80-11-A
APPLICANT – Law Office of Marvin B. Mitzner LLC, for Kushner Companies, owners.
SUBJECT – Application November 29, 2013 – An amendment to the previously approved waivers to the Multiple Dwelling Law (MDL) to address MDL objections raised by the Department of Buildings. R8B zoning district.
PREMISES AFFECTED – 335 East 9th Street, north side East 9th Street, 2nd and 1st Avenue, Block 451, Lot 47, Borough of Manhattan.
COMMUNITY BOARD #3M
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 4
Negative:.....0
THE RESOLUTION –

WHEREAS, the decisions of the Manhattan Borough Commissioner, dated November 21, 2013 and March 10, 2014, acting on Department of Buildings Application No. 120615218 read, in pertinent part:

(4) Cellar must have 2-hour fire separation from other floors. Ceiling and stairs must be fire rated. [MDL 143] . . .
(8) Interior living rooms require adequate light and air. A number of rooms, including those at the top floor with skylights, are indicated as interior windowless rooms contrary to MDL 30. [MDL 30]
(9) BSA granted a waiver of MDL 143 in total Plans must be prepared to carefully demonstrate compliance with the stipulation proposed to mitigate this requirement. Present to the department. [MDL 143]
(10) BSA granted that fire escapes may be used as 2nd means of egress from the dwelling units. Plans shall indicate the design and construction of same including compliance with 4a-c for construction and support, 2a for the fire escape in the interior court at house #333, size height and construction of the drop ladder per 5a-c. [MDL 145 and 53]
(11) Plans must demonstrate compliance with section 1 through 5 including stairway, platform, riser tread, and handrail dimensions. In the event any dimensions or construction are non-complying, same shall be cited on plans. [MDL 148, 1 through 5]
(12) Plans must demonstrate compliance with sections 1, 3, 4, 5, 6 including public hall windows opening directly to exterior, fire proof construction and dimensions. In the event any dimensions or construction are non-complying, same shall be cited on plans. [MDL 149]
(13) Plans must demonstrate compliance with sections 1 through 7 including details indicating the design of the fire-stopping, edge relief, fire resistance rated fill and coverings. [MDL 152, 1 through 7]
(14) The proposed fire passages from the rear yards to the front of each building are contrary to C26-273(d).7, in that, there is no access from the lower termination of the rear fire escape to the street through a fire proof passage independent of the first means of egress. Design and construction of such passage shall be carefully detailed to indicate fire resistance rating, access and structural support. The fire escape at house #333 does not have access to a passage at 333. [MDL 53; C26-273(d).7]
(15) BSA approved plans dated July 31, 2012 show winder stairs at house number 329 contrary to submitted plans dated July 17, 2013. Please resolve. [MDL 52.4]; and

Proposed increase in bulk and/or height exceeds threshold of 5 stories for non-fireproof tenement. [MDL 211.1]; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law ("MDL") § 310, for an amendment to a prior approval to vary the MDL (the "2012 Approval"); and

WHEREAS, the applicant seeks to vary MDL § 211 to allow for the proposed one-story vertical enlargement of the subject five-story residential building; however, the analysis addresses waiver to MDL §§ 30, 52, 53, 145, 148, 149 and 152; and

WHEREAS, three companion applications to vary the MDL to permit one-story vertical enlargements of the three adjacent buildings, filed under BSA Cal. Nos. 84-11-A, 85-11-A and 103-11-A, were heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on February 11, 2014, after due notice by publication in *The City Record*, with continued hearings on March 25, 2014, April 29, 2014, June 10, 2014, and July 15, 2014, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by former Chair Srinivasan, Vice-Chair Collins, Commissioner

Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, New York City Council Member Rosie Mendez recommends disapproval of this application, citing concerns about (1) the self-creation of the hardships related to MDL non-compliance by choosing to enlarge the building; (2) a blanket waiver of all objections, rather than an individual analysis of each requested waiver; (3) whether the Board has the authority to waive non-compliance with light and air requirements; and

WHEREAS, the Greenwich Village Society for Historic Preservation provided testimony in opposition to this application, which reiterates Council Member Mendez' concerns including that there be individual assessment of MDL non-compliance rather than a single waiver; and

WHEREAS, collectively, the parties who provided testimony in opposition to this application are known as the "Opposition;" and

WHEREAS, the subject site is located on the north side of East 9th Street, between First Avenue and Second Avenue, within an R8B zoning district; and

