

**57-95-A**

APPLICANT – Mitchell S. Ross, Esq., for Upwest Company, LLC, owner.

SUBJECT – Application February 9, 2015 – Amendment/Time to complete construction filed under Certificate of Occupancy Modification. R7-2 zoning district.

PREMISES AFFECTED – 473 Central Park West, West side of Central Park West between West 107th and West 108th Streets, Block 01843, Lot 32, Borough of Manhattan.

**COMMUNITY BOARD #7M**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure and an extension of time to obtain a Certificate of Occupancy, which expired on September 18, 2008; and

WHEREAS, a public hearing was held on November 24, 2015, after due notice by publication in *The City Record*, with continued hearings on February 2, 2016, April 5, 2016, August 23, 2016, September 27, 2016, and January 31, 2017, and then to decision on April 4, 2017; and

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

WHEREAS, the subject site is located on the west side of Central Park West, between West 107th and West 108th Street, in an R7-2 zoning district, in Manhattan; and

WHEREAS, the site has approximately 24 feet of frontage along Central Park West, 100 feet of depth, 2,400 square feet of lot area and is occupied by a five-story residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject premises since January 29, 1963, when, under BSA Calendar No. 1874-61-A, the Board granted waivers of Sections 216 and 34(6) of the New York State Multiple Dwelling Law ("MDL"), pursuant to MDL § 310, to permit the creation of Class A apartments in the cellar for a term of five (5) years, expiring January 29, 1968, on condition that a Certificate of Occupancy be obtained; and

WHEREAS, the Board granted waivers of the same MDL sections and for the same purposes for adjacent buildings located at 474/475 and 476 Central Park West under BSA Cal. Nos. 1937-61-A and 1871-61-A, respectively (referred to herein, together with the subject premises, as the "Subject Buildings"); and

WHEREAS, on June 18, 1968, December 5, 1972, and January 17, 1978, under BSA Calendar No. 1874-61-

A, the Board granted extensions of the term of the MDL waivers for additional five (5) year terms, the last of which expired on January 17, 1983, on condition that a new Certificate of Occupancy be obtained; and

WHEREAS, on October 25, 1983, under BSA Calendar No. 1874-61-A, the Board granted another extension of the term of the MDL waivers for an additional five (5) year term, expiring January 17, 1988, on condition that access to the street through the cellar conform to the Board-approved plans, that, in the event the building was separately sold, an easement permitting the required access to the street must be provided at the time of sale and such easement condition must appear on the Certificate of Occupancy and a new Certificate of Occupancy be obtained within one (1) year; and

WHEREAS, on November 21, 1995, under the subject calendar number, the MDL waivers having lapsed and occupancy of the dwelling units in the cellar having continued, the Board reinstated the waiver for a term of ten (10) years, expiring November 14, 2005, on condition that, in the event the building was separately sold, an easement permitting the required access to the street must be provided at the time of sale and such easement condition must appear on the Certificate of Occupancy, that smoke detectors and exit signs be provided in accordance with the Board-approved plans and a new Certificate of Occupancy be obtained within one (1) year; and

WHEREAS, on March 18, 2008, under the subject calendar number, the Board granted a waiver of its Rules, amended the MDL waivers to eliminate the term of years and extended the time to obtain a Certificate of Occupancy by six months, to be obtained by September 18, 2008, on condition that, in the event the building is sold separately, an easement permitting the required access to the street be provided and all fire safety measures be installed and maintained pursuant to the Board-approved plans; and

WHEREAS, the applicant now seeks an extension of time to obtain a Certificate of Occupancy and a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, of Rule § 1-07.3(d)(2) to permit the filing of this application more than thirty (30) days after the expiration of time to obtain a Certificate of Occupancy; and

WHEREAS, each of the Subject Buildings remains filed under separate calendar numbers, but all three applications were heard together; and

