



IN THE MATTER OF an application submitted by 172-174 East 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 rear yard requirements of Section 23-47 (Minimum Required Rear Yards) and the minimum distance between legally required windows and lot lines of Section 23-86 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines) to facilitate a 2-story penthouse enlargement of an existing three-story mixed use building, on property located at 172-174 East 73rd Street (Block 1407, Lot 44), in an R8B District, Borough of Manhattan, Community District 8.

This application for a special permit was filed by 172-74 East LLC on August 24, 2017. The special permit seeks to modify the rear yard requirements of ZR Section 23-47 and the minimum distance between legally required windows requirements of ZR Section 23-86 to facilitate the renovation and expansion of a landmarked building.

BACKGROUND

The proposed development is located at 172-74 East 73rd Street (Block 1407, Lot 44) on the south side of East 73rd Street between Third and Lexington avenues in Manhattan Community District 8. The site is currently developed with a three-story historic building constructed in 1889 and designed by the architect Frank Wennemer in a Romanesque Revival style with neo-Grec details. It is a New York City landmark (N 80528 HKY) and a contributing property to the East 73rd Street Historic District, listed on the State and National Registers of Historic Places. The building was originally used as a carriage house and was converted into a garage once carriages became obsolete. In 1963, the Board of Standards and Approvals granted a variance (1134-62-BZ) to allow a photography studio to occupy the ground floor and part of the second floor. In

1965, the variance was amended to allow an office (Use Group 6) to occupy the first floor with residences on the second and third floors. This office was used most recently by a psychotherapist. The building is currently vacant.

The development site is adjacent to the Upper East Side Historic District, and there are several landmarked buildings in the vicinity, including two landmarked Italianate rowhouses and 13 carriage houses on the same block as the subject property. Twelve of these carriage houses have been converted into residences and one is used as a garage. According to Department of Buildings records, at least five of the landmarked carriage houses have undertaken vertical expansions similar to the proposed development.

The surrounding area features a mix of building forms and uses. In general, midblocks are characterized by brownstones and mid-rise residential buildings and wide streets are characterized by taller residential buildings, such as the 15-story residential building that abuts the rear lot line of the property. The predominant land use is residential, with commercial ground floor uses found along the avenues. A number of institutions are located nearby, including Marymount Manhattan College (one block south), Robert F. Wagner Middle School (three blocks northeast), and Lenox Hill Hospital (three blocks northwest). Central Park is four blocks to the west. The area is served by the 4, 6, and Q subway lines and numerous bus lines.

The subject building is located on a 2,554-square-foot lot with 25 feet of frontage along East 73rd Street. The existing building has a total floor area of 5,605 square feet, a floor area ratio (FAR) of 2.19, and a height of 35 feet 10 inches. The site is zoned R8B, which is a contextual zoning

district with a maximum residential FAR of 4.0 and a maximum height of 75 feet with setbacks. The existing building predates the 1961 Zoning Resolution and contains features that do not conform to bulk regulations regarding residential areas. Currently, the first and second floors of the building, and attendant windows, encroach 24 feet into the required 30-foot rear yard, with a small attached shed encroaching 30 feet.

The applicant proposes to enlarge the existing building to create a two-unit residence. The proposed expansion would entail extending the third floor toward the rear property line and adding a new fourth floor with a bulkhead. The enlargement would add 3,215 square feet of zoning floor area to the existing building for a total zoning floor area of 8,820 square feet (3.45 FAR). The proposed development would also include the excavation of a cellar, alterations to the building's front façade, and other renovations. Once completed, the building would have a maximum height of 54 feet 5 inches, although the new fourth floor would be set back 15 feet from the front lot line to reduce its visibility by pedestrians on East 73rd Street.

The proposed third floor extension, to be built over the existing second floor, would encroach 14 feet into the required rear yard and the proposed fourth floor addition would encroach nine feet into the required rear yard. New noncompliant rear windows would be introduced on the third and fourth floors as well. Existing noncompliant windows on the second floor would remain. On the first floor, two new noncompliant windows and two new noncompliant glass doors would be introduced, replacing existing windows and doors. The small one story shed attachment would be removed from the first floor.

