/2 feet.

Section 74-711 of the Zoning Resolution allows the City Planning Commission, by special permit, to modify use and bulk regulations (except floor area) in order to further the preservation of designated landmark buildings or buildings located within historic districts.

Section 74-711 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 August 6, 2009, the Landmarks Preservation Commission issued a Certificate of Appropriateness. On October 30, 2009, the Landmarks Preservation Commission issued a report stating that a program for continuing maintenance has been established for 45 East 70th Street (Block 1385, Lot 29) and a restrictive declaration will be filed against the property. The continuing maintenance program for 45 East 70th Street includes restorative work to the building's front and garden facades, fenestration and metal balustrades.

ENVIRONMENTAL REVIEW

This application (C 100140 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. This application was determined to be a Type II action which requires no further environmental review.

UNIFORM LAND USE REVIEW

This application (C 100140 ZSM) was certified as complete by the Department of City Planning on July 7, 2010, and was duly referred to Community Board 8 and the Borough President, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules.

Community Board Public Hearing

Community Board 8 held a public hearing on this application (C 100140 ZSM) on July 21, 2010 and on that date, by a vote of 26 in favor, 12 opposed, and 2 abstentions, adopted a resolution recommending approval of the application.

Borough President Recommendation

This application (C 100140 ZSM) was considered by the Borough President, who issued a recommendation approving the application on August 26, 2010.

City Planning Commission Public Hearing

On August 25, 2010 (Calendar No. 1), the City Planning Commission scheduled September 15, 2010, for a public hearing on this application (C100140ZSM). The hearing was duly held on September 15, 2010 (Calendar No. 15). There were two speakers in favor of the application and none in opposition.

The applicant's attorney and a representative of the Borough President's office appeared in favor. The applicant's attorney presented the proposal and noted that the enlargement on the fifth

floor will not be viewable from street level, that the buildings to the rear of the subject site contain 30-foot rear yards, and that the enlargement will result in a lower building height than other buildings on the north side of East 70th Street. The representative from the Borough President's office reiterated the Borough President's approval.

There were no other speakers and the hearing was closed.

CONSIDERATION

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

The Commission notes that the proposed development would increase the building's height at roof level from 53 feet to 64 feet, which is only 4 feet higher than the maximum allowed by zoning. The Commission further notes that the height of the proposed development would still be lower than the heights of the other buildings along the north side of East 70th Street. The Commission believes that the proposed increase in building height is consistent with the goals of the Limited Height District, enacted in 1982, which was intended to safeguard the historic scale and character of residential midblocks. The Commission also notes that the proposed addition would be set back from the building's front wall and, as determined by the Landmarks Preservation Commission in its approval process, would not be visible from the street.

The Commission also believes that the waiver of the required rear setback regulations is appropriate. The Commission notes that the area of encroachment is contained within an

approximately seven-foot by four-foot volume at the uppermost part of the rear of the building. The Commission also notes that the buildings which face the proposed rear encroachment are approximately 60 feet in distance from the proposed construction. As a result, the Commission believes that the waiver of the required rear setback would not affect the light and air of the structures and open space in the vicinity of the proposed building enlargement.

The Commission believes that the waiver of the required open area along the side lot line is appropriate. The Commission notes that open areas along a side lot line are not required, but when provided are subject to an 8-foot width requirement. The Commission notes that the encroachment area would contain the building's fire egress stair bulkhead and that the location of the encroachment area along the side lot line is limited to a 12-foot depth. The Commission further notes that a 9 ½ foot open area along the majority of the easterly side lot line would be provided and that no neighboring windows are located adjacent to the encroachment. The Commission believes that the waiver of the minimum depth required for an open area along the side lot line will have no effect on the light and air to the neighboring buildings and the surrounding area.

FINDINGS

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

- (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) Not applicable.