WHEREAS, the photographs submitted with the subject applications raised issues regarding the safety and maintenance of the cellar dwelling units and showed, *inter alia*, the metal stairs, public corridors, flooring and masonry in the buildings' cellars to be in poor condition, impermissible storage of materials along the fire route and maintenance of unenclosed garbage under the stairs

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and in front of cellar dwelling unit windows; and

WHEREAS, at the public hearing held on November 24, 2015, the Board also raised concerns regarding the substantial number of outstanding Department of Buildings (“DOB”) and Housing Preservation and Development (“HPD”) violations at the Subject Buildings and requested that all violations be corrected; and

WHEREAS, by letter dated November 23, 2015, the Fire Department requested that any action by the Board on this applications be conditioned on the installation of a full sprinkler system throughout the cellars of the Subject Buildings; and

WHEREAS, shortly before the public hearing held on February 2, 2016, ownership of the Subject Buildings was transferred and the management company for the purchaser proposed a plan to resolve the open violations, which included the replacement and conversion of the boiler systems, installation of fire stopping in the cellar ceilings, installation of an automatic sprinkler system in the cellars, and gut renovation of the 34 dwelling units (out of a total 75 dwelling units in the Subject Buildings) that were vacant; and

WHEREAS, at that public hearing, the Board requested additional information regarding the timeline for the proposed renovations and plans for correcting violations in occupied dwelling units; the Board additionally discussed reinstatement of the term of the MDL waivers due to the present conditions in the Subject Buildings; and

WHEREAS, at this time, the applicant represented that the vacant dwelling units included two of the four total dwelling units located in the cellar of 473 Central Park West, three of the seven total dwelling units located in the cellar of 474/475 Central Park West and all four of the dwelling units located in the cellar of 476 Central Park West; and

WHEREAS, by letter dated February 25, 2016, in light of the applicant’s representation that dwelling units in the Subject Buildings would be gut renovated, the Fire Department revised its recommendation to request that any Board action be conditioned on the installation of sprinklers throughout all dwelling units, hallways and accessory spaces of the Subject Buildings in compliance with the MDL, New York City Building Code and New York City Fire Code; and

WHEREAS, by submission dated March 17, 2016, the applicant voiced its opposition to the Fire Department’s request that the Subject Buildings be sprinklered in their entirety on the basis that the Fire Department had misunderstood the representations previously made by the applicant regarding the scope of the proposed renovation work and that no applicable law or code required full sprinklering; and

WHEREAS, by letter dated March 18, 2016, the Fire Department identified testimony by the applicant’s representative from the prior public hearing that, indeed,

referenced “gut renovations,” acknowledged that strict interpretation of applicable codes did not require sprinklers in the Subject Buildings, but stated that its recommendation was, further, based on the historical mismanagement, lack of proper maintenance and violation history of the subject premises and the Fire Department’s interest in ensuring that life safety systems in aging buildings are brought to current code, whenever possible; and

WHEREAS, the Board was further alarmed by the physical conditions of the cellar dwelling units as indicated by additional photos of the premises submitted into the record by the applicant’s submission, dated March 17, 2016; in particular, the Board expressed concern that the repair work being undertaken to address the existing violations was minor and failing to address or correct underlying building issues, including, but not limited to, evident plumbing leaks and potential mold; and

WHEREAS, the Board noted that given the substantial number of vacant dwelling units in the Subject Buildings located above grade, and, thus, the potential to relocate tenants from the cellar, continued occupancy of the cellar dwelling units and the grant of the relief requested herein could only be justified if the dwelling units in the cellar were maintained in desirable conditions; and

WHEREAS, the Board also stated, at the public hearing held on April 5, 2016, that the significant number of HPD violations and quantity of vacant dwelling units suggested that tenants vacated the Subject Buildings due to the prior owner’s neglect and that rent-regulated dwelling units may have been deregulated as a result of these vacancies; and

