***CORRECTION**

This resolution adopted on April 4, 2017, under Calendar No. 68-15-A and printed in Volume 102, Bulletin No. 15, is hereby corrected to read as follows:

68-15-A

APPLICANT – Pryor Cashman, LLP for 230 West 97th Street, LLC, owner.

SUBJECT – Application March 27, 2015 – Variance pursuant to Section 310 of the NYSMDL to allow the 2,708 square foot penthouse enlargement to a non-fireproof Old law Tenement building contrary to the height regulations. C4-6AEc-3 zoning district.

PREMISES AFFECTED – 230 West 97th Street, Block 1868, Lot 44, 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, the decision of the Department of Buildings ("DOB"), dated March 5, 2015, acting on Alteration Application No. 104599043 reads in pertinent part:

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

WHEREAS, this is an application pursuant to Multiple Dwelling Law ("MDL") § 310 to legalize the vertical enlargement of a seven-story, with cellar, non-fireproof old-law tenement, contrary to MDL § 211(1); and

WHEREAS, a public hearing was held on this application on September 20, 2016, after due notice by publication in *The City Record*, with a continued hearing on December 13, 2016, and then to decision on April 4, 2017; and

WHEREAS, former 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 southeast corner of Broadway and West 97th Street, within a C4-6A zoning district and the Special Enhanced Commercial District 3, in Manhattan; and

WHEREAS, the site has approximately 101 feet of frontage along Broadway, 100 feet of frontage along West 97th Street and 10,092 square feet of lot area;

WHEREAS, the site is occupied by an existing seven-story, with cellar, building with a one-story penthouse enlargement; and

WHEREAS, prior to being enlarged, the building contained 56,104 square feet of floor area (5.57 FAR) on seven stories, 75 feet in height with commercial uses in the cellar and on the first floor and 31 residential apartments on the first through seventh floors; and

WHEREAS, the enlarged building currently contains 58,812 square feet of floor area (5.84 FAR) on eight stories, 101.8 feet in height with an additional three dwelling units on the eighth floor; and

WHEREAS, Certificate of Occupancy No. 107626, issued on July 19, 1995, and Certificate of Occupancy No. 58572, issued on November 1, 1969, indicate that the existing building is an "old-law tenement," which MDL § 4(11) defines, in pertinent part, as "a tenement existing before April twelfth, nineteen hundred one"; and

WHEREAS, accordingly, the existing building was a tenement built prior to April 12, 1901; and

WHEREAS, the applicant proposes to legalize the eighth-story penthouse enlargement that occurred between 2007 and 2008 pursuant to an invalid building permit issued under Alteration Application No. 104599043; and

WHEREAS, the applicant states that the eighth story contains three apartments and 2,078 square feet of floor area resulting in a building with a total floor area of 58,812 square feet (5.84 FAR); and

WHEREAS, the applicant notes that the enlargement is fully compliant with the zoning district regulations applicable to the subject site, but that it does not comply with MDL § 211(1); and

WHEREAS, MDL § 211(1) prohibits any non-fireproof tenement from being increased in height so that it exceeds five stories without adhering to the MDL provisions applicable to multiple dwellings erected after April 18, 1929; and

WHEREAS, accordingly, the applicant requests that the Board exercise its authority under MDL § 310 to permit the eighth-story enlargement, contrary to MDL § 211(1); 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 building was constructed prior to April 12, 1901, and existed on July 1, 1948; 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 § 211(1) specifically relates to the height and bulk of tenements; therefore, the Board has the power to vary or modify the subject provision under MDL § 310(2)(a)(1); and

WHEREAS, turning to the findings under MDL

§ 310(2)(a), the applicant asserts that practical difficulty and unnecessary hardship would result from strict compliance with the MDL; and

WHEREAS, the applicant states that the eighth-story enlargement would be lawful were it to conform to Article 4 of the MDL, which would require, among other things, the reconstruction of all floors of the building with non-combustible material and the creation of a new stairwell, which would reduce the size of existing apartments throughout the building as evidenced by plans submitted by the applicant comparing the existing enlargement with an enlargement of the building compliant with Article 4; and

WHEREAS, the applicant also represents that demolition of the eighth-story enlargement or compliance with Article 4 of the MDL would both result in extraordinary construction costs and provided cost estimates to that effect; and

WHEREAS, based on the above, the Board agrees that there are practical difficulties or unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the applicant states that the requested variance of MDL § 211(1) 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 Board 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 enlargement will not impact existing fire safety measures and will, to the contrary, improve fire safety at the subject site; and

