

CORRECTION

The resolution adopted on February 25, 2014, under Calendar No. 127-13-A and printed in Volume 99, Bulletin Nos. 8-9, is hereby corrected to read as follows:

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APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for Brusco Group, Inc., owner.

SUBJECT – Application May 1, 2013 – Appeal under Section 310 of the Multiple Dwelling Law to vary MDL Sections 171-2(a) and 2(f) to allow for a vertical enlargement of a residential building. R8 zoning district.

PREMISES AFFECTED – 332 West 87th Street, south side of West 87th Street between West end Avenue and Riverside Drive, Block 1247, Lot 48 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 Manhattan Borough Commissioner, dated April 3, 2013, acting on Department of Buildings (“DOB”) Application No. 110361554 reads, in pertinent part:

1. Proposed heretofore converted dwelling cannot be increased in height or stories as per MDL 171-2(a);
2. Proposed enlargement of the existing heretofore converted dwelling exceeds 25% of the area of the 3rd floor (fourth story) which is contrary to MDL 171-2(f); and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, to vary height and bulk requirements in order to allow for the proposed partial one-story vertical enlargement of the subject three-story and basement residential building, contrary to MDL §§ 171(2)(a) and 171(2)(f); and

WHEREAS, a public hearing was held on this application on July 23, 2013, after due notice by publication in *The City Record*, and then to decision on February 25, 2014; and

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

WHEREAS, the subject site is located on the south side of West 87th Street, between West End Avenue and Riverside Drive, within an R8 zoning district within the

Riverside Drive-West End Historic District; and

WHEREAS, the site has 20 feet of frontage along West 87th Street, a depth of approximately 100.6 feet, and a lot area of 2,013 sq. ft.; and

WHEREAS, the site is occupied by a three-story and basement non-fireproof residential building; and

WHEREAS, the applicant states that the existing building was constructed in approximately 1900 and is currently occupied by eight residential units, with two units per floor; and

WHEREAS, the subject building has a floor area of approximately 5,177.85 sq. ft. (2.57 FAR) and a height of approximately 47’-0”;

WHEREAS, the applicant proposes to enlarge the building by constructing a partial fourth floor containing an additional 743.3 sq. ft. of floor area; and

WHEREAS, the applicant states that the front of the proposed fourth floor will include a new, additional unit and the rear will be part of a duplex unit with the third floor; therefore, the proposal will increase the total number of dwelling units in the building from eight to nine; and

WHEREAS, the applicant further states that the proposed enlargement will increase the floor area of the subject building from 5,177.85 sq. ft. (2.57 FAR) to 5,921.15 sq. ft. (2.94 FAR) and increase the height of the building from 47’-0” to 56’-3”;

WHEREAS, the applicant notes that the proposed fourth-floor enlargement will be set back 13’-5” from the building’s front façade and slanted, so as not to be visible from the street; and

WHEREAS, the applicant also notes that it initially proposed a height of 57’-0”, which was reduced at the request of the Landmarks Preservation Commission (“LPC”); and

WHEREAS, MDL § 171(2)(a) states that it is unlawful to “increase the height or number of stories of any converted dwelling or to increase the height or number of stories of any building in converting it to a multiple dwelling”; and

WHEREAS, because any increase in height or number stories of a converted multiple dwelling is prohibited, and the proposed increase of the existing building is from three stories to four stories and from 47’-0” to 56’-3”, the Department of Buildings (“DOB”) determined that the proposal does not comply with the requirements of MDL § 171(2)(a); and

WHEREAS, MDL § 171(2)(f) states that it is unlawful to “enlarge or extend any converted dwelling so as to exceed by more than twenty-five per centum the area which such dwelling had on any floor at the time of its conversion”; and

WHEREAS, because the proposed 743.3 sq. ft. enlargement on the fourth floor exceeds 25 percent of the area on the third floor, DOB determined that the proposal does not comply with the requirements of MDL § 171(2)(f); and

WHEREAS, pursuant to MDL § 310(2)(a), the

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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 approximately 1900; 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 §§ 171(2)(a) and 171(2)(f) relate to height and bulk; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a)(1); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with the MDL; and

WHEREAS, the applicant states that MDL §§ 171(2)(a) and 171(2)(f) prohibit a vertical enlargement of the subject building and that the third floor cannot practicably be enlarged horizontally to make up for this deficit because the existing building is located within an historic district and the LPC will not approve a third floor horizontal expansion; and

WHEREAS, the applicant represents that because a vertical enlargement is not permitted and a horizontal enlargement is impracticable, the MDL restrictions create a practical difficulty and an unnecessary hardship in that they prevent the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, in particular, the applicant notes that the subject district permits an FAR of 6.02, and the proposed enlargement would increase the FAR of the building from 2.57 to 2.94; and

WHEREAS, based on the above, the Board agrees that there is a practical difficulty and an unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the applicant states that the requested variance of MDL §§ 171(2)(a) and 171(2)(f) is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the proposal includes numerous fire safety improvements to mitigate the existing fire infirmities inherent in the pre-1929 building; and

WHEREAS, the applicant notes that MDL § 2 (“Legislative Finding”) provides that the intent of the law is to protect against dangers such as “overcrowding of

multiple dwelling rooms, inadequate provision for light and air, and insufficient protection against the defective provision for escape from fire . . .”; and

WHEREAS, accordingly, the applicant represents that the proposed construction promotes the intent of the law because: (1) the new unit will cause minimal impact, as it will increase the unit count to nine, which is well below the 16 total permitted units in a building in an R8 zone; (2) it will be modest in size and set back from the front and rear facades, thereby providing sufficient light and air to the proposed fourth floor without diminishing access to light and air for other units in the building; and (3) it will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant proposes to provide the following fire safety improvements: (1) sprinklers will be added to all common areas of the building; (2) new, steel stair ways will be installed; (3) all existing wood stair rails will be replaced with metal; (4) all doors leading to the apartments and cellar will have one-and-one-half-hour fireproof self-closing doors; (5) all public halls will have a new two-hour rated enclosure by an additional new layer of fire resistant gypsum board; (6) two layers of fire resistant gypsum board will be installed in the cellar ceiling; (7) a new layer of fire resistant gypsum board will be installed to the underside of the existing staircases and landings; and (8) all bedrooms will have ceiling mounted hard-wired smoke detectors and carbon-monoxide detectors; and

WHEREAS, the applicant represents that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, based on the above, the Board finds that the proposed variance to the height and bulk requirements of MDL §§ 171(2)(a) and 171(2)(f) will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, the applicant represents that the proposal will not affect the historical character of the site; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the LPC approving work associated with the proposed enlargement, dated February 5, 2014; and

WHEREAS, at hearing, the Board expressed concerns regarding the dimensions of the proposed dwelling units; and

WHEREAS, in response, the applicant submitted an amended statement clarifying the dimensions of the proposed units and confirming that such units meet the minimum requirements set forth in the Zoning Resolution; 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)

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and that the requested variance of the height and bulk requirements of MDL §§ 171(2)(a) and 171(2)(f) is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decision of the Manhattan Borough Commissioner, dated April 3, 2013, is modified and that the requested waivers are granted, limited to the decision noted above; *on condition* that construction will substantially conform to the plans filed with the application marked, "Received February 21, 2014" eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the building will be as follows: 5,921.15 sq. ft. (2.94 FAR); nine dwelling units; and a maximum building height of 56'-3", as reflected in the BSA-approved plans;

THAT the dimensions of the proposed dwelling units will be subject to DOB review;

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

THAT the 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, February 25, 2014.

The resolution has been amended. Corrected in Bulletin Nos. 12-13, Vo. 99, dated April 3, 2014.

A true copy of resolution adopted by the Board of Standards and Appeals, February 25, 2014.

Printed in Bulletin Nos. 8-9, Vol. 99.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

