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BOARD OF STANDARDS AND APPEALS

MEETING OF: **December 13, 2021**
CALENDAR NO.: **2019-257-BZ & 2019-258-A**
PREMISES: **179 East 79th Street, Manhattan**
Block 1508, Lot 31

ACTION OF BOARD — Application granted on condition.

THE VOTE —

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....	5
Negative:	0

THE RESOLUTION —

The decision of the Department of Buildings (“DOB”), dated March 26, 2020, acting on DOB Alteration Type II Application No. 121288016, reads in pertinent part:

“ZR 12-10, ZR 23-153: Creating zoning floor area for living purpose in cellar is contrary to permitted zoning floor area ratio;

BB 2012-008: Portions of cellar used for dwelling purposes shall be included in building floor areas;

MDL sec. 216(2)a, b;

MDL sec. 34 & 216, 2. (a. to h.): Proposed living rooms in cellar does not comply with MDL requirements;

HMC 27-2085: Obtain approval & special permit [. . .] from [Board] of Standard[s] & Appeal[s] (BSA). ”

This application consists of two parts. First, a special permit, under Z.R. §§ 73-621 and 73-03, to permit the enlargement within a building containing residential uses for a non-complying building existing on December 15, 1961, to allow the enlargement of the existing superintendent’s apartment in the cellar of the Premises that does not comply with zoning regulations for floor area (Z.R. § 23-152). Second, an application pursuant to New York City Charter (“Charter”) § 666(7) and New York State Multiple Dwelling Law (“MDL”) § 310(2)(a), to

vary MDL and Housing Maintenance Code (“HMC”) requirements pertaining to required ceiling height (MDL § 216(2)(a) and HMC § 27-2085(a)), required ceiling height in relation to curb elevations (MDL § 216(2)(b) and HMC 27-2085(b)(2)), required rear yard (MDL § 216(3)(e)), and required window openings (HMC § 27-2085(d)).

A public hearing was held on this application on May 25, 2021, after due notice by publication in *The City Record*, with a continued hearing on September 23, 2021, and then to decision on December 13, 2021. Community Board 8, Manhattan, recommends approval of this application.

I.

The Premises are located on the north side of East 79th Street, between Third Avenue and Lexington Avenue, partially within an R10 zoning district and partially within an R10 (C1-5) zoning district, in Manhattan. With approximately 65 feet of frontage along East 79th Street, 102 feet of depth, and 6,334 square feet of lot area, the Premises are occupied by an existing 15-story, with cellar and penthouse, Use Group 2 residential building with 59 dwelling units and 64,605 square feet of floor area (10.2 FAR).

The applicant proposes to enlarge the superintendent’s apartment at the cellar level by 390 square feet, for a total of 994 square feet of floor area, which would result in a total floor area of 64,995 square feet, or 10.25 FAR, which exceeds the allowable 10.0 FAR in the subject R10 zoning district. The applicant represents that the enlargement will occur in the existing cellar, utilizing floor area from existing storage space, and will not increase or modify the footprint of the Premises. Thus, the applicant seeks a special permit under Z.R. § 73-621 to permit the enlargement. Additionally, the proposed cellar apartment would provide a minimum ceiling height of 8'-1", where 9 feet is required pursuant to MDL § 216(2)(a) and HMC § 27-2085(a); required ceiling height in relation to curb elevation of 1'-6", where 2 feet is required by MDL § 216(2)(b) and HCM § 27-2085(b)(2); maintain a 20'-2" rear yard, where 60 feet is required by MDL § 216(3)(e); and, provide a required window opening to a yard with dimensions of 44 feet by 20'-2", contrary to HMC § 27-2085(d). Accordingly, the applicant seeks an appeal pursuant to Charter § 666(7) and MDL § 310(2)(a).

II.

As a threshold matter, the applicant represents that the Premises exist in a zoning district where the special permit is available and are improved with an existing building built prior to December 15, 1961, and submits certificates of occupancy and I-Cards demonstrating the Premises were constructed prior to 1928.

The applicant states that the proposed enlargement complies with Z.R. § 73-621 in that the floor area ratio proposed will not exceed the floor area ratio permitted in the underlying R10 zoning district (10 FAR) by more than 10 percent, is consistent with the surrounding area which is characterized by building with FARs ranging from 10.25 to 15.48, and will have no negative impact on the privacy, quiet, light, and air in the neighborhood as the enlargement is proposed within an existing building and will not increase its footprint.