WHEREAS, by letter dated July 27, 2016, the Fire Department further revised its recommendation to request that sprinklers be installed throughout the cellars of each of the Subject Buildings, including all public areas, service areas, storage areas and residential units; sprinklers be installed in all public hallways and stairways, cellar to bulkhead inclusive, of the Subject Buildings; hard-wired smoke and carbon monoxide detectors be installed in all residential units, both renovated and currently occupied, of the Subject Buildings; and that no vote be taken by the Board until the sprinkler systems are installed and approved by both the Fire Department and DOB; and

WHEREAS, on September 14, 2016, the Board performed a site visit of the Subject Buildings, gained access to the vacant cellar dwelling units, rear and side yards, as well as a recently renovated dwelling unit on an upper floor, but was unable to view any of the occupied cellar dwelling units; at that visit, the project manager in charge of building construction represented that the intention was to retain all demising and interior walls in the cellar apartments, skim coat the walls, paint and

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install kitchen cabinets, appliances and fixtures, relocate corridor walls and install electrical upgrades, if required by code; and

WHEREAS, at the Executive Session, held on September 26, 2016, the Board stated that these statements contradicted the floorplans submitted with the applicant's submission, dated September 8, 2016, which showed that all interior partitions at the cellar level, including all corridor walls, as new; and

WHEREAS, as a result of these conflicting representations, and the Board's recognition that many of the cellar dwelling units are undersized and non-compliant with MDL regulations regarding minimum unit and room sizes, the Board further stated that it was inclined to deny the subject applications as proposed unless the applicant agreed to comply with the following: gut renovation of the cellars of the Subject Buildings that matches the quality of the renovated units located on the upper floors of the Subject Buildings with full sprinklering in the cellar and hard wired smoke detectors; combination of the cellar units so as to provide units of habitable size and layout in compliance with the MDL; installation of code compliant radiators in lieu of ceiling-mounted coil heating units; relocation of all exposed piping, as necessary, so as to be concealed in the hung ceiling; replacement of all wiring in the cellar; clear route from all cellar units to a second means of egress to the Subject Buildings' side or rear yards via doors rather than windows; installation of a raised insulated floor in the unit located over the boiler room to reduce the extreme heat load currently experienced in that unit and the maintenance of an 8 foot floor to ceiling height in that unit; relocation of electric and gas meters to an enclosed meter closet in a corridor recess so as to not impact the corridor's width or circulation; an uninterrupted and continuous corridor floor without any features that would compromise access or egress; enclosure of corridor walls with finished material; and replacement of stairs to cellar levels with stairs that meet the rise to run and tread width requirements of the Building Code; and

WHEREAS, the Board further requested that tenants of rent-regulated dwelling units located in the cellars be relocated to apartments located above grade without any increase to their rent and that hard-wired smoke detectors be installed in all rent-regulated dwelling units in the Subject Buildings, whether or not they have been renovated; and

WHEREAS, the Board expressed concern that the requested combination of cellar dwelling units—requested so as to improve the condition of those units, particularly with regards to access to light and air and the provision of secondary means of egress, such that a grant of the requested relief would be warranted—not result in the reduction in the number of rent-regulated dwelling units or an increase in rent for those units' current tenants; and

WHEREAS, at the public hearing held on September 27, 2016, the applicant agreed, to relocate the

two remaining tenants of rent-regulated dwelling units located in the cellars to above-grade dwelling units in the Subject Buildings, or other buildings within the owner's real estate portfolio, without any increase in rent and to consult with landlord-tenant counsel to ensure that cellar dwelling units would be combined so as to not reduce the number of rent-regulated units; and

WHEREAS, the applicant provided revised plans for the cellar dwelling units in the Subject Buildings showing a reduction in the number of units in the cellar of 473 Central Park West from four to two (one studio and one two-bedroom unit), a reduction in the number of units in the cellar of 474/475 Central Park West from seven to four (1 one-bedroom, 2 two-bedrooms and one studio) and a reduction in the number of units in the cellar of 476 Central Park West from four to two (one studio and one two-bedroom); and