WHEREAS, the site has 25 feet of frontage along East 9th Street, a depth of 92.25 feet, and a total lot area of 2,306 sq. ft.; and

WHEREAS, the site is occupied by a five-story non-fireproof building, with retail space and one residential unit on the ground floor and a total of eight dwelling units on the upper four floors (two dwelling units per floor); and

WHEREAS, the applicant states that the subject building is located on a single zoning lot with three adjacent buildings located at 329 East 9th Street (the "329 Building"), 333 East 9th Street (the "333 Building"), and 335 East 9th Street (the "335 Building"), each of which is seeking identical relief to vary the MDL in order to allow for a one-story vertical enlargement; and

WHEREAS, the applicant notes that the proposed zoning lot has a total lot area of 8,395 sq. ft.; and

WHEREAS, the applicant states that the existing building was constructed prior to 1929; and

WHEREAS, the subject building has a floor area of approximately 7,625 sq. ft. and a height of 54'-3"; and

WHEREAS, the applicant proposes to enlarge the building by constructing a sixth floor containing an additional 931.8 sq. ft. of floor area to be occupied by one additional dwelling unit, increasing the total number of dwelling units in the building to ten; and

WHEREAS, the applicant states that the proposed enlargement will increase the floor area of the subject building from 7,625 sq. ft. to 8,556.8 sq. ft., and in combination with the proposed enlargements of the 329 Building, the 333 Building, and the 335 Building, will increase the total floor area on the proposed zoning lot from 27,826 sq. ft. (3.31 FAR) to 31,422 sq. ft. (3.75 FAR) (the maximum permitted floor area is 33,580 sq. ft. (4.0 FAR)), and will increase the height of the subject building from 54'-3" to 67'-3" (the maximum permitted height is 75'-0"); and

WHEREAS, on September 11, 2012, the Board approved a prior version of the application for waiver to MDL §§ 51(6), 148(3), 149(2), 143, and 146 (the "2012 Approval"); and

WHEREAS, however, DOB subsequently audited the application and issued the noted supplemental objections; and

WHEREAS, the applicant asserts that the objections associated with the 2012 Approval and the initial (November 21, 2013) objections associated with the subject amendment application were issued under the assumption that the buildings are Hereafter Erected Class A (HAEA) buildings; and

WHEREAS, during the hearing process, the applicant adopted the position that the building is actually a tenement and returned to DOB to obtain a single objection for non-compliance with MDL § 211 (Article 7: Height and Bulk) for tenement buildings; and

WHEREAS, the applicant states that by requesting a variance of MDL § 211, it is not seeking a waiver of every provision that would be applicable to strictly comply with MDL § 211 but, rather, that the Board vary the requirements of MDL § 211 by specifying which provisions it cannot comply with in exchange for proposed safety measures that maintain the spirit and intent of the MDL; and

WHEREAS, MDL § 211 requires that in order for a pre-1929 non-fireproof residential building to increase in height beyond five stories, the building must comply with the provisions of the MDL; the proposed addition of a sixth floor to the subject building results in the MDL non-compliances waived under the 2012 Approval and the supplemental conditions described below; and

WHEREAS, initially, a question arose about whether the Board had jurisdiction to waiver non-compliance with light and air provisions (MDL § 30) since light and air is not one of the enumerated conditions at MDL § 310(2)(a); and

WHEREAS, the Board considered the jurisdictional question and concluded that the request to increase the height triggers the specific non-compliances and thus the Board's waiver authority under MDL § 310(2)(a)(1) allows for a waiver of MDL § 211 (Height and Bulk) and the associated enumerated non-compliances DOB identified during its audit; and

WHEREAS, however, the Board directed the applicant to address all of the DOB objections so that it could appropriately evaluate whether the MDL § 310(a) findings are met; and

WHEREAS, at the Board's request, the applicant addressed each of the specific DOB objections to supplement its assertion that the Board had jurisdiction over each non-compliance individually and through MDL

§ 211; and

WHEREAS, MDL § 211 (Height and Bulk) (1) states that "[e]xcept as otherwise provided in subdivision four of this section, no non-fireproof tenement shall be increased in height so that it shall exceed five stories, except that any tenement may be increased to any height permitted for multiple dwellings erected after April eighteenth, nineteen hundred twenty-nine, if such tenement conforms to the provisions of this chapter governing like multiple dwellings erected after such date;" and

