

383-03-A

APPLICANT - Zygmunt Staszewski, P.E., for Cammeby's Management Company, LLC, owner; Barry Pincus, lessee.

SUBJECT - Application December 9, 2003 - Proposed retention of the existing 10-story atrium and open access stair unenclosed, which is contrary to the "Old Code", Art.26-209(6.4.1.9)(2), as part of a "residential conversion" of an existing Commercial Class "E" building to a residential J-2 occupancy.

PREMISES AFFECTED - 5 Beekman Street, southwest corner of Nassau Street, southeast corner of Theater Alley, Block 90, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES -

For Applicant: Caroline Harris, Zygmunt Staszewski, Gene Kaufman and Romona Franklin, Department of Buildings.

ACTION OF THE BOARD - Appeal granted on condition.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, Commissioner Caliendo and Commissioner Chin.....5

Negative:.....0

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, Commissioner Caliendo and Commissioner Chin.....5

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated August 11, 2003, acting on Department of Buildings Application No. 103497823, reads, in pertinent part:

"Proposed egress from apartments via a multi-level open shaft (atrium) is contrary to Section 277(9)(B)(I) M.D.L.

Multi-level opening of shaft is contrary to Section 26-638 . . . (Old Code) [and] should be enclosed with materials having a three hour rating.

Atrium does not comply with M.D.L. Section 277(9)c. Provide access through an unenclosed corridor."; and

WHEREAS, a public hearing was held on this application on August 17, 2004 after due publication in The City Record, with a continued hearing on October 5, and then to decision on October 19, 2004; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, Commissioner Joel Miele, and the Board's appeals examiner; and

WHEREAS, this is an administrative appeal, filed pursuant to section 666 of the New York City Charter, which requests relief from sections 26-238

of the old New York City Building Code (the "Old Code"), with respect to enclosure of a multi-level open shaft, and sections 277(9)(B)(i) and 277(9)(C) of the Multiple Dwelling Law (the "MDL"), with respect to proper egress through enclosed hallways and stairwells; and

WHEREAS, the subject building (the "Building") is known as the Temple Court Building and Annex, and was built in 1881-1890 with brick, stone and terra cotta above a two-story granite base; and

WHEREAS, appellant states: (1) that the exterior of the Building was designated as a Landmark on February 10, 1998; and (2) that it was designed under the Old Code and is currently not sprinklered; and

WHEREAS, the Building features a full-height interior skylighted atrium on one side (the "Atrium Side"), and a smaller open courtyard on the other side (the "Courtyard Side"); and

WHEREAS, there are ten stories on the Courtyard Side and nine stories and three penthouse levels on the Atrium Side; and

WHEREAS, the Building was designed for commercial use, and has historically been occupied commercially; and

WHEREAS, the overall development proposal is to retain retail on the first floor, with 128 residential rental apartments to be developed on the upper floors; and

WHEREAS, appellant represents that apartments may be combined in the future, resulting in reduction of the number of doorways leading into the atrium and/or enclosed corridors; and

WHEREAS, appellant seeks to retain the existing 10-story atrium and open access stair unenclosed; and

WHEREAS, section 26-238 of the Old Code requires that all multi-level shafts must be enclosed with three-hour fire resistive rated construction; and

WHEREAS, section 277(9)(B)(i) of the MDL requires an enclosed hallway and two independently enclosed stairs in a fireproof building; and

WHEREAS, section 277(9)(C) of the MDL provides that no more than two dwelling units shall open directly to a stair without an intervening enclosed hallway; and

WHEREAS, the Old Code objection originally applied to both sides of the Building, but, through a reconsideration granted by the Deputy Commissioner of the Department of Buildings on September 13, 2004, which removed the referenced and certain other Old Code objections related to the Courtyard Side, now only applies to the Atrium Side; and

WHEREAS, however, DOB, who appeared in opposition to this appeal, notes that the objection based upon Old Code §26-238 has not been waived, as it still applies to the Courtyard Side; and

WHEREAS, DOB states that the referenced

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objections pertain to appellant's proposal in the following ways: (1) the atrium, consisting of a series of more than two floor openings in successive floors, is a shaft and must be enclosed with three-hour fire resistive rated construction materials per Old Code §C26-638; according to the revised plans, the atrium remains unenclosed and thus violates Old Code §C26-638; (2) the central hallway to the stairs on the second through ninth floors still abuts the ten-story atrium without a fire resistive-rated assembly separating the hallways from the atrium; therefore, the hallways abutting the atrium on the second through ninth floors are unenclosed and do not comply with MDL §277(9)(b)(1); and (3) six apartment units on the second through eighth floors and four apartment units on the ninth floor open directly onto the central unenclosed hallway abutting the atrium in violation of MDL §277(9)(c); and