As the bulk and rear windows of both the existing building and the expansion would be non-compliant with the existing zoning regulations, the applicant requests a special permit pursuant to Section 74-711 to waive Section 23-47, requiring a minimum rear setback of 30 feet, and Section 23-861, requiring a minimum distance of 30 feet from legally required windows to rear lot line. In order to grant the special permit, the City Planning Commission is required to find that the proposed bulk modifications would have minimal effects on the nearby structures or open space in terms of scale, location, and access to light and air. As a condition of the special permit, a restrictive declaration codifying continued maintenance of the exterior of the property would also be recorded.

ENVIRONMENTAL REVIEW

This application (C 180066 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 New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 18DCP029M. The lead is the City Planning Commission.

The application was determined to be a Type II action, which requires no further environmental review.

UNIFORM LAND USE REVIEW

This application (C 180066 ZSM) was certified as complete by the Department of City Planning on September 18, 2017, 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

Manhattan Community Board 8 held a public hearing on this application on October 11, 2017 and, on that date, adopted a resolution recommending approval of the application by a vote of 30 in favor, nine opposed, no abstentions, and one not voting with cause.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation approving the application on November 20, 2017.

City Planning Commission Public Hearing

On November 29, 2017 (Calendar No. 5), the City Planning Commission scheduled December 13, 2017 for a public hearing on this application (C 180066 ZSM). The hearing was duly held on December 13, 2017 (Calendar No. 25). There were two speakers in favor of the application and no speakers in opposition.

The applicant's primary representative stated that the proposed bulk waivers would allow for useable floor plates that respect the building's historic condition. The project architect spoke about the height and setbacks of the proposed extension.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the grant of this special permit (C 180066 ZSM) to modify the bulk requirements is appropriate.

The special permit application would facilitate the renovation and expansion of a historic landmark building that would introduce new noncompliant bulk and rear windows. The bulk waivers will allow for the construction of an addition that is set back from the street and appropriate to the landmarked building. The applicant is not seeking a modification of use requirements.

The building is a historic landmark and the proposed development would entail the renovation of the front façade to better reflect its original historic condition. The expansion will use brick, metal, and glass materials in response to concerns expressed by Manhattan Community Board 8 and in keeping with the historic building's original appearance, and in compliance with the Landmarks Preservation Commission's (LPC) approval of November 18, 2016, stating that the planned restorative work will reinforce the architectural and historic character of the building. The letter also states that the applicant has entered into an agreement with the LPC that ensures a continuing maintenance program for the building. This continuing maintenance program is contained in a restrictive declaration entered into in connection with this application.

The existing historic landmark building was built before the adoption of the 1961 Zoning Resolution and currently encroaches into the required rear yard by 24 feet at the existing first and second floors. Therefore, the existing building does not currently comply with the rear yard regulations of Section 23-47 or the rear window regulations in Section 23-86. The proposed expansion of the third floor will be built over the existing second floor and encroach 14 feet into the required rear yard setback, and the fourth floor expansion will encroach nine feet.

The proposed building would be built to a FAR of 3.45, which is less than the 4.0 FAR allowed as-of-right in an R8B zoning district. The proposed height of the building, including the bulkhead, would be 59 feet 5 inches, which is lower than the maximum 75 feet height allowed in R8B districts and similar to the heights of nearby historic landmark carriage houses. In addition, the new fourth floor enlargement would be set back 15 feet from the front façade to reduce its visibility by pedestrians on the street. The Commission notes that the proposed enlargement increases the degree of noncompliance vertically, but does not decrease the existing rear yard at the ground level. The Commission further notes that the majority of buildings on the block precede the 1961 Zoning Resolution and are also noncompliant with rear yard regulations. Therefore, the Commission believes that the proposed enlargement would have minimal adverse effects on the neighboring structures and open space in the vicinity in terms of scale, location, and access to light and air.

