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APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for Francesco Veltri, owner.
SUBJECT – Application July 28, 2015 – Application filed pursuant to Section 310 of the Multiple Dwelling Law ("MDL") requesting to vary MDL 171(2)(a) to permit a partial one story vertical enlargement of an existing building. R10A zoning district.

PREMISES AFFECTED – 137 West 86th Street, north side of West 86th between Columbus and Amsterdam Avenues, Block 1217, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Chanda.....	4
Negative:.....	0
Absent: Commissioner Montanez.....	1

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 21, 2016, acting on Department of Buildings ("DOB") Application No. 122416420 reads, in pertinent part:

Proposed increase in stories bulk and/or height not allowed for heretofore converted dwelling (HCA) contrary to MDL 171(2)(a) and 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 four-story, basement and cellar multiple dwelling, contrary to MDL §§ 171(2)(a) and 171(2)(f); and

WHEREAS, a public hearing was held on this application on May 17, 2016, after due notice by publication in *The City Record*, with a continued hearing on July 12, 2016, and then to decision on August 23, 2016; and

WHEREAS, the record was re-opened on December 6, 2016, to accept a revised objection from DOB, closed and voted again on the same date; and

WHEREAS, Vice-Chair Hinkson, Commissioner Montanez, Commissioner Ottley-Brown, and Commissioner Chanda performed inspections of the subject site and neighborhood; and

WHEREAS, the subject site is located on the north side of West 86th Street, between Amsterdam Avenue and Columbus Avenue, within an R10 zoning district within the Upper West Side/Central Park West Historic District; and

WHEREAS, the site has 23 feet of frontage along West 86th Street, a depth of approximately 100 feet, and a lot area of 2,316 sq. ft.; and

WHEREAS, the site is occupied by a four-story with basement and cellar multiple dwelling; and

WHEREAS, the applicant states that the existing

building was constructed c. 1900 and contains 14 residential apartments (three apartments on the basement level, first floor, second floor, and third floor, and two apartments on the fourth floor); and

WHEREAS, the existing building has a floor area of approximately 8,445 sq. ft. (3.65 FAR) and a height of approximately 60'-3"; the applicant notes that the permitted FAR for a residential building in the subject R10 zoning district is 10.0, and notes further that as-built, the existing building contains 14,707 sq. ft. of unused development rights; and

WHEREAS, the applicant states that the building has a pre-existing rear yard enlargement which was constructed c. 1939; and

WHEREAS, the applicant proposes to enlarge the building by constructing a partial fifth floor containing an additional 851 sq. ft. of floor area; the applicant proposes to use the front portion of the proposed fifth floor as the upper floor of an existing unit (which will be converted into a duplex); the applicant proposes to use the remaining portion of the proposed fifth floor to create a separate one bedroom unit; thus, the applicant states; and

WHEREAS, thus, the applicant states that the proposed enlargement will (1) increase the total number of dwelling units in the building from 14 to 15; (2) increase the floor area of the subject building from 8,445 sq. ft. (3.65 FAR) to 9,296 sq. ft. (4.01 FAR); and (3) increase the height of the building from 60'-3" to 68'-7" (an increase of 8'-4"); and

WHEREAS, the applicant notes that the proposed fifth-floor enlargement will be set back 15'-0" from the building's front façade, so as not to be visible from the street, and also notes that the base height of the proposed building is compliant with the underlying zoning district regulations, which allow a maximum base height of 150'-0"; and

WHEREAS, the applicant notes that the proposed enlargement is fully compliant with the zoning district regulations applicable to the subject site, but that it does not comply with MDL § 171(2)(a), which 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 four stories to five stories and from 60'-3" to 68'-7", the Department of Buildings ("DOB") has 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 851 sq. ft. enlargement on the fifth floor exceeds 25 percent of the

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area on the fourth 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 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 fourth floor of the building 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 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 10.0, and the proposed enlargement would increase the FAR of the building from 3.65 to 4.01; 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

subject 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, the applicant represents that the proposed construction is modest in size, set back from the front façade of the subject building, and in no way diminishes access to light or air; the applicant further represents that the increase in the unit count of the subject building is minimal (one unit) and below that which is permitted in the subject zoning district; and

WHEREAS, the applicant states that the proposed enlargement will have no impact on the sanitary conditions of the subject building; and

WHEREAS, the applicant states that the proposed enlargement will not impact existing provisions for the escape from fire and will, to the contrary, improve fire safety at the subject site;

WHEREAS, specifically, the applicant proposes to provide the following fire safety improvements: (1) the applicant shall fully sprinkler all common areas and shall replace all existing sprinklers; (2) the applicant shall clad all existing wooden staircases with non-combustible material and shall add gypsum board to the underside of each staircase; (3) the applicant shall upgrade the fire rating of existing public halls to 2-hour fire-rated wall construction; (4) the applicant shall add two (2) layers of 5/8" gypsum board to the cellar ceiling; (5) the applicant shall install fire proof self-closing doors at all apartment entrances; (6) the applicant shall install hardwired smoke/carbon monoxide detectors in all apartments; (7) the applicant shall construct the proposed fifth floor addition of fireproof construction; (8) the applicant shall fill the space between the roof of the existing building and the proposed fifth floor extension with non-combustible material; and

WHEREAS, the applicant states that the second floor of the subject building contains decorative wood panels and wood balusters and handrails, which the applicant need not remove in order to achieve the proposed fire rating; and

WHEREAS, the applicant states that the material of the stair coverings on the treads and risers will be marble; 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

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

WHEREAS, the applicant submitted a Certificate of No Effect, dated March 1, 2016, issued by the New York City Landmarks Preservation Commission and expiring March 1, 2020, which states that the subject proposal will have no effect on significant protected features of the building; 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 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 November 21, 2016, 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 August 19, 2016"- Eleven (11) sheets; and *on further condition*:

THAT the bulk parameters of the building will be as follows: 9,296 sq. ft. (4.01 FAR); 15 dwelling units; and a maximum building height of 68'-7", 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, December 6, 2016.

**A true copy of resolution adopted by the Board of Standards and Appeals, December 6, 2016.
Printed in Bulletin Nos. 48-50, Vol. 101.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