WHEREAS, accordingly, the applicant addressed all of the objections DOB raised; and

WHEREAS, as to MDL § 30 (Lighting and Ventilation of Rooms), the applicant notes that interior living rooms require adequate light and air and a number of rooms are indicated as interior windowless rooms contrary to MDL § 30; and

WHEREAS¸ the applicant states that, through the addition of skylights, the plans for the enlargement have been amended to satisfy this requirement; and

WHEREAS, however, with respect to the existing floors, windowless rooms are an existing non-complying condition that is unaffected by the addition of a story, and, should be permitted to remain; and

WHEREAS, the applicant states that compliance with MDL § 30 would require the intrusion into and reconfiguration of occupied apartments and the reconstruction and partitioning of tenant-occupied space, which the Board found by the 2012 Approval creates a practical difficulty; and

WHEREAS, specifically, in the 333 Building and the 335 Building, the building depth is 56'-2" so that there could only be one room facing the front at a maximum depth of 30 feet and a super kitchen facing the rear with a depth of 26'-2"; the reconfiguration would result in the loss of the bedrooms; and

WHEREAS, the applicant notes that the subject building has a depth of 50'-1" so that there would be a loss of the living room or one bedroom; and

WHEREAS, the 329 Building includes a rooms that exceed the maximum permitted depth of 30'-0"; and

WHEREAS, the applicant asserts that the 2012 Approval found practical difficulty in complying with MDL requirements that necessitated making changes to spaces in the existing building that are tenant-occupied or would be affected by tenancies; and

WHEREAS, the applicant notes that in lieu of strict compliance with MDL § 30, mechanical ventilation, hardwired smoke detectors and a sprinkler system will be installed in each apartment; and

WHEREAS, as to MDL § 148 (Public Stairs), subsection (1) requires that all stairs be constructed as fireproof; subsection (2) requires that every stair must be at least three feet in width and all levels must have landings 3'-6" in width; subsection (3) requires that all stairs must be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and subsection (4) requires light and ventilation at every stair at every story by a window or windows opening onto a street, court, yard or space above a setback; and

WHEREAS, the applicant asserts that the Board-approved plans associated with the 2012 Approval show the existing stairwell and common area configuration and the 2012 Approval identifies the practical difficulty of removing and replacing core elements of the buildings, such as public stairs, stairwells and platforms; and

WHEREAS, the applicant asserts that compliance with MDL § 148 would require the removal and replacement of the stairs, landings and public hallways (and creating a separation), which the Board found to be a practical difficulty in the 2012 Approval; and

WHEREAS¸ the applicant assert that compliance with MDL § 148(1) would require that all stairs be constructed as fireproof stairs and to construct fire proof stairs would require removing and replacing the entire stairwell; and

WHEREAS, the applicant states that this would require extensive demolition and reconstruction of the new stairs as well as vacating the building since the stairs are used for egress; and

WHEREAS, the applicant asserts that compliance with MDL § 148(2) requires that every stair must be at least three feet in width and all levels must have landings 3'-6" in width; and

WHEREAS, the applicant asserts that to provide landings at all levels at a width of 3'-6" would require demolishing existing walls of tenant occupied units and reconfiguring public hallways; and

WHEREAS, the applicant asserts that compliance with MDL § 148(3) requires that all stairs be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and

WHEREAS, the applicant notes that a practical difficulty in complying with MDL § 148(3) was found by the 2012 Approval; and

WHEREAS, the applicant asserts that compliance with MDL § 148(4) requires light and ventilation at every stair at every story by a window or windows opening onto a street, court, yard or space above a setback and to provide light and ventilation at every stair at every story would require reconfiguring the current tenant occupied apartments and extending the public hallways, which would entail replacing the core elements of the buildings; and

WHEREAS, the applicant notes that the 2012 Approval provided waiver of MDL § 148(3) and noted it is a practical difficulty to comply with MDL §148 subsections 1-4 because they require removing and replacing the buildings' core structure since the buildings

are wood frame structures. All stairs, landings and public hallways would have to be removed and replaced; and

WHEREAS, the applicant asserts that similar to MDL § 148, strict compliance with MDL § 149(1), (2) and (3) would require the removal and replacement of the stairs, landings and public hallways, which the Board found to be a practical difficulty in the 2012 Approval; and