FINDINGS

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

(1) That 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

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 172-74 LLC for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify rear yard requirements of Section 23-47 (Minimum Required Rear Yards) and the minimum distance between legally required windows and lot lines of Section 23-86 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines) to facilitate a 2-story penthouse enlargement of an existing three-story mixed use building, on property located at 172-174 East 73rd Street (Block 1407, Lot 44), in an R8B District, Borough of Manhattan, Community District 8, is approved, pursuant to Section 74-711 of the Zoning Resolution, subject to the following terms and conditions:

1. The property that is the subject of this application (C 180066 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 Wright Architects, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
CPC-01	Zoning Analysis	8/18/2017
CPC-03	Zoning Lot Site Plan	8/18/2017
CPC-07	Waiver Plan	8/18/2017
CPC-08	Waiver Section at Elev. B.H.	8/18/2017
CPC-09	Waiver Cross Section at Elev. B.H.	8/18/2017

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, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this resolution and 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. 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 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.

7. 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 180066 ZSM), duly adopted by the City Planning Commission on January 3, 2018 (Calendar No. 7), 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.

MARISA LAGO, *Chair*

KENNETH J. KNUCKLES, *Esq.*, *Vice-Chairman*

RAYANN BESSER, ALFRED C. CERULLO, III,

MICHELLE DE LA UZ, JOSEPH I. DOUEK, RICHARD W. EADDY,

CHERYL COHEN EFFRON, HOPE KNIGHT, ANNA HAYES LEVIN,

ORLANDO MARIN, LARISA ORTIZ, *Commissioners*

James G. Clynes
Chairman

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**The City of New York
Manhattan Community Board 8**

October 19, 2017

Hon. Marisa Lago
Chair
The Department of City Planning
22 Reade Street
New York, New York 10007

Re: ULURP Application No. C 180066 ZSM, CEQR No. 18DCP029M, 172-174 east 73rd Street

Dear Chair Lago:

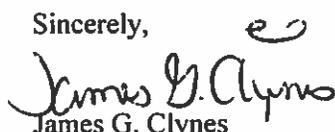
At its Land Use meeting on Wednesday, October 11, 2017 Community Board 8M approved the following resolution by a vote of 30 in favor, 9 opposed 0 abstentions and 1 not voting for cause.

WHEREAS, the application submitted by 172-174 East LLC pursuant to Section 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 rear yard requirements of Section 23-47 (Minimum Required Rear Yards) and the minimum distance between legally required windows and lot lines of Section 23-86 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines) to facilitate a 2-story penthouse enlargement of an existing three-story mixed use building on property located at 172-174 East 73rd Street (Block 1407, Lot 44) in an R8B District, therefore

BE IT RESOLVED that Community Board 8 approves the ULURP application for for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify rear yard requirements of Section 23-47 (Minimum Required Rear Yards) and the minimum distance between legally required windows and lot lines of Section 23-86 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines) to facilitate a 2-story penthouse enlargement of an existing three-story mixed use building on property located at 172-174 East 73rd Street (Block 1407, Lot 44)

Please advise this office of any decision made by City Planning concerning this matter.

Sincerely,


James G. Clynes
Chair

cc: Honorable Bill de Blasio, Mayor of the City of New York
Honorable Gail Brewer, Manhattan Borough President
Honorable Carolyn Maloney, 14th Congressional District Representative
Honorable Liz Krueger, NYS Senator, 26th Senatorial District

Honorable Rebecca Seawright, NYS Assembly Member, 76th Assembly District
Honorable Dan Quart, NYS Assembly Member, 73rd Assembly District
Honorable Ben Kallos, NYC Council Member, 5th Council District
Honorable Daniel Garodnick, NYC Council Member, 4th Council District
Valerie Campbell, Esq.