WHEREAS, appellant does not challenge the application of the referenced objections to its proposal, but rather argues that strict application of the Old Code and MDL requirements causes practical difficulties such that a waiver of strict application by the Board is warranted; and

WHEREAS, as discussed below and in various submissions made to the Board, appellant will provide various fire safety measures in lieu of strict compliance, and argues that such measures will provide for the safety of the proposed residential occupants in the event of a fire or other emergency; and

WHEREAS, appellant states that the practical difficulties of complying with enclosing and eliminating the atrium are significant from a cost and historic preservation perspective; and

WHEREAS, appellant notes that the cost of the entire renovation and rehabilitation of the Building is \$20 million, and that enclosing the atrium from the second floor to the top, creating inner corridors, theoretically could be done in one of two ways; and

WHEREAS, one of the ways would involve enclosing the landings and walkways in fire-rated glass that would cost in excess of \$5 million, which the applicant represents would be prohibitively expensive; and

WHEREAS, the other way is to enclose the atrium in fire rated sheetrock with small glass openings, which would cost approximately \$1 million, but which, according to the applicant, would cause the loss of visual access to a splendid historic interior, and consequently devalue the entire historic renovation aesthetically, decrease the value of the residential building, significantly reduce the price for the residential space, and thus cause practical difficulties for the project; and

WHEREAS, appellant notes that the existing atrium has horizontal dimensions of 40'-8 2" x 35'-5 2" for a total of 1,443 square feet, which exceeds the minimum dimension of 1,200 square feet as required

by the currently applicable Building Code (the "New Building Code"); and

WHEREAS, appellant proposes to construct two new, enclosed fire rated stairs meeting the egress requirements for the residential load of the building; and

WHEREAS, both of the stairwells will discharge to the street via enclosed fire rated passageways on the first floor, and the open staircase inside the atrium and the first floor of the atrium itself is not a required means of egress for upper floors; and

WHEREAS, appellant will provide all legally required signage in the atrium; and

WHEREAS, appellant will provide area smoke detectors around the atrium on each floor, spaced in accordance with New Building Code Reference Standard ("RS") 17-5 (NFPA 72/1993), and, in addition, will install two smoke beam detectors at the top of the atrium; and

WHEREAS, all detectors will be tested in accordance with NFPA 72/2002 National Fire Alarm Code; and

WHEREAS, all detectors will be connected to a new smoke detection/sprinkler alarm panel to be located in the 1st floor lobby; and

WHEREAS, appellant will also install low voltage addressable system smoke detectors with sounder bases in all apartments in the building; and

WHEREAS, appellant also proposes a detection/sprinkler alarm panel to be located in the 1st floor lobby, which will allow the 24-hour concierge to verify the alarm and call the Fire Department if necessary; and

WHEREAS, appellant states that such arrangement will provide early warning in case of an apartment fire; and

WHEREAS, appellant states that a new combination sprinkler/standpipe riser will be installed in the unenclosed staircase, in addition to the riser in one of the enclosed staircases, and that a fire hose cabinet will be provided as required for high rise residential buildings, to be located at the concierge desk in lobby; and

WHEREAS, appellant states that sprinkler requirements will be complied with through provision of a new 500 GPM fire pump and a jockey pump; and

WHEREAS, quick response extended coverage horizontal sprinkler heads (Reliable EC-9) will be utilized throughout the residential areas of the building, including all apartments; horizontal, wall-mounted extended coverage sprinkler heads will be able to dispense water across the atrium; and

WHEREAS, in addition, the atrium opening will be provided with sprinkler heads at 6'-0" spacing; and

WHEREAS, exposed structural steel brackets

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supporting the atrium balconies will be provided with additional sprinkler heads to protect them from heat; and

WHEREAS, appellant states that sprinkler alarm waterflow switches and valve tamper switches will be installed on each floor and connected to the new smoke detection/sprinkler alarm panel to be located in the 1st floor lobby, and fire pump operation, pump failure and phase reversal will also be monitored by this smoke detection/sprinkler alarm panel; and

WHEREAS, appellant proposes that the panel will transmit all alarms, supervisory and trouble conditions to a FDNY approved Central Station; and

WHEREAS, appellant states that smoke purge requirements will be complied with through provision of a mechanical smoke purge system (exhaust and make-up fan) and manually released spring-loaded skylights; and