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 City Charter, that based on the environmental determination, and the consideration and findings described in this report, the application of 70th Street Holdings, 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 requirements of Section 23-691 (Limited Height Districts), Section 23-692 (Height limitations for narrow buildings or enlargements), Section 23-663(b) (Required rear setbacks for tall buildings in other districts), and Section 23-462(c) (Side yards for all other residential buildings) to facilitate a 1-story rooftop enlargement of an existing 4-story residential building on property located at 45 East 70th Street (Block 1385, Lot 29), in an R8B District, within a Limited Height District (LH-1A), within the Upper East Side Historic District, Borough of Manhattan, Community District 8, is approved subject to the following terms and conditions:

1) The property that is the subject of this application (C 100140 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 Fradkin & McAlpin Associates, LLP, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
CPC1	Zoning Calculation	March 26, 2010
CPC2	Proposed Site Plan	March 26, 2010
CPC3	Zoning District Analysis - Proposed Site Plan	March 26, 2010
CPC4	Zoning District Analysis - Proposed Section 1-1	March 26, 2010
CPC5	Zoning District Analysis - Proposed Section 2-2	March 26, 2010

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) Development pursuant to this resolution shall be allowed only after the restrictive declaration dated October 11, 2010, executed by 70th Street Holdings, LLC, 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.

4) 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.

5) 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.

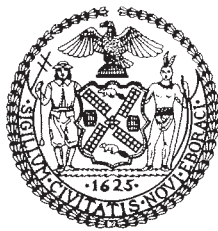
6) Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 100140 ZSM), duly adopted by the City Planning Commission on October 12, 2010 (Calendar No. 3), 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, FAICP Chair
KENNETH J. KNUCKLES, Esq., Vice Chairman
RAYANN BESSER, IRWIN G. CANTOR, P.E., ALFRED C. CERULLO, III,
BETTY Y. CHEN, MARIA M. DEL TORO, RICHARD W. EADDY,
NATHAN LEVENTHAL, ANNA HAYES LEVIN, KAREN A. PHILLIPS, Commissioners

Jacqueline Ludorf
Chair

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District Manager



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The City of New York
Manhattan Community Board 8

OFFICE OF THE
CHAIRPERSON

July 22, 2010

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Hon. Amanda M. Burden
Chair
The Department of City Planning
22 Reade Street
New York, New York 10007

Re: ULURP Application C100140 ZSM, Block 1385, Lot 29, 45 East 70th Street

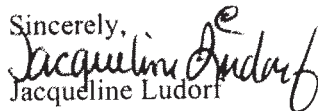
Dear Chair Burden:

At its Land Use/Full Board meeting on Wednesday, July 21, 2010 Community Board 8M approved the following resolution by a vote of 26 in favor, 12 opposed and 2 abstention.

Whereas, An application for a Special Permit to Modify Bulk Regulations at 45 East 70th Street, Block 1385, Lot 29-70th Street Holdings, LLC (the "Applicant) requests approval of an application for a special permit to allow the enlargement of a single-family residential building located at 45 East 70th Street, Block 1385, Lot 29 in the Borough of Manhattan, contrary to Sections 23-462, 23-663, 23-691, and 23-692 of the Zoning Resolution of the City of New York.

THEREFORE BE IT RESOLVED that Community Board 8M approves application C100140 ZSM requesting a special permit to allow the enlargement of a single-family residential building at 45 East 70th Street.

Kindly advise this office of your decision made concerning this matter.

Sincerely,

Jacqueline Ludorf
Chair

cc: Honorable Michael Bloomberg, Mayor of the City of New York
Honorable Scott Stringer, Manhattan Borough President
Honorable Carolyn Maloney, 14th Congressional District Representative
Honorable Liz Kruger, NYS Senator, 26th Senatorial District
Honorable Micah Kellner, Assemblyman, 65th Assembly District
Honorable Jonathan Bing, Assemblyman, 73rd Assembly District
Honorable Jessica Lappin, NYC Council Speaker, 5th Council District
Honorable Daniel Garodnick, NYC Council Member, 4th Council District
Neil Weisbard, Attorney



THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

SCOTT M. STRINGER
BOROUGH PRESIDENT

August 26, 2010

Recommendation for
ULURP Application No. C 100140 ZSM – 45 East 70th Street
by 70th Street Holdings LLC

PROPOSED ACTION

70th Street Holdings LLC¹ seeks approval of a **special permit pursuant to Section 74-711 of the Zoning Resolution (“ZR”)** to modify the bulk requirements of ZR §§ 23-462 (Side yards for all Other Buildings), 23-663 (Required Rear Setbacks for Tall Buildings in Other Districts), 23-691 (Limited Height Districts), and 23-692 (Height Limitations for Narrow Buildings) to allow the enlargement of a four-story residential building located at 45 East 70th Street on the Upper East Side. The building is on a single zoning lot in an R8B zoning district and within an LH-1A Limited Height District. The building is also located within the Upper East Side Historic District in Community District 8.

ZR § 74-711 addresses requests for special permits to modify bulk and use regulations of zoning lots that contain, as designated by the Landmarks Preservation Commission (“LPC”), landmarks, or are within Historic Districts. In order for the City Planning Commission to grant a bulk modification pursuant to ZR § 74-711, the applicant must first meet the following conditions: 1) LPC has issued a report that states 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; 2) LPC has issued a Certificate of Appropriateness that states that the bulk modifications relate “harmoniously” to the landmark building or other buildings in the Historic Districts; and 3) the maximum number of permitted dwelling units is as set forth in ZR § 15-111.² Further, the City Planning Commission must find that such bulk modifications shall have minimal adverse effects on structures or open space in the vicinity in terms of scale, location and access to light and air.

¹ The LLC’s principal officer is Ronald S. Lauder.

² The LPC issued such report on October 30, 2009, and granted a Certificate of Appropriateness. The LPC’s determination has not been re-examined in this recommendation.

PROJECT DESCRIPTION

70th Street Holdings LLC (the “applicant”) seeks a special permit to construct a one-story rooftop addition to 45 East 70th Street. The subject building is located on the north side of East 70th Street between Park and Madison avenues. It is a single-family mansion in the neo-French Classic style. The building, which was built in 1928, has a coquina stone façade. The building’s style, scale, materials, and details make it a contributing building in the Upper East Side Historic District.

The subject building is a four-story narrow building, with 42 feet of frontage along East 70th Street. It has a maximum building height of 53 feet at the fourth-floor roof level (59 feet 6 inches at the top of existing mechanicals). Currently, the building has no side yards and has a rear yard with a depth of 30 feet. The building is used as a single-family residence.

The building is located in an R8B zoning district and within an LH-1A Limited Height District. The R8B zoning district permits a base height of 55 to 60 feet and a maximum building height of 75 feet. The LH-1A Limited Height District (“LH-1A district”) applies additional height restriction to buildings in this R8B district; it allows a maximum building height of 60 feet. In addition, the building is subject to the provisions of ZR § 23-692, which sets forth additional regulations on the maximum height for the proposed enlargement. ZR § 23-692, commonly known as the “sliver law,” requires narrow buildings (less than 45 feet wide) on narrow streets be limited to a height equivalent to the width of the street or the streetwall of the lowest adjacent building, whichever is greater. An as-of-right building on the subject lot would be limited to a height of 60 feet without setback. In addition, if side yards are provided, though not required, they must have a minimum width of 8 feet pursuant to ZR § 23-462. Further, ZR § 23-663 requires a rear setback of a minimum of 10 feet above a height of 60 feet.

The applicant proposes to enlarge the existing building with an additional floor that would be approximately 10 feet 4 inches to 10 feet 11 inches in height. The enlargement would be set back 15 feet from East 70th Street, 3 feet from the rear façade, and would not be visible from the street. The rear setback for the enlargement would not comply with the required 10 foot setback. The proposed enlargement would not have a side yard on its western edge; however, on its eastern edge, a side yard of 9 feet 6 inches, at its widest, would be provided. A small portion of this side yard, where the stair bulkhead is located, would be non-compliant because only 4 feet of side yard would be provided. The proposed side yard faces an existing 10 foot wide alley, owned by the neighboring building to the east. With the proposed addition, the building would reach a maximum height of 64 feet at its roof-level (69 feet 10 inches at the top of proposed mechanicals), which is greater than would be permitted by the underlying zoning. The building’s use and bulk are otherwise as-of-right.