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Gale A. Brewer, Borough President

November 20, 2017

**Recommendation on ULURP Application C 180066 ZSM – 172-174 East 73rd Street
By 172-174 East LLC**

PROPOSED ACTION

172-174 East LLC (“the applicant”) seeks a special permit pursuant to Section 74-711 of the Zoning Resolution (“ZR”) to modify rear yard requirements of Section 23-47 and the minimum distance between legally required windows and lot lines of Section 23-86 to facilitate a two-story penthouse enlargement of an exist three-story mixed used landmarked building located at 172-174 East 73rd Street (Block 1407, Lot 44) in an R8B District located within Community Board 8, Borough of Manhattan.

Pursuant to ZR § 74-711, applicants may request a special permit to modify the use and bulk 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 or bulk 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 or buildings in the Historic District, as applicable;²
- 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 “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.”⁴

¹ The LPC issued a report, MOU 19-5293 (LPC 192454) dated November 18, 2016

² The LPC issued a Certificate of No Effect (CNE19-5291) on November 11, 2016. The Certificate of Appropriateness (COFA #19-5298) was issued on November 18, 2016.

³ The applicant proposes two dwelling units for the building which is below the total maximum number (15) dwelling units permitted under ZR § 15-111.

⁴ The second finding related to use modifications is not applicable to this proposal as residential use is permitted as of right in this district.

PROJECT DESCRIPTION

The applicant seeks a special permit to modify bulk regulations to facilitate the development of an additional 5,115 square feet to a three-story building by enlarging the third floor, construction of a fourth-story addition with a bulkhead, and excavation below the ground floor to construct a new cellar to use the building as a two-family residence. The applicant also proposes alternations to the building's front façade, and reconstruction of the building's roof and rear façade. The applicant's proposal would also remove a one-story portion of the structure covering approximately 50 square feet, in the rear yard of the building.

The existing building has non-complying bulk features for residential use, including: a first floor addition that encroaches in the rear yard, which will be partially removed, and rear windows on the second floor that are six feet from the rear lot line. The applicant proposes a third-story enlargement that will be 16 feet from the rear lot line and a fourth-story addition that will be 21 feet from the rear lot line; the enlargement and addition will have rear windows that encroach on the rear yard.

Pursuant to the Certificate of Appropriateness issued by the LPC, the applicant has been approved for alteration, restoration and repair of the interior and exterior of the building. The approved work to the building's front façade includes alterations, cleaning and removing paint from masonry, repointing masonry with lime rich mortar, removal of the flagpole, resurfacing sandstone, repairing granite, replacing the modern one-over-one double-hung windows, replacing a pair of modern wood and glass doors, scraping and repainting the cornice, and installing a hose bib, fire alarm bell, and water meter at the base of the façade. On the rear façade, work was approved to clean and repoint the masonry, reconstruct the parapet and replace brickwork, repair bluestone sills, replace one-over-one double-hung windows, and replace the modern wood fencing at the rear yard. The approved work also includes demolishing the roof and rear façade of the third floor, construction of a two-story brick-clad rooftop addition with a metal and glass clad bulkhead with railings at the roof of the new addition.

The special permit pursuant to ZR § 74-711 requires the applicant to enter into a Restrictive Declaration with the LPC to establish a continuing maintenance program for the preservation of the building in perpetuity.

Area Context

The project site is located on a predominately multi-family residential street which contains various types of private carriage houses constructed in the late 19th and early 20th centuries, in the neo-Renaissance, Neo-Grec, and Queen Anne styles and conveniently located to the mansions on the east side. The street also consists of two-family townhouses and larger multi-family buildings. The taller mixed residential and commercial buildings are at the corners of the avenues and contain clothing boutiques and dining establishments on the lower floors. The project site is also surrounded by educational and religious uses including the Buckley School, The Marymount Manhattan School, and St John the Martyr Rectory.

Most of the surrounding area has R8B as the underlying zoning district on the midblock, with a C1-8X district along Lexington Avenue, an R10A district along East 72nd Street. Beginning

midblock between East 73rd and East 72nd Street on Third Avenue is a C1- 9 zoning district which also continues south of East 72nd Street. On Lexington Avenue, midblock between East 73rd and East 72nd Street is a C1-8X zoning district.