WHEREAS, in response to Board concerns, appellant amended its proposal in the following manner: (1) the total fan size was increased to 25,000 CFM, which will translate to 9.4 air changes per hour; (2) the purge system design was modified to include the third smoke intake at the top of the atrium; and (3) the entire smoke purge system, including the fans and controls, is now connected to the emergency power system, which will allow for uninterrupted operation of the smoke purge during a blackout; and

WHEREAS, appellant states that the smoke exhaust system will be activated by area smoke detectors located in the atrium, smoke beam detectors at the top of the atrium, duct smoke detectors on all HVAC units serving the atrium, sprinkler waterflow switches on sprinkler branches serving the atrium, as well as manually from the smoke purge panel in the 1st floor lobby; and

WHEREAS, activation of the smoke purge system will be preceded by release of all self-closing smoke-stop doors, which will separate the atrium from the egress corridors; and

WHEREAS, initial acceptance testing will be conducted in accordance with NFPA 92B "Guide for Smoke Management Systems in Malls, Atria and Large Areas", 2000 edition; and

WHEREAS, subsequent smoke exhaust system tests will be conducted monthly, as per a memorandum submitted by Cosentini Associates, dated 9/1/2004, which is part of the record; and

WHEREAS, a log book will be maintained of all tests; said log book shall comply with all legal requirements; and

WHEREAS, appellant states that it will install a one-way voice paging system for notification of the occupants and conducting effective evacuation, if necessary, and that this system will consist of a microphone and amplifiers to be built into the sprinkler/smoke detection panel in the 1st floor lobby,

two loudspeakers per floor in the atrium area on floors 2-10, two loudspeakers per floor in the enclosed corridors near the staircase entrances on each floor, speakers in all staircases (every 4 floors) and speakers in each apartment for notification of the occupants; and

WHEREAS, this system will be tested semi-annually and a log book, which will comply with all legal requirements, will be maintained to indicate such testing; and

WHEREAS, appellant states that emergency power requirements will be met through provision of a diesel emergency generator sized to power all fire safety systems, including the emergency lighting; and

WHEREAS, all emergency power systems will be tested in accordance with the NYC Building Code; and

WHEREAS, appellant states that a back-up gravity exhaust system will be provided by means of skylights located at the top of the atrium, which will be manually operable from the smoke purge panel and which will also feature fusible links; and

WHEREAS, at the request of the Board, smoke-stop doors to separate the atrium from the corridors leading to the two enclosed staircases on each floor have been added; and

WHEREAS, these doors will swing only in towards the Courtyard Side of the Building; and

WHEREAS, appellant states that: (1) these doors will be self-closing and normally held open by electromagnetic door holders connected to the fire alarm system; (2) activation of any automatic smoke or heat detection devices in the building (including sprinkler system activation) will release all the self-closing doors, which will then latch to create smoke barriers; and (3) door latching shall be adequate to prevent the doors from being opened under the pressures that may be created by hot smoke in the atrium area or in the enclosed corridors; and

WHEREAS, all smoke-stop door releases will be tested in accordance with NFPA 72/2002 National Fire Alarm Code; and

WHEREAS, also at the request of the Board, an enclosed, appropriately fire-rated corridor through a portion of the courtyard will be constructed, which will further facilitate access from all units of the Courtyard Side to the two newly created egress stairwells; and

WHEREAS, appellant has prepared a comparison of the proposed life-safety features to be installed against those required by the New Code, which shows that many requirements of the New Code are exceeded by the proposed conditions; and

WHEREAS, at the request of the Board, appellant has shown other examples of open atriums in building in New York City that have been approved, and which contain comparable fire safety features as those proposed; and

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WHEREAS, the Fire Department made a submission dated August 17, 2004, and indicated that it has no objection to the fire safety scheme and individual components as proposed for the Building by appellant; and

WHEREAS, the Board has reviewed the fire safety measures proposed by appellant and finds that such measures, when considered in the aggregate, will afford the proposed residential occupants a sufficient degree of safety should a fire or other emergency occur; and

WHEREAS, therefore, the Board finds that appellant has proven that there are practical difficulties in the way of carrying out the strict letter of the law and has proposed measures sufficient to address the fire safety concerns inherent to the site and the proposed use, such that the spirit of the law shall be observed, public safety secured, and substantial justice done; and

WHEREAS, accordingly, the Board finds that waiver of the above-mentioned Old Code and MDL provisions is warranted, upon certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals, pursuant to its authority under Section 666 of the Charter of the City of New York, waives the objections of the Department of Buildings as set forth above, and approves the plans labeled A203, A204, A205, A206, A207, A208 and A209, marked "Received October 15, 2004"-(7) sheets, and plan A301, marked "Received October 19, 2004"-B (1) sheet, on condition:

THAT the following fire safety measures shall be installed and maintained:

- two new, enclosed 2-hour fire rated stairs meeting the egress requirements for the residential load of the building;
- legally required signage in the atrium;
- area smoke detectors around the atrium on each floor, spaced in accordance with RS 17-5 (NFPA 72/1993);
- two smoke beam detectors at the top of the atrium;
- a smoke detection/sprinkler alarm panel to be located in the 1st floor lobby, which will monitor fire pump running, pump failure and phase reversal, as well as transmit all alarms, supervisory and trouble conditions to a FDNY approved Central Station;
- a low voltage addressable system smoke detectors with sounder bases in all apartments in the building;
- a new combination sprinkler/standpipe riser to be installed in the unenclosed staircase;
- a fire hose cabinet to be provided as required for high rise residential buildings, located at the concierge desk

in lobby;

- a 500 GPM fire pump and a jockey pump;
- quick response extended coverage horizontal sprinkler heads (Reliable EC-9) to be sited throughout the residential areas of the building, including all apartments;
- horizontal, wall-mounted extended coverage sprinkler heads will be able to dispense water across the atrium;
- sprinkler heads at 6'-0" spacing at the atrium opening;
- exposed structural steel brackets supporting the atrium balconies, to be provided with additional sprinkler heads;
- sprinkler alarm waterflow switches and valve tamper switches, to be installed on each floor and connected to the new smoke detection/sprinkler alarm panel;
- a mechanical smoke purge system (exhaust and make-up fan) and manually released spring-loaded skylights, with a total fan size of 25,000 CFM, three smoke intakes at the top of the atrium, and with connection to the emergency power system;
- area smoke detectors at the top of the atrium, smoke beam detectors at the top of the atrium, duct smoke detectors on all HVAC units serving the atrium, sprinkler waterflow switches on sprinkler branches serving the atrium, as well as manual operation of the switches from the smoke purge panel in the 1st floor lobby;
- a one-way voice paging system for notification of the occupants and conducting effective evacuation, consisting of a microphone and amplifiers to be built into the sprinkler/smoke detection panel in the 1st floor lobby, two loudspeakers per floor in the atrium area on floors 2 - 10, two loudspeakers per floor in the enclosed corridors near the staircase entrances on each floor, speakers in all staircases (every 4 floors) and speakers in each apartment;
- a diesel emergency generator sized to power all fire safety systems, including the emergency lighting;
- a back-up gravity exhaust system, to be provided by means of skylights located at the top of the atrium, which will also be manually operable from the smoke purge panel and also will feature fusible links;
- smoke-stop doors to separate the atrium from the corridors leading to the two enclosed staircases on each floor have been added; and

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- an enclosed, appropriately fire-rated corridor through a portion of the courtyard.

THAT testing of certain fire protection systems shall occur as follows:

- initial acceptance of the smoke purge system shall be conducted in accordance with NFPA 92B "Guide for Smoke Management Systems in Malls, Atria and Large Areas", 2000 edition;
- subsequent smoke exhaust system tests shall be conducted monthly, as per a memorandum submitted by Cosentini Associates, dated 9/1/2004, which is part of the BSA record;
- a log book of all testing shall be maintained;
- all detectors shall be tested in accordance with NFPA 72/2002 National Fire Alarm Code;
- the one-way voice paging system shall be tested semi-annually and a log book (which will comply with all legal requirements) will be maintained to indicate such testing;
- all emergency power systems shall be tested in accordance with the New Building Code; and
- all smoke-stop door releases shall be tested in accordance with NFPA 72/2002 National Fire Alarm Code

THAT apartment units may be combined without further review by the BSA if there is no increase in the amount of units doors into the atrium or courtyard;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all of the above-mentioned components of the various fire protection systems shall comply with all applicable legal provisions and materials acceptance protocol, as determined and approved by the Department of Buildings;

THAT notwithstanding the above-mentioned testing regime, any and all additional testing as required by the New Building Code or any other applicable law, rule or regulation, as determined by the Department of Buildings, shall be complied with;

THAT notwithstanding the above-mentioned safety measures, any and all additional safety measures as required by the New Building Code or any other applicable law, rule or regulation, as determined by the Department of Buildings, shall be complied with;

**A true copy of resolution adopted by the Board of Standards and Appeals, October 19, 2004.
Printed in Bulletin Nos. 42-43, Vol. 89.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

THAT the Board reserves its right to impose further conditions, based upon its own initiative or upon the recommendation of any governmental agency having jurisdiction over the subject building;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; 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, including those that pertain to fire safety, 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, October 19, 2004.