WHEREAS, further, the applicant notes that in the 2012 Approval the Board considered the applicant's cost analysis for removing such core elements of the buildings; and

WHEREAS, the applicant notes that as part of the 2012 application, it provided a cost analysis for removing such core elements of the buildings and the Board accepted the cladding of stairs with gypsum board underneath and fire retardant materials on the existing risers and treads, the addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor, the addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells, and the installation of sprinklers; and

WHEREAS, the applicant asserts that MDL § 149 (Public Halls) (1) requires that every public hall must have a width of at least three feet; and

WHEREAS, the applicant asserts that compliance would require removing and replacing stairs, public hallways and platforms and intrusion into tenant occupied apartments to meet the requirement; and

WHEREAS, the applicant asserts that MDL § 149(2) requires that all public halls be completely enclosed with fireproof floor, ceiling and walls, and separated from all stairs by fireproof partitions or walls; and

WHEREAS, the applicant represents that compliance would require removing and replacing the occupied buildings' core structure since the buildings are wood frame structures; and

WHEREAS, the applicant asserts that MDL § 149(3) requires that every public hall have at least one window opening directly upon a street or upon a lawful yard or court; and

WHEREAS, the applicant represents that compliance would require intrusion into occupied apartments and a total reconfiguration of the building core, which is practically impossible; and

WHEREAS, the applicant asserts that the 2012 Approval notes that creating a vestibule, which would require intrusion into occupied apartments, constitutes a practical difficulty; and where compliance would necessitate narrowing the existing living rooms on each apartment on floors two through five to accommodate the extended hallway landing and reconstructing the floors and ceilings to be made fire-proof, a practical difficulty exists; and

WHEREAS, the applicant asserts that in lieu of such compliance, under the 2012 Approval, the Board accepted the installation of fire-proof self-closing doors for the entrance to each apartment, the installation of hard-wired smoke detectors in all residential units, and sprinklers; and

WHEREAS, the applicant asserts that MDL § 152 (Firestopping) requirements necessitate substantial reconstruction and rehabilitation of spaces in the existing building and, additionally, in spaces that are tenant occupied or would be affected by tenancies; and

WHEREAS, the applicant represents that strict compliance with MDL § 152 (1), (2), (3), (4), (6) and (7) is not possible since it would require the substantial reconstruction that would occur in existing occupied apartments; and

WHEREAS, the applicant submitted a letter from an architect consultant detailing the practical difficulty in complying with each subsection of MDL §152; and

WHEREAS, as to MDL § 152(1), every wall where wooden furring is used and every course of masonry from the underside to the top of any floor beams will project a distance of at least two inches beyond each face of the wall that is not on the outside of the dwelling; and whenever floor beams run parallel to a wall and wooden furring is used, every such beam must always be kept at least two inches away from the wall, and the space between the beams and the wall shall be built up solidly with brickwork from the underside to the top of the floor beams; and

WHEREAS, the applicant states that compliance would require removing and replacing the buildings' structural elements; demolishing and replacing the flooring system and all perimeter walls; and intrusion into occupied apartments; and

WHEREAS, as to MDL § 152(2), whenever a wall is studded off, the space between an inside face of the wall and the studding at any floor level must be fire-stopped; every space between beams directly over a studded-off space must be fire-stopped by covering the bottom of the beams with metal lath and plaster and placing a loose fill of incombustible material at least four inches thick on the plaster between the beams, or hollow-burned clay tile or gypsum plaster partition blocks, at least four inches thick in either case and supported by cleats, will be used to fill the spaces between beams; and

WHEREAS, the applicant represents that compliance would require removing and replacing the buildings' structural elements; removing and replacing ceilings because each wooden wall stud has a wooden top and bottom plate; and intrusion into occupied apartments; and

WHEREAS, as to MDL § 152(3), the applicant notes that it requires that partitions which are not parallel with the wood floor beams and which separate one apartment or suite from another or any part of an apartment or suite from a public hall or other part of the dwelling outside the apartment or suite must be filled in

solidly with incombustible material between the floor beams from the plate of the partition below to the full depth of the floor beams; and

WHEREAS, the applicant represents that compliance would require removing and replacing the apartments' and public hall elements and because these Old Law Tenements contain wooden wall studs and plates, the floors and ceilings at each landing would have to be removed and replaced; and