The area is served by the Q subway train at East 72nd Street and Second Avenue and the No. 6 train located at East 68th Street and Lexington Avenue. Access to the M101, M102, M103, and M72 buses is available along both Third and Lexington avenues. There are several Citibike stations located in the vicinity of the site, with the closest just southeast of the site at East 72nd Street and Third Avenue.

Site Description

The Project Site consists of a three-story Romanesque Revival style with neo-Grec details carriage house located at 172-174 East 73rd Street (Block 1407, Lot 44) in an R8B zoning district. The existing building is built to a floor area ratio (FAR) of 2.19 and R8B zoning districts permit a maximum FAR of 4.0. The lot coverage maximum for interior lots is 70 percent. The maximum base height is 60 feet and the maximum building height is 75 feet. The permitted uses in an R8B zoning district are residential (Use Groups 1 and 2) and community facility uses (Use Groups 3 and 4).

The subject building was constructed in 1889 and designed by architect, Frank Wennemer and was constructed for Frank P. Perkins. The Landmarks Preservation Commission designated this building as an individual landmark in 1980 and the designation report identifies it as a fine example of late 19th century carriage houses and states that it is a reminder of an elegant lifestyle. By the 20th-century, the building was converted to a residence and according to the 1963 Certificate of Occupancy, the building was used as a photography studio and two residences. The building is currently vacant.

Proposed Actions

The applicant seeks a special permit pursuant to ZR § 74-711 to modify the minimum distance requirement of 30 feet from the lot line for legal windows and the minimum rear yard depth requirement of 30 feet for an interior lot. These bulk waivers would facilitate the enlargement of the third-story of the building, the construction of a new fourth-story addition with bulkhead, reconstruction of the building's roof and rear façade, and excavation of the ground floor to create a cellar floor. These modifications would increase the building's floor area to 10,720 square feet and increase the zoning floor area of the building to 3.45 FAR.

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 and LPC's Certificate of Appropriateness and Certificate of No Effect, the restoration work and change in size is consistent with the historic evolution of the adaptive reuse of this building type, the addition will not overwhelm the scale of landmark or adjacent landmarks, will not obscure or eliminate any significant architectural features of this building and will place the building in a sound, first-class condition.

COMMUNITY BOARD RECOMMENDATION

At its October 11, 2017 full board meeting, Manhattan Community Board 8 (CB8) voted by a vote of 30 in favor, 9 opposed, 0 abstentions, and 1 not voting for cause to approve the application.

BOROUGH PRESIDENT'S COMMENTS

Carriage houses were constructed on the Upper East Side in areas adjacent to the distinguished mansions and townhomes built for prestigious clients in the late 19th century. 172-174 East 73rd Street is a Romanesque Revival style with neo-Grec detail carriage house that was built in 1889 by Frank Wennemer and designated by LPC as an individual landmark in 1980 “as a major component to the unusual group of carriage houses and stables that give East 73rd Street between Lexington and Third Avenues its singular character.”

The applicant seeks two waivers: 1) to modify the minimum distance requirement of 30 feet from the lot line for legal windows, and; 2) the minimum rear yard depth requirement of 30 feet for an interior lot. The portion of the building that is subject to the waivers requested today predates the requirements of the 1961 Zoning Resolution. This building, and the adjacent buildings, do not meet the minimum rear yard requirements under the zoning resolution and have never contributed to the historic donut, which this office seeks to protect. In its Certificate of Appropriateness, dated November 18, 2016, the LPC stated that the enlargement will not be visible from the street nor diminish the scale and character of this or the surrounding buildings. As such, it is believed that these waivers do not adversely impact scale and the light and air of structures or open space in the vicinity.

The Manhattan Borough President believes the conditions and findings have been met for the requested special permit as the proposal does not significantly impact light and air and the removal of a portion of the ground floor building will reduce the degree of non-compliance in the rear yard. The applicant has also proposed a first-class restoration of the building.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends approval of ULURP Application No. C 180066 ZSM.



Gale A. Brewer

Manhattan Borough President