Based upon its review of the record and inspections of the Premises and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area. The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood. The proposed modification of bulk regulations will not interfere with any pending public improvement project. The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-621 and 73-03.

III.

Because the proposed enlarged apartment would not comply with HMC and MDL provisions relating to required ceiling height (MDL § 216(2)(a) and HMC § 27-2085(a)), required ceiling height in relation to curb elevations (MDL § 216(2)(b) and HMC 27-2085(b)(2)), required rear yard (MDL § 216(3)(e)), and required window openings (HMC § 27-2085(d)), the applicant seeks an appeal pursuant to Charter § 666(7) and MDL § 310(2)(a) to vary these requirements.

The Board notes that it has authority, as set forth in Charter § 666(7), to vary or modify any rule or regulation or the provisions of any law relating to the construction, use, structural changes, equipment, alteration or removal of buildings or structures. The Board may grant a modification pursuant to Charter § 666(7), if it finds that (1) there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the law; (2) the spirit of the law shall be observed; (3) public safety shall be secured; (4) substantial justice is done; and (5) if the Housing Maintenance Code is varied it shall be limited to the extent permitted by the code and only in the manner provided for in it. Additionally, under 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.

The applicant represents that strict compliance with provisions of the HMC and MDL prevents adequate space for the superintendent's family by the addition of a second bedroom and second bathroom in the superintendent's apartment. The applicant states that the inability to enlarge the existing one-bedroom superintendent's apartment presents a practical difficulty and unnecessary hardship. The applicant submits that the requested waivers are relatively minor in scope such that, while the proposed 8'-1" ceiling does not meet the 9' ceiling height requirements of the MDL or the HMC, it meets the 1968 Building Code requirement that habitable rooms have a minimum clear ceiling height of 8' and observes the spirit of the law.

Over the course of hearings, the Board questioned the quality of life in the proposed cellar apartment with respect to the ceiling height and amount of light in the proposed bedroom of the superintendent's apartment; specifically, whether a skylight should be installed in the one-story roofed portion of the cellar where the bedroom is proposed. In response, the applicant performed probes of the roof and assembly, determining that the existing roof materials over the bedroom will require replacement to comply with 2020 NYC Energy Conservation Code requirements. The Board notes that, in the event the entire roof structure needs to be replaced, a skylight shall be installed, measuring 30" by 30", and may be approved by letter; otherwise, insulation is provided in the roof assembly to retain the ceiling height to 8'-2", which could be maintained only by the existing 1/4" plaster.

IV.

Based on the foregoing, the evidence in the record supports the findings required to be made under Z.R. §§ 73-621 and 73-03, and supports the findings required to be made under Charter § 666(7) and MDL § 310(2)(a), and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby make each and every one of the required findings under Z.R. §§ 73-621 and 73-03, MDL § 310(2)(a), and NYC Charter § 666(7), to *permit* the 390 square-foot enlargement of the existing superintendent's apartment in the cellar of the Premises, contrary to that does not comply with zoning regulations for floor area (Z.R. § 23-152), and MDL and HMC requirements pertaining to required ceiling height (MDL § 216(2)(a) and HMC § 27-2085(a)), required ceiling height in relation to curb elevations (MDL § 216(2)(b) and HMC 27-2085(b)(2)), required rear yard (MDL § 216(3)(e)), and required window

openings (HMC § 27-2085(d)); *on condition* that all work and site conditions shall conform to drawings filed with this application marked “November 23, 2021”—Eighteen (18) sheets; and *on further condition*:

THAT if the entire roof structure needs to be replaced, a skylight shall be installed, measuring 30" by 30", and may be approved by letter;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-257-BZ & 2019-258-A”), shall be obtained within four years, by December 13, 2025;

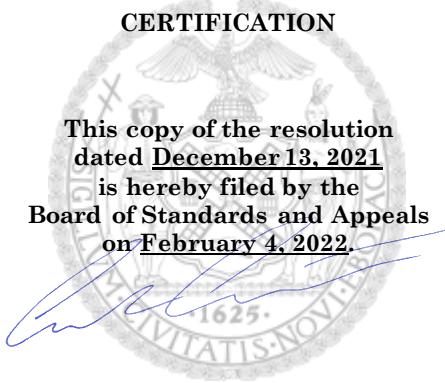
THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

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 other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 13, 2021.

CERTIFICATION



Carlo Costanza
Executive Director