WHEREAS, further, the applicant states that the tenant occupied apartments would have to be vacated during the demolition and construction of the rooms and means of egress; and

WHEREAS, as to MDL § 152(4), the applicant notes that it requires that if a dwelling is within ten feet of another non-fireproof building or of a side lot line, it must have its eaves or cornices built up solidly with masonry; and

WHEREAS, the applicant asserts that compliance would require removing and replacing each front cornice, all of which are independent from each other and solidly blocked at the ends of each property line; and

WHEREAS, as to MDL § 152(6), the applicant notes that it requires that every space between stair carriages of any non-fireproof stair be fire-stopped by a header beam at top and bottom; where a stair run is not all in one room or open space, the stair carriages must have an intermediate firestop, so located as to cut off communication between portions of the stair in different rooms or open spaces; and the underside and stringers of every unenclosed stair of combustible material must be fire-retarded; and

WHEREAS, the applicant represents that compliance would require removing and replacing each primary stair because the structural members of the existing stairwells are wooden and the tenant occupied apartments would have to be vacated during the demolition and construction of the buildings' primary means of egress; and

WHEREAS, as to MDL § 152(7), the applicant notes that it requires that all partitions required to be fire-retarded be fire-stopped with incombustible material at floors, ceilings and roofs; fire-stopping over partitions must extend from the ceiling to the underside of any roofing above; and any space between the top of a partition and the underside of roof boarding must be completely fire-stopped; and

WHEREAS, the applicant represents that compliance would require removing and replacing the apartments' and public hall elements and, because these Old Law Tenements contain wooden wall studs and plates, the floors and ceilings at each landing would have to be removed and replaced; and

WHEREAS, further, the applicant states that the tenant occupied apartments would have to be vacated during the demolition and construction of the rooms and means of egress; and

WHEREAS, in conclusion, the applicant asserts that compliance with MDL § 152 is not possible since it would require substantial reconstruction of building elements and reconstruction of the common spaces and means of egress; and

WHEREAS, the applicant asserts that in lieu of strict compliance, it proposes fire-safety measures formerly accepted by the Board, including the installation of sprinklers throughout the entire building; and

WHEREAS, at hearing, a commissioner raised concern about whether the proposed firestopping sealant was appropriate for wood-frame buildings and whether the building would be entirely sprinklered; and

WHEREAS, in response, the applicant revised the plans to reflect the correct sealant – Blaze Stop WF300 Intumescent Firestop Caulk – which is used for wood joists, and sprinklers throughout the building, including within each unit; and

WHEREAS, additionally, at hearing, another commissioner who was not satisfied that sufficient fire safety measures are proposed, specifically that there was not a basis to waive MDL § 152 (Fire-stopping) referred to and compared the application to the application and DOB approvals of fire safety measures for 515 East 5th Street (initially approved by DOB absent jurisdiction and not yet approved by the Board); and

WHEREAS, the commissioner indicated that the sprinkler design must satisfy all Fire and Building Code requirements; and

WHEREAS, in response, the applicant notes the following distinctions: (1) the East 5th Street proposal reflects the full demolition of the interior apartments, which allows for the introduction of additional measures compared to the subject building which does not propose a gut rehabilitation and complete demolition of apartments; (2) the construction notes on the East 5th Street plans refer to MDL § 241 which is not one of the noted objections in the subject application; and (3) the construction notes reference Building Code § 27-3459 (formerly C26-504.7) which exempts certain sprinklered areas from the fire-stopping requirement and is not being sought to waive; 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 prior to 1929; 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 each of the noted conditions fits within one of the sections of MDL § 310(2)(a) – namely height and bulk and means of egress – which the Board has the express authority to vary; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a); and

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

WHEREAS, the applicant states that while it has specified the practical difficulties that would result from strictly complying with each of the individual provisions of the MDL, the underlying issue is that the subject building was constructed more than a century ago using the then common materials and designs, and there is no feasible way to remove all the combustible wood to create segregated and fireproof areas and add elevator cores; and

WHEREAS, the applicant represents that because the proposed vertical enlargement is not permitted, the MDL restriction creates practical difficulty and unnecessary hardship in that it prevents the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, specifically, the applicant notes that the subject district permits an FAR of 4.0, and the proposed enlargement, in combination with the proposed enlargements of the 329 Building, the 333 Building, and the 335 Building, will increase the FAR on the proposed zoning lot from 3.31 to 3.75; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the Board notes that the new construction will comply with light and air requirements but that the existing windowless rooms will remain as they have existed; and