WHEREAS, of the eight reconfigured cellar dwelling units, the applicant represented that the following four would remain rent-regulated: both units in the cellar of 473 Central Park West (Units A and B), the two-bedroom unit in the cellar of 474 Central Park West (Unit B) and the studio unit in the cellar of 476 Central Park West (Unit A); and

WHEREAS, the applicant additionally stated that one of the last two rent-regulated tenants of cellar dwelling units had successfully been relocated to a formerly fair market apartment at another building under the same ownership as the Subject Buildings', which the applicant represented became rent-regulated as a matter of law, without any increase in rent and that efforts were being made to similarly relocate the final tenant of a cellar dwelling unit in 473 Central Park West; and

WHEREAS, thus, as a result of the reconfiguration of the cellar dwelling units and relocation (and planned relocation) of rent-regulated tenants of these cellar units, the applicant represents that five rent-regulated cellar dwelling units would be retained as follows: four units in the cellars of the Subject Buildings, one new rent-regulated unit in another building under the same ownership as the Subject Buildings and the possibility of a sixth rent-regulated unit, should the final rent-regulated tenant from a cellar unit in 473 Central Park West be relocated to a market rate unit that would become rent-regulated as a matter of law; and

WHEREAS, the applicant agreed to set the first rent for the rent-regulated cellar dwelling units below the current rent threshold at which such units could be eligible for deregulation by the New York State Division of Housing and Community Renewal ("DHCR") and, at the Board's request, provided the rent rolls for the rent-regulated units in the cellars of the Subject Buildings; and

WHEREAS, the applicant satisfactorily addressed the remainder of the Board's concerns, including substantial progress on the correction of outstanding

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violations, secondary means of egress from the cellar dwelling units, installation of an insulated floor in the cellar dwelling unit located above a boiler room, relocation of the electric and gas meters and reconfiguration of the cellar corridors; and

WHEREAS, nevertheless, the Board notes that the prior owner of the Subject Buildings was greatly enriched by the MDL waivers; the prior owner benefitted, for decades, from rents collected for fifteen cellar dwelling units that that owner failed to maintain in proper and safe condition; and that the current owner initially demonstrated a reluctance to substantially improve these conditions by proposing only to paint and upgrade building systems if required by code; and

WHEREAS, thus, the Board finds that reinstatement of a term is necessary based on the historical lack of maintenance of the cellars at the subject premises; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to obtain a Certificate of Occupancy is appropriate with certain conditions, as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated November 21, 1995, as amended through March 18, 2008, so that as amended this portion of the resolution reads: “to grant an extension of time to obtain a Certificate of Occupancy to April 4, 2020; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received March 16, 2017”-Seven (7) sheets; and *on further condition*:

THAT a Certificate of Occupancy shall be obtained within three (3) years, by April 4, 2020;

THAT the term of years for the waivers is reinstated, to run from the date of this grant, for a term of thirteen (13) years, expiring April 4, 2030;

THAT the rents for each of the rent-regulated dwelling units in the cellar (473 Central Park West Unit A and 473 Central Park West Unit B) shall start at the maximum monthly rent permitted in New York City for such units, based on size, for tenants earning 100 percent Area Medium Income (“AMI”), calculated as of the time the dwelling unit is first occupied;

THAT DOB shall verify that all window openings meet the lighting and ventilation requirements of MDL § 30;

THAT the cellar shall not be occupied until issuance of the Certificate of Occupancy;

THAT there shall be no construction in the cellar until the final occupant of the cellar has been relocated;

**A true copy of resolution adopted by the Board of Standards and Appeals, April 4, 2017.  
Printed in Bulletin No. 15, Vol. 102.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

THAT a new sprinkler system fully compliant with the New York City Fire Code and New York City Building Code shall be installed throughout the cellar, including individual dwelling units and hallways, and throughout the hallways and common areas, up to bulkheads of the remainder of the building;

THAT in the event that this building is sold separately from the adjacent buildings at 474/475 and 476 Central Park West, an easement permitting the required access to the street must be provided at the time of sale;

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

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s); and

THAT 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, April 4, 2017.