The surrounding neighborhood is primarily residential with a few retail, commercial and community facility uses. The lot is located on a block with primarily low-rise buildings on East 70th Street and taller buildings on the avenues. All the buildings on the north side of East 70th Street exceed the LH-1A district’s 60-foot building height limit. The building directly east of the

site, 720 Park Avenue, is 17 stories tall and is separated from the project site by a 10-foot alley. The building directly west, 43 East 70th Street, is six stories (including a rooftop addition) and has a building height of 72 feet. The rear portion of the proposed enlargement would obstruct one lot line window of the adjacent building to the west.

COMMUNITY BOARD'S RECOMMENDATION

At its joint Land Use-Full Board meeting on July 21, 2010, Manhattan Community Board 8 recommended approval of the application by a vote of 26 in favor, 12 opposed, and 2 abstentions.

BOROUGH PRESIDENT'S COMMENTS

The special permit pursuant to ZR § 74-711 is a powerful tool which can be used to modify many sections of the Zoning Resolution in order to make owning and maintaining historic structures less burdensome and more desirable. In return for waiver(s), applicants must ensure that the subject property is properly rehabilitated and maintained in perpetuity. In this case, the LPC has found that the proposed bulk changes and the ensuing restoration of the building will contribute to a preservation purpose worthy of allowing the applicant to request this bulk waiver from the City Planning Commission.

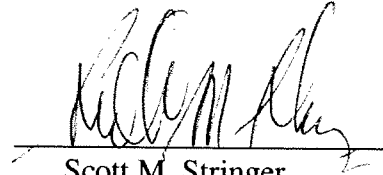
The proposed bulk modification would result in a building that is consistent in height and scale with other nearby buildings, particularly along the north side of East 70th Street. The extension will not be visible from the street. Even with the enlargement, the building will remain shorter than its neighboring buildings. The proposed addition will have a minimal incremental increase in shadows on neighboring buildings and open spaces, as indicated in the applicant's shadow analysis. The applicant has also been in communication with the owner of 43 East 70th Street regarding the impacted lot line window. The impacted window serves an exercise room that has another window facing the rear yard of 43 East 70th Street. The exercise room's other window is not affected by the proposed enlargement. Further, the proposed enlargement to a single family residence does not exceed the maximum number of permitted dwelling units. Finally, while the applicant is minimally waiving the required side yard width, side yards are not required in R8B zoning districts. As such, the proposed encroachment on the side yard will still provide more light and air to the neighboring alley than would otherwise be provided under an as-of-right development scenario. Therefore, the application meets the conditions and findings set forth for a bulk modification pursuant to ZR § 74-711.

Further, in applying for the special permit, the building's owner is undertaking extensive work to bring the historic building to a sound, first-class condition and is ensuring continued maintenance to keep the building in this state in perpetuity. Such work includes restoration of the building's façade, fenestration, and metal balustrades. In order to restore the building's unique coquina façade to its original form, air conditioning vents located on the building's front and rear façades will be removed. The proposed addition subject to this application will in part accommodate a new HVAC system necessary to remove the air conditioning vents and bring the building's façade back to its historic condition. This external change requires significant internal renovation, which includes the construction of a new internal HVAC system.

BOROUGH PRESIDENT'S RECOMMENDATION

This application meets the applicable conditions and findings for a special permit regarding bulk waivers pursuant to ZR § 74-711. The proposed bulk waiver will have minimal adverse effect upon the neighborhood.

Therefore, the Manhattan Borough President recommends approval of ULURP Application No. C 100140 ZSM.

A handwritten signature in black ink, appearing to read "Scott M. Stringer", is written over a horizontal line.

Scott M. Stringer
Manhattan Borough President