WHEREAS, specifically, the applicant proposes to provide the following fire safety improvements: (1) full sprinklering of all common areas; (2) installation of a full automatic wet sprinkler system in the basement; (3) addition of emergency lighting, with back-up battery power, in all common areas; (4) addition of 5/8" gypsum board to all hallway walls and ceilings, resulting in a three-hour fire rating for the walls and ceilings; (5) installation of 1-1/2 hour fire-rated doors in all apartments; (6) installation of full automatic wet sprinkler systems in 15 of the existing 31 apartments; and (7) installation of hard-wired smoke and carbon-monoxide detectors in 15 of the existing 31 apartments; and

WHEREAS, the applicant further proposes to install a full automatic wet sprinkler system and hard-wire the existing battery-operated smoke and carbon-monoxide detectors in the remaining 16 of the existing 31 apartments as they become vacant and to install 1-1/2 hour fire-rated doors in all stairwells; and

WHEREAS, in response to concerns from the Board, the applicant further notes that a substantial number of the improvements to fire safety have already been installed throughout the building, including 5/8" gypsum board on the walls and ceilings of common areas, sprinklers and hard-wired smoke detectors in some apartments with existing tenants, and 1-1/2 hour fire-rated doors on all floors; and

WHEREAS, at the Board's request, the applicant provided an evacuation plan for the subject site, which provides two means of egress for all existing apartments; and

WHEREAS, in response to questions from the Board, the applicant provided additional information about the site's alternate entrance at 226 West 97th Street, which the applicant represents is not a primary entrance but a convenience opening subject to an egress easement agreement utilized as a fireproof exit from the subject building to the street, and the applicant represents that the area subject to this agreement is sprinklered and of fireproof construction and that the door between the subject site and 226 West 97th Street will be three-hour fire-rated; and

WHEREAS, the Board notes that this use of 226 West 97th Street was the subject of an Order from the State of New York Division of Housing and Community Renewal ("DHCR"), Docket Number DS430004OD, issued May 31, 2016, granting permission to modify the lobby of the subject building to utilize a newly constructed corridor connected to the lobby of 226 West 97th Street pursuant to the terms of a signed Agreement between the owners and the tenants, a copy of which was attached to the order; and

WHEREAS, the applicant submitted a plan of the first floor of 226 West 97th Street, represents that the convenience opening indicated therein is in compliance with the DHCR Order and attached Agreement, and, accordingly, this plan of the first floor of 226 West 97th Street has been included in the set of plan approved in connection with this application; and

WHEREAS, the applicant also represents that the combustible deck on the roof complies with the Building Code because it covers 15 percent, which is no more than 20 percent as permitted, of the roof area; that the first floor of the building is concrete and fireproof; and 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, the Board notes that the owner has agreed to record a Restrictive Declaration against the property stating that rents will not be increased for any rent-regulated or rent-stabilized tenant as a result of the safety improvements made in order to legalize the eighth story enlargement and that recordation of such Declaration has been incorporated as a condition of this grant; and

WHEREAS, based on the above, the Board finds that the proposed variance to the height and bulk requirements of MDL § 211(1) will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; 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 § 211(1) is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decision of the Department of Buildings ("DOB"), dated March 5, 2015, be *modified* under the powers vested in the Board by Section 310 of the Multiple Dwelling Law and that the application be *granted* limited to the objection noted, *on condition* that construction shall substantially conform to the drawings filed with the application marked "Received March 31, 2017"–Twenty-Five (25) sheets, and that all applicable laws, rules and regulations shall be complied with, and *on further condition*:

THAT all work described on the Board-approved drawings, including sprinkler installation, shall be completed prior to the issuance of a certificate of occupancy;

THAT the Board has no objection to the issuance of temporary certificates of occupancy for the eighth-story penthouse enlargement or other dwelling units within the building provided that, prior to the issuance of any temporary certificate of occupancy for the eighth-story enlargement, the fire escape has been extended and all other fire safety work related to the eighth-story enlargement has been completed;

THAT the Egress Easement Agreement permitting a second means of egress from the subject site through 226 West 97th Street be recorded with the Office of the City Register;

THAT a restrictive declaration, which requires that no rent be increased as a result of any fire safety work completed within the building pursuant to the Board's variance of MDL § 211(1), shall be placed on the property;

THAT a copy of the restrictive declaration shall be recorded with the Office of the City Register and made part of the Department of Buildings file prior to the issuance of a certificate of occupancy;

THAