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Gale A. Brewer, Borough President

November 24, 2014

**Recommendation on ULURP Application No. C 150059 ZSM – 110 East 70th Street
By 110 Residence LLC**

PROPOSED ACTION

110 Residence LLC (“the applicant”) seek a special permit pursuant to Section 74-711 of the Zoning Resolution (“ZR”) to modify the rear yard requirements of Section 23-47, the narrow outer court requirements of Section 23-841 and the lot coverage requirements of Section 23-145 for an existing single family residential building at 110 East 70th Street, Block 1404, Lot 67 (“Project Site”) located in an R8B District in the Upper East Side Historic District in Community Board 8, 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;¹
- 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 District²;
- 3) The maximum number of permitted dwelling units is as set forth in ZR § 15-111.³

Further, in order to grant a special permit, the CPC must 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.

¹ The LPC issued a report dated December 26, 2013.

² The LPC issued Certificates of Appropriateness 09-8354 and 12-2066 on April 1, 2009 and June 28, 2011, respectively.

³ The building contains one dwelling unit. This is below the maximum permitted number of dwelling units set forth in Section 15-111.

PROJECT DESCRIPTION

The applicant proposes three waivers of bulk requirements in order to legalize the residential use of a portion of an existing rear yard extension (the “home office”) and a portion of wall that encroaches into the outer court. The residential building also has some existing legal non-complying conditions, including exceeding the maximum lot coverage and encroachments into the required rear yard. These areas, which are part of the main house, are not subject to the special permit.

The area that is subject to the waivers is approximately 130 square feet. The first waiver is to permit a reduction of 12’-4 ¼” in the 30 foot minimum required rear yard. The second waiver would allow the existing non-compliant lot coverage to be increased from 76.5% to 83.75%. Only 70% lot coverage is permitted as of right. The third waiver is to permit a reduction in the required width of one and one-third of the depth of a narrow inner court from 11’-3 5/8” to 10’-8.” The proposed use of the home office conforms to zoning and no change of use is proposed for the remainder of the building.

The building is located in the Upper East Side Historic District, which the LPC designated in 1981 and expanded in 2010. The district is known for its collection of townhouses and luxury apartment buildings, a testament to its heyday as the most fashionable residential district in the city. In the 1981 report, 110 East 70th Street was designated as being simplified Beaux-Arts in style and two major alteration periods were noted, 1905 when a new façade was added, and 1948, when the building was converted to a two family residence. The special permit pursuant to ZR § 74-711 requires the applicant enter into a Restrictive Declaration with the LPC and establish a continuing maintenance program for the preservation of the building.

Area Context

The project site is located in an R8B zoning district in the heart of the Upper East Side Historic District in Community Board 8, Manhattan. The project site is also subject to an additional zoning control as it is also located in a Limited Height District (LH-IA). Due west is Central Park. Most of the surrounding area also has R8B as the underlying zoning district. Also nearby is an R9X District along Lexington Avenue to the south, an R10A District along East 72nd Street to the north and east, and a C1-8X District along Lexington Avenue to the north. The nearest subway station is for the number 6 line and is about two blocks away at Lexington Avenue and 68th Street.

The project site is also adjacent to the Special Park Improvement District (PI), which limits the heights of new buildings to 210 feet or 9 stories, whichever is less, mandates street wall continuity, and was put in place to preserve the residential character and architectural quality of Fifth and Park Avenues in the neighborhood. Farther west, there is also the Special Madison Avenue Preservation District (MP). This district’s goal is to preserve and insure the commercial retail character of Madison Avenue while balancing the residential character on the mid blocks. The ground floor of buildings on Madison Avenue must be occupied by selected retail uses, while bulk controls such as height and street wall provisions ensure the continuity of the streetscape.

The area's land use is known for its townhouses, many of which are single-family homes, at the midblock and taller apartment building along the avenues. This built character is for the most part consistent with the applicable zoning. The townhouses range in height from four to five stories. There is also a substantial number of philanthropic, educational, and religious uses distributed throughout the neighborhood. The area is generally within the Upper East Side Historic District and there are a number of individual landmarks nearby. These include the Center for Inter-American Relations, the Automation House, the Italian Cultural House and the Consulate General of Italy.

Site Description

The Project Site is a five and a half story building located at 100 East 70th Street (Block 1404, Lot 67) in an R8B District within a Limited Height District. R8B Districts permit a maximum floor area ratio (FAR) of 4.0 for residential uses and 5.10 FAR for community facility uses. If the building contains both residential and community facility, the maximum FAR is 4.0. Buildings are allowed a maximum building height of 60 feet after the minimum street wall height of 55 feet has been met. The maximum street wall height is 60 feet.

The Project Site is a single-family residence that was originally constructed in 1869 as one of five in a series of brownstone row houses in the Anglo-Italianate style. In 1905, it underwent a significant alteration and the style of the building was changed to simplified Beaux-Arts, as was popular during that particular time. The façade was pulled closer to the street wall and the rear of the house was also enlarged. In 1922, the house was enlarged again in the rear extension. The house was altered again in 1948 when it was converted from a single family to a two family residence. A few years later, a new certificate of occupancy was requested to reflect the basement level use as a doctor's office. In 1995, plans were filed to convert the house back to a single family; the doctor's office remained and was enlarged under the community facility use and bulk requirements.

When the 1961 Zoning Resolution was enacted, the 1922 rear extension became a legal non-compliance as it encroached in the rear yard, had a non-complying narrow outer court and the total building exceeded the maximum lot coverage permitted. In 2004, text amendments were adopted which limited rear yard encroachments of community facility uses in residential districts; the 1995 addition then became a legal non-complying condition as well.

The applicant purchased the property in 2007, and in 2008 began the process of completely rebuilding the structure. At the time, the applicant filed for a building permit on the basis of the text of ZR § 54-41 which allows owners of one and two family residences to rebuild non-complying buildings after complete demolition. Building permits were issued in 2009 from Department of Buildings and the LPC for the complete demolition and reconstruction of the house, including the 1995 extension and the 1922 extension. In the ensuing years, multiple audits were conducted and passed as to whether these portions could be reconstructed and occupied. In 2011 this decision was reversed and further litigation ensued, resulting in the applicant's ability to occupy all portions of the home except the 130 square feet in question. The remedy was to pursue a special permit pursuant to ZR § 74-711 to legalize the non-complying portion of the rear yard extension that was built in the footprint of the 1995 addition.

Proposed Actions

The applicant seeks a special permit pursuant to ZR § 74-711 to modify bulk controls related to the rear yard, court, and lot coverage requirements in order to legalize the residential use of a portion of an existing rear yard extension (the “home office”) and a portion of wall that encroaches into the outer court. A restrictive declaration will be recorded which sets forth a continuing maintenance plan for the building to ensure the preservation of the building and the fulfillment of the preservation purpose as a condition of approval for this special permit.

As described in the application materials, Certificates of Appropriateness and LPC report, the reconstruction and restoration of the building has put it in a sound, first-class condition. The restoration involved the replication of original architectural details from the 1920s Beaux-Arts façade, a complete reconstruction floor by floor of the building’s structure and mechanical systems, and the recladding of an exposed party wall with historically appropriate brick. The LPC noted in its report to the City Planning Commission that the restoration work “returned the building closer to its original appearance, and will reinforce the architectural and historic character of the building, the streetscape, and the Upper East Side Historic District.”

COMMUNITY BOARD RECOMMENDATION

At its Land Use Committee, a committee of the whole, on October 9, 2014 Manhattan Community Board 8 (CB8) recommended approval of this application. The vote was 34 in favor, 2 opposed, and 2 abstentions. The recommendation was submitted to the Department of City Planning on October 22, 2014.

BOROUGH PRESIDENT’S COMMENTS

A unique attribute of Manhattan’s blocks is, in general, a consistent street wall along the perimeter of all four sides of the block. We do not have a road system that includes alleys; instead, we have “donuts.” These donuts on the Upper East Side were historically formed by the rear yards of townhouses, like 110 East 70th Street, built speculatively by developers as the residential development of Manhattan expanded ever northward in response to a post-Civil War population boom and the opening of Central Park. Today, it is the City of New York’s Zoning Resolution through its requirements for open space, minimum yards, and distance between buildings that maintains and ensures these open areas will remain in perpetuity to provide light and air.

The waiver requested as part of this application is for a relatively small amount of square footage within the donut or open area of this particular block. However, while it is important to note that much of the donut space has been intruded upon by other development, this aggregate intrusion should not be used as a justification for why it is appropriate for further obstruction. We should be careful about setting precedent for granting a waiver upon the cumulative adverse condition that may already exist. The findings for this special permit require discussion as to whether this individual waiver impacts the light and air, not whether this waiver is appropriate because the existing conditions already do so.

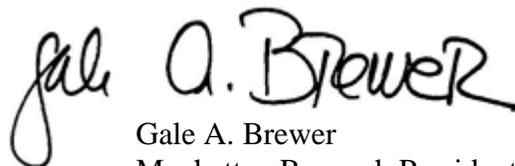
Also to be clear, this approval is not condoning the construction of community facility space under the bulk requirements of that use only to have that space converted to residential use soon after. Here the space was documented as being used for a doctor's office for a long period of time, at least fifty years. Neighborhoods and buildings should and can change over time.

The story of how and when the conclusion was reached that the home office was non-complying is unsettling. A building permit was issued and audits undertaken over the course of years only for this interpretation to be made after construction was completed and a certificate of occupancy was requested. If a mistake was made in the interpretation and that mistake created a non-complying condition, all efforts should be made to correct the non-compliance. This should be undertaken in a reasonable and judicious manner. The text of the Zoning Resolution is complex and many memos and interpretations already exist. These documents are encouraged to be made available online even in draft form to ensure transparency and that these discussions occur before shovels hit the ground and such a painstaking and commendable restoration is undertaken.

However, many of these concerns are broader than the special permit under consideration. The Manhattan Borough President believes the conditions and findings have been met for the requested special permit. The encroachments into the rear yard subject to this permit are minimal and do not significantly impact light and air; nor is this addition visible from the street. The applicant has already completed a first-class restoration of the building. A great amount of research was undertaken by the family to ensure the right brick, windowpane treatment and pattern, and attention was paid. In addition, it is appreciated that the applicant's sought the rationale behind the façade changes from 1905, including understanding the significance of its former inhabitants, that resulted in a completely different style designation for this row house from its immediate neighbors. Given that the family who undertook this restoration marked by such painstaking detail and work will occupy the building, the maintenance plan and commitment to the building are considered with confidence.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends approval of ULURP Application No. C 150059 ZSM.


Gale A. Brewer
Manhattan Borough President