

315-14-A

APPLICANT – Mitchel A. Korbey, Esq., for 485 Seventh Avenue Associates LLC, owner.

SUBJECT – Application November 21, 2014 – MDL (Multiple Dwelling Law (section 310(2)(a) for waivers to permit the conversion of and small addition to the building, located within an M1-6 Special Garment Center District.

PREMISES AFFECTED – 485 Seventh Avenue, northeast corner of West 36th Street and Seventh Avenue, Block 812, Lot 1 & 2, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), November 14, 2014, acting on DOB Application No. 121186509 reads, in pertinent part:

1. The proposed inner court does not comply with the requirements of NYS MDL Section 26.7
2. The proposed outer court fronting West 36th Street does not comply with the requirements of NYS MDL Section 26.7; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, to vary court requirements in order to allow for the proposed conversion of the subject building from office use (Use Group 6) to a transient hotel (Use Group 5), contrary to the court requirements of MDL §§ 26(7); and

WHEREAS, a public hearing was held on this application on March 31, 2015, after due notice by publication in *The City Record*, and then to decision on April 28, 2015; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Montanez; and

WHEREAS, the subject site is located on the northeast corner of the intersection Seventh Avenue and West 36th Street, within an M1-6 zoning district, within the Special Garment Center District, and partially within the Preservation Area P-1 subdistrict; and

WHEREAS, the site has 174.42 feet of frontage along West 36th Street and 96.75 feet of frontage along Seventh Avenue, and approximately 17,214 sq. ft. of lot area; and

WHEREAS, the applicant notes that, pursuant to ZR §121-12 the site, less than fifty percent of which is located within the Preservation Area P-1 subdistrict and which fronts on a wide street, is not subject to the preservation requirements generally applicable to zoning

lots within the Special Garment Center District; and

WHEREAS, the site is occupied by a 16-story commercial office building, with commercial offices (Use Group 6) on floors two through 16 and commercial retail (Use Group 6) on the ground floor; and

WHEREAS, the applicant states that building was constructed in 1905 as a hotel and was converted to its current retail and office use in the 1980s; and

WHEREAS, the building was designated by the New York City Landmarks Preservation Commission (the “LPC”) as an individual landmark on October 28, 2014; and

WHEREAS, the site includes four courts: (1) an outer court with frontage along West 36th Street with a width of 24.5 feet and a depth of 36 feet (the “Outer Court”); (2) an inner court on the west side of the building with a width of 26.10 feet and depth of 37.81 feet from the third story of the building to the seventh story of the building (the “West Court”); (3) an inner court on the east side of the building with a width of 26.14 feet and depth of 38.34 feet from the third story of the building to the seventh story of the building (the “East Court”); and (4) an inner court on the north side of the building with a width of 25.2 feet and a depth of 27.1 feet, beginning at the third story of the building and fronting along the side yard thereof (the “North Court”); and

WHEREAS, both the West Court and East Court act as atriums with skylights located on the roof, and both have been incrementally “filled in” with floor area starting at the eighth story of the building and increasing until the 16th story of the building, at which point the depth of both the West Court and East Court is approximately 20 feet; and

WHEREAS, the applicant proposes to enlarge the building, remove some of the infill of the West Court and the East Court, renovate the interior layout of the building and infill the North Court and renovate the ground and second floor retail space in its efforts to restore the building to its original transient hotel (Use Group 5) use with 618 hotel rooms on the third through 16th stories, with commercial, parking and accessory uses on the subcellar, cellar, ground floor and second floor; and

WHEREAS, the Board notes that pursuant to MDL § 4(9), transient hotels are considered Class B multiple dwellings; therefore, the proposed hotel use must comply with the relevant provisions of the MDL; and

WHEREAS, the Board further notes that pursuant to MDL § 30(2), every room in a multiple dwelling shall have at least one window opening directly upon a street or upon a lawful yard, court or space above a setback located on the same lot as that occupied by the multiple dwelling; and

WHEREAS, the applicant states that of the 618 rooms in the proposed hotel, 308 will have windows that open onto a street, 160 will have windows that open onto a legal side yard, 94 will have windows that open onto

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the East Court, and 56 will have windows that open onto the Outer Court; and

WHEREAS, pursuant to MDL § 4(32), the East Court is considered an “inner court” and the Outer Court is considered an “outer court”; and

WHEREAS, MDL § 26(7) states that, except as otherwise provided in the Zoning Resolution, (1) an inner court shall have a minimum width of four inches for each one foot of height of such court and (2) the area of such inner court shall be twice the square of the required width of the court, but need not exceed 1,200 sq. ft. so long as there is a horizontal distance of at least 30 feet between any required living room window opening onto such court and any wall opposite such window; the applicant notes that the Zoning Resolution does not provide any standards for courts that serve transient hotels; and

WHEREAS, pursuant to MDL § 26(7), the East Court, which has a height of approximately 159 feet, is required to have a width of at least 53 feet; and

WHEREAS, the proposed East Court does not satisfy the minimum requirements of MDL § 26(7) in that neither the width nor depth of the proposed East Court equals 53 feet, nor is the area of the proposed East Court twice the square of the required width or at least 1,200 sq. ft. in area; and

WHEREAS, MDL § 26(7) states that, except as otherwise provided in the Zoning Resolution, (1) an outer court shall have a minimum width of twice the depth of said outer court if such court is less than 30 feet in width or (2) a width equal to its depth if such court is 30 feet or more in width, but need not exceed a width of 60 feet; the applicant notes that the Zoning Resolution does not provide any standards for courts that serve transient hotels; and

WHEREAS, the Outer Court, the dimensions of which are 24.83 feet in width and 35.63 feet in depth does not satisfy the minimum requirements of MDL § 26(7); and

WHEREAS, accordingly, the applicant requests that the Board invoke its authority under MDL § 310 to permit the proposed conversion contrary to MDL §§ 26(7); and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed in 1905; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or

requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that MDL § 26(7) specifically relates to the minimum dimensions of courts; therefore, the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a)(3); and

WHEREAS, the Board also observes that to the extent it permits a court at variance with the requirements of MDL § 26(7), such court is a “lawful court” upon which legally-required windows can open in accordance with MDL § 30; and

WHEREAS, turning to the findings under MDL § 310(2)(a), the applicant asserts that practical difficulty and unnecessary hardship would result from strict compliance with the MDL; and

WHEREAS, in support of this assertion, the applicant submitted a comparison between the proposal and the conversion of the Building to a transient hotel with a court that satisfies the minimum requirements of MDL §§ 26(7); and

WHEREAS, the applicant states that in order to create a complying East Court and Outer Court, the following work would be required: (1) excavation to install new reinforced concrete footings at the lowest level of the aforesaid courts in order to permanently support the building loads above; (2) demolition of new openings through the existing slabs to provide access for permanent new steel columns; (3) installation of steel columns for the height of the building and atriums and the attendant bracing of each column into the existing floor slabs at each level; (4) temporary shoring of the existing beams on a floor-by-floor basis; (5) removal of the existing atrium façade and affected original steel columns on a floor-by-floor basis from the top of the building down; (6) cutting and shortening of the existing steel beams on a floor-by-floor basis to permit the installation of permanent new steel beams that connect directly to the new steel beam columns; and (7) repair to the slab edges with new infill and the reconstruction of the building’s interior façade at all levels of the building atrium; and

WHEREAS, the applicant submitted a cost estimate to perform the foregoing work to the Board, which states that the cost of such work would be in excess of \$6,800,000; and

WHEREAS, the applicant states that in addition to causing the applicant to incur significant cost, the foregoing work would result in the loss of approximately 42 hotel rooms, reducing the number of the hotel rooms from 618 to 576, resulting in a loss of approximately \$5,000,000 in revenue annually; and

WHEREAS, the applicant notes that the foregoing work would jeopardize the structural integrity of the landmark structure; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of

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practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the applicant states that the requested variance of MDL §§ 26(7) is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, the applicant states that the proposed conversion will serve tourists, business travelers and other visitors to Midtown Manhattan and New York City; and

WHEREAS, the Board notes that the intent of MDL §§ 26(7) is to ensure that rooms within multiple dwellings have adequate light and ventilation; and

WHEREAS, the applicant states that although the dimensions of the East Court and Outer Court are deficient under the MDL, the building occupies a corner location, fronting upon Seventh Avenue and West 36th Street, with a majority of the proposed hotel rooms having windows that open onto those thoroughfares or the existing legal side yards; and

WHEREAS, the applicant states that the 94 hotel rooms with windows which open onto the East Court are benefitted by ample light and air in that (1) the East Court has an area that is approximately 82-percent of that which is required under the MDL; (2) such windows will be located approximately 26 feet from any opposite facing wall (the required distance is 30 feet); and

WHEREAS, the applicant state states that the 56 room with windows which open onto the Outer Court are benefitted by ample light and air in that (1) half of such affected rooms will have windows will be located approximately 25 feet from any opposite facing wall(the required distance is 30 feet); and

WHEREAS, the applicant further states that in order to mitigate any impacts on light and air to affected rooms, the Applicant proposed to install a glass curtain-wall system in order to maximize daylight and improve reflectivity within such rooms; and

WHEREAS, in addition, the applicant submitted, and the Board reviewed, a shadow study which assessed the potential effects of the enlargement of the East Court and Outer Court and which concludes that the proposed enlargement will have little or no effect on shadows throughout the year; and

WHEREAS, the Landmarks Preservation Commission has approved the proposed alterations of the building by Certificate of Appropriateness (Design Approval Only), dated April 16, 2015; and

WHEREAS, based on the above, the Board finds

that the proposed modifications to the court requirements of MDL §§ 26(7) will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, accordingly, the Board finds that the applicant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested modification of the court requirements of MDL §§ 26(7) is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decision of the Department of Buildings, dated November 14, 2014, is modified and that this application is granted, limited to the decision noted above, on condition that construction will substantially conform to the plans filed with the application marked, "Received, April 27, 2015"- (23) sheets; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB objections related to the MDL;

THAT the applicant record with the City Register a restrictive declaration for light and air over the building prior to the issuance of the temporary Certificate of Occupancy for the building;

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

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

Adopted by the Board of Standards and Appeals, April 28, 2015.

A true copy of resolution adopted by the Board of Standards and Appeals, April 28, 2015.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