WHEREAS, the applicant states that the requested variance of MDL §§ 30, 52.4, 53, 145, 148, 149 and 152 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 states that the objections cited by DOB are all existing conditions in legally occupied buildings, and the proposal to increase the height from 54'-3" to 67'-3" to accommodate one additional residential unit effectively triggers the retrofitting of the entire building; and

WHEREAS, the applicant represents that the proposed construction promotes the intent of the law because the additional occupancies will be of minimal impact and will not result in overcrowding of the building, the newly constructed spaces will be compliant with current fire safety norms, and the proposal will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant states that it proposes the following fire safety measures: (1) installation of non-combustible concrete floors in the first floor public hallway; (2) installation of new fireproof stairs in the cellar/basement spaces; (3) cladding of all remaining stairs with gypsum board; (4) addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) installation of fireproof self-closing doors for each dwelling unit; (7) addition of fire sprinklers throughout the whole building (including sprinkler in apartments); (8) installation of hard-wired smoke detectors in all residential units; (9) installation of new fire escapes at the rear of the 333 Building and 335 Building; and (10) installation of fire-stopping at the junctures between the walls and floors/ceilings in the public hallways as detailed in the proposed plans; and

WHEREAS, the applicant represents that the above-mentioned fire safety improvements provide a significant added level of fire protection beyond what presently exists in the subject building and improves the health, welfare, and safety of the building's occupants; and

WHEREAS, the applicant represents that the addition of one floor to the subject building does little to increase fire risk, and that the proposed building will actually be significantly safer than it is in its present condition; and

WHEREAS, the applicant submitted a report from a fire consultant endorsing the proposed improvements to the building and stating that "it cannot be understated how significantly fire safety will be improved if the plans are approved by the Board;" 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 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 Board's 2012 Approval, variance to the requirements of MDL §§ 51(6), 143, 146, 148(3), and 149(2) and associated conditions remains and it is not disturbed; and

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WHEREAS, the applicant notes that it has eliminated the proposed dormers from the plans and added skylights since the 2012 Approval; and

WHEREAS, as to the Opposition's arguments that the proposed enlargement will have a negative effect on the low-rise character of the surrounding neighborhood and that the alleged hardships are self-created by the applicant's desire to enlarge the building, the Board notes that in an application to vary the requirements of the MDL under MDL § 310, unlike in an application to vary the Zoning Resolution under ZR § 72-21, the Board's review is limited to whether there are practical difficulties and unnecessary hardship in complying with the strict letter of the MDL, that the spirit and intent of the MDL are maintained, and that substantial justice is done; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the requirements of MDL §§ 30, 52.4, 53, 145, 148, 149 and 152 is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decisions of the Manhattan Borough Commissioner, dated November 21, 2013 and March 10, 2014, are modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received July 22, 2014"-(8) sheets; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings objections related to the MDL and does not address any other non-compliance, including any which may exist pursuant to the Zoning Resolution, Building Code, or Housing Maintenance Code;

THAT fire safety measures not limited to the following will be installed and maintained: (1) non-combustible concrete floors in the first floor public hallway; (2) new fireproof stairs in the cellar/basement spaces; (3) cladding of all remaining stairs with gypsum board; (4) two additional layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) two additional layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) fireproof self-closing doors for each dwelling unit; (7) fire sprinklers throughout the whole building; (8) hard-wired smoke detectors in all residential units; (9) new fire escapes at the rear of the 333 Building and 335 Building; and (10) fire-stopping at the junctures between the walls and floors/ceilings in the public hallways as detailed in the proposed plans;

THAT DOB review and approve sprinkler location and number in accordance with the Building Code and Fire Code requirements for full sprinklering of a residential building including within each unit and all public spaces, prior to the issuance of any permits;

THAT fire safety measures associated with the 2012 Approval will be installed and maintained;

THAT the Department of Buildings will confirm the establishment of the zoning lot, consisting of tax lots 44, 45, 46, and 47, prior to the issuance of a building permit;

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

THAT the Department of Buildings 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, July 29, 2014.

A true copy of resolution adopted by the Board of Standards and Appeals, July 29, 2014.
Printed in Bulletin No. 31, Vol. 99.
Copies Sent
To Applicant
Fire Com'r.
Borough Com'r.