



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

SCOTT M. STRINGER  
BOROUGH PRESIDENT

March 22, 2007

Recommendation on  
ULURP Application No. C 070125 ZSM – 45 E. 78<sup>th</sup> Street  
by L&M Arts LLC

**PROPOSED ACTION**

L & M Arts LLC seeks a special permit pursuant to §74-711 of the Zoning Resolution to modify the use regulations of §22-00 to allow Use Group 6 uses (art gallery) in the cellar, 1<sup>st</sup> floor, 2<sup>nd</sup> floor and 3<sup>rd</sup> floor of an existing 5-story building at 45 E. 78<sup>th</sup> Street (Block 1393, Lot 25). The building is located in the Upper East Side Historic District, within the Special Limited Height District of the Special Madison Avenue Preservation District. The lot is split between two zoning districts, with one third of the lot in a C5-1 zoning district, and two thirds in an R8B zoning district. The property is currently in use as an art gallery (use group 6) which is not allowed in an R8B zoning district. This application seeks to legalize this existing use. In order to grant the use modification, the City Planning Commission must find that such use modification shall have minimal adverse effects on the conforming uses within the building and in the surrounding area.<sup>1</sup>

**PROJECT DESCRIPTION**

L & M Arts LLC seeks a special permit for use waivers pursuant to ZR §74-711 to modify the use regulations of ZR §22-10 in order to legalize the existing commercial art gallery use. The gallery, which occupies the cellar through the third floor of the existing five-story building, has been in operation since 1993. The upper floors are used by two non-profit organizations, The Shakespeare Society, and The Hedley Median/Children of Difference Foundation, which are community facility uses. There is also one small apartment on the fifth floor. These uses are

<sup>1</sup> In order for a 74-711 special permit to be granted, the Landmarks Preservation Commission must also issue a certificate of appropriateness for the project, as well as report that the use modification will contribute to a continuing maintenance program that has been established to preserve the historic building. The LPC issued such report on September 29, 2006, and granted the certificate of appropriateness on December 12, 2006. The LPC's determination has not been re-examined in this recommendation.

allowed as-of-right and do not require a waiver.

In R8B Districts, only use groups 1-4, which include residential and community facility uses, are allowed as-of-right. In C5-1 districts, Use Groups 1-6, and 9-11 are allowed as of right. However, since the majority of the lot is in an R8B zoning district, the rules of that district apply, and the art gallery is a non-conforming use.

In its report issued to the City Planning Commission, the Landmarks Preservation Commission stated that the applicant's plans for the use change and the conversion will bring the building up to a "sound first class condition" by repairing several structural elements, including brick and marble masonry, balconies and doors. The applicant is also installing new windows and inspecting and repairing roof parapets as needed, thereby fulfilling the preservation purpose of the application.

### **COMMUNITY BOARD'S RECOMMENDATION**

At a regularly scheduled board meeting on February 21, 2007, Manhattan Community Board No. 8 voted 33 in favor, 1 opposed, 1 abstained and 0 recused, to recommend approval of the application, provided that the future use of the space be limited to an art gallery or residential use.

### **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. The LPC has found that the proposed use changes and the ensuing repairs to the building will contribute to a preservation purpose worthy of allowing the applicant to request these use waivers from the City Planning Commission.

The proposed use waiver will have no adverse effect on the neighborhood. The gallery has been in operation at its current location since 1993, and the special permit would bring this use into conformance. The area surrounding the gallery has a mix of commercial uses (on Madison Avenue) and many institutional and office uses -including another art gallery, medical offices, and a school- on 78<sup>th</sup> Street. The gallery has a quiet presence on the street, holding only 2-3 shows per year, and the legalization of this use will not create any adverse effects on the neighborhood through allowing its continued use. 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 entering into a restrictive declaration ensuring continued maintenance the building in this state in perpetuity.

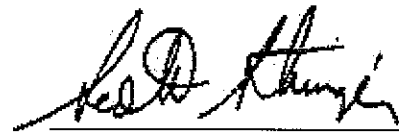
The community concern that future use be limited to an art gallery or residential use only is a valid one. Uses on this block are primarily residential or institutional, and allowing any Use Group 6 use in this building could certainly have an adverse effect on the area. The amount of foot traffic and noise from a restaurant use, for example, would have a much greater impact on

78<sup>th</sup> Street than the gallery's current, quiet presence. For this reason, it would be prudent to limit future use of the building to a gallery or residential use only.

**BOROUGH PRESIDENT'S RECOMMENDATION:**

This application for a special permit meets the required applicable conditions and findings for a special permit pursuant to ZR §74-711 regarding use waivers. The proposed legalization of an existing gallery use will have no adverse effect upon the neighborhood, provided uses be restricted to gallery or residential use, should the current tenant vacate the building.

Therefore, the Manhattan Borough President recommends approval of ULURP Application No. C 070125ZSM.



Scott M. Stringer  
Manhattan Borough President