

269-13-BZ

CEQR #14-BSA-040M

APPLICANT – Law Office of Marvin B. Mitzner, LLC, for Robert Malta, owner.

SUBJECT – Application September 13, 2013 – Special Permit (§73-42) to permit the expansion of UG6 restaurant (*Arte Café*) across zoning district boundary lines. R8B zoning district.

PREMISES AFFECTED – 110 West 73rd Street, south side of 73rd Street between Columbus Avenue and Amsterdam Avenue, Block 1144, Lot 37, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings, dated August 22, 2013, acting on Department of Buildings Application No. 121689707, reads in pertinent part:

ZR 22-10, 22-20; Proposed Commercial Use/Dining area (Use Group 6) at Basement/Cellar in Zoning District R8B is not permitted as per ZR 22-10 “Uses Permitted As-of-Right;” and

WHEREAS, this is an application under ZR §§ 73-42 and 73-03, to permit the extension of an existing Use Group 6 use within a C1-8A zoning district into the adjacent R8B zoning district within the Upper West Side-Central Park West Historic District, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on February 2, 2014 after due notice by publication in *The City Record*, with continued hearings on March 11, 2014 and April 8, 2014, and then to decision on May 6, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, certain community members provided testimony in opposition to the proposal, citing concerns about traffic and late night refuse collection; and

WHEREAS, the subject site is located on the south side of West 73rd Street, between Columbus Avenue and Amsterdam Avenue; 110 West 73rd Street is located within an R8B zoning district within the Upper West Side-Central Park West Historic District, with approximately 19 feet of frontage on West 73rd Street, and a total lot area of 1,941 sq. ft.; and

WHEREAS, 110 West 73rd Street is currently occupied by a four-story and basement townhouse building occupied by residential use; the building has 5,960 sq. ft. of floor area (3.12 FAR); and

WHEREAS, 110 West 73rd Street is adjacent to 106-108 West 73rd Street (Block 1144, Lot 35), which is fully within a C1-8A zoning district and occupied by a Use Group 6 restaurant, *Arte Café*; and

WHEREAS, the applicant proposes to extend the restaurant use across the zoning district boundary line between the R8B zoning district and the C1-8A zoning district, 18’-6” within the basement level with 1,298 sq. ft. of floor area; and

WHEREAS, the applicant requests a special permit pursuant to ZR § 73-42 to allow the use to extend across the zoning district boundary into the R8B zoning district; and

WHEREAS, the applicant states that the extension of the restaurant use would allow for additional space for the existing restaurant; and

WHEREAS, the applicant states that the proposed extension would accommodate 12 dining tables and 69 restaurant patrons; and

WHEREAS, the applicant notes that the restaurant within the C1-8A zoning district occupies 2,384 sq. ft. of space in the cellar and 3,667 sq. ft. of floor area in the basement for a total of 6,051 sq. ft. of restaurant space; the remaining portions of 106-108 West 73rd Street are occupied by residential use and 10,480 sq. ft. of floor area; and

WHEREAS, the applicant does not propose any changes to 106-108 West 73rd Street and that no other changes than the conversion of the basement are proposed to 110 West 73rd Street; and

WHEREAS, the applicant states that 106-108 West 73rd Street and 110 West 73rd Street are under common ownership and the two lots (Lot 35 and Lot 37) will be merged; the merger will result in 20,053 sq. ft. of commercial floor area and 15,088 sq. ft. of residential floor area across the site; and

WHEREAS, ZR § 73-42 provides that the Board may permit the expansion of a conforming use into a district where such use is not permitted, provided that (1) the enlarged use is contained within a single block; (2) the expansion of either the depth or the width of the conforming use is no greater than 50 percent of either the depth or width of that portion of the zoning lot located in the district where such use is a conforming use; and that (3) the area of the expansion cannot exceed 50 percent of the area of the zoning lot located in the district where such use is a conforming use, and provided further that the required findings are made; and

WHEREAS, the findings are as follows: (a) there is no reasonable possibility of expanding the use within the existing district where it is conforming; (b) the conforming use existed prior to January 6, 1965, or the

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date of any applicable subsequent amendment to the zoning maps; and (c) the expanded use is not so situated or of such character or size as to impair the essential character or the future use or development of the surrounding area; and

WHEREAS, as to the threshold condition that the use is contained on a single block, the applicant notes that the existing Arte Café located at 106-108 West 73rd Street is adjacent to and on the same block, Block 1144, as 110 West 73rd Street; and

WHEREAS, the applicant notes that the lot occupied by the existing conforming restaurant is 39 feet wide by 102 feet deep, with a lot area of 3,978 sq. ft., and the expansion with a width of 18'-6" and 1,298 sq. ft. of floor area, is less than 50 percent of the width and lot area within the C1-8A zoning district; and

WHEREAS, accordingly, the Board notes that the use and proposed expansion site are located within the same block; that the expansion does not exceed size restrictions; and the applicant has provided sufficient evidence showing that the restaurant use was in existence on Lot 35 prior to January 6, 1965; and

WHEREAS, as to the finding under ZR § 73-42(a), the applicant represents that there is not any reasonable possibility of expanding the use within the existing C1-8A zoning district because such use is not allowed above the first floor of the building; and

WHEREAS, further, the applicant notes that the adjacent building to the west is occupied by another business and therefore is not available to accommodate the expansion of the restaurant; and

WHEREAS, as to the finding under ZR § 73-42(b), the applicant represents that the use at 106-108 West 73rd Street was in existence prior to January 6, 1965; and

WHEREAS, in support of this assertion, the applicant submitted a Certificate of Occupancy from 1941, which reflects that the basement floor was occupied by restaurant use; and

WHEREAS, as to the finding under ZR § 73-42(c), the applicant asserts that the proposed use is not situated or of such character or size as to impair the essential character or future use of the surrounding area; and

WHEREAS, specifically, the applicant states that the expansion of the dining area across the basement adds only 12 dining tables for a maximum occupancy of 69 people; and

WHEREAS, the applicant notes that the use is compatible with the character of the neighborhood and is located only 100 feet from the commercial thoroughfare of Columbus Avenue; and

WHEREAS, the applicant notes that there are several commercial and mixed-use buildings adjacent and across from the subject site, including a nine-story mixed-use building at the rear on West 72nd Street,

which is within a C4-6A zoning district; and

WHEREAS, the applicant notes that the building owner also owns 112 West 73rd Street and it is in his interest to maintain conditions that are compatible with residential use; and

WHEREAS, the applicant states that the use will be limited to a restaurant and no bar is proposed and that the proposed hours of operation are 12:00 p.m. to 11:00 p.m. Sunday through Thursday and 12:00 p.m. to 12:00 a.m. Friday and Saturday; and

WHEREAS, the applicant states that the expansion of the restaurant is necessary to accommodate the dinner rush from 6:00 to 9:00 p.m. and that it does not anticipate using the 110 West 73rd Street space during later hours; and

WHEREAS, the Landmarks Preservation Commission issued a Certificate of No Effect, dated March 26, 2014, to approve interior alterations to the basement; and

WHEREAS, the Board directed the applicant to provide additional information on the proposed use of the rear yard, sound attenuation, refuse storage and collection, and outstanding DOB violations; and

WHEREAS, the applicant states that the rear yard will not be used for restaurant use; the applicant submitted photographs of the rear yard of 110 West 73rd Street that show it without restaurant use; and

WHEREAS, the applicant states that it will install and maintain sound board between 110 West 73rd Street and 112 West 73rd Street to attenuate any noise from the restaurant, that there will not be any speakers in the portion of the restaurant within the R8B zoning district, and that it will not use the portion of the restaurant within the R8B zoning district after 9:00 p.m.; and

WHEREAS, the applicant revised the plans to reflect sound board to be installed at the ground floor wall between 112 West 73rd Street and the subject building; and

WHEREAS, the applicant states that it will store refuse in its cellar space until ready for pick up and provided a letter from its refuse carting company stating that pick up will be scheduled for 7:00 a.m., Monday through Saturday; and

WHEREAS, the applicant states that it will resolve all outstanding DOB violations in the course of completing the proposed construction; and

WHEREAS, the applicant also notes that the front entrance at 110 West 73rd Street will only be used for emergency egress and not ingress or egress from the restaurant; and the two dwelling units currently occupying the basement will be eliminated to accommodate the restaurant, but that the remainder of the building within the R8B zoning district will remain occupied by residential use; and

WHEREAS, accordingly, the Board finds that the proposed expansion of the Use Group 6 use from the C1-

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8A zoning district into the R8B zoning district portion of the pending merged lots will not cause impairment of the essential character or the future use or development of the surrounding area, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the proposed action will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-42 and 73-03; and

WHEREAS, the project is classified as a Type 1 action pursuant to 6 NYCRR Part 617.4 and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 14BSA040M, dated August 22, 2013; and

WHEREAS, the EAS documents that the operation of the bank would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type 1 Negative declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City

Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-52 and 73-03, to permit the extension of an existing Use Group 6 use within a C1-8A zoning district into the adjacent R8B zoning district within the Upper West Side-Central Park West Historic District, contrary to ZR § 22-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 22, 2014" – seven (7) sheets; and *on further condition*:

THAT the term of the grant is limited to five years, to expire on May 6, 2019;

THAT the restaurant use within the R8B portion of the site will be restricted to the basement level, as reflected on the BSA-approved plans;

THAT the occupancy of the basement level will be as reviewed and approved by DOB but will not exceed 69 patrons;

THAT there will not be any Use Group 6 use within the rear yard of 110 West 73rd Street;

THAT there will not be any entrance or egress of the restaurant through the 110 West 73rd Street frontage, which will be reserved for emergency use;

THAT refuse will be stored within the building until collection, which is scheduled for 7:00 a.m., Monday through Saturday;

THAT sound attenuation measures between 110 West 73rd Street and 112 West 73rd Street will be installed and maintained, as reflected on the BSA-approved plans;

THAT all lighting will be directed down and away from adjacent residential uses;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 6, 2014.

A true copy of resolution adopted by the Board of Standards and Appeals, May 6, 2014.

Printed in Bulletin No. 19, Vol. 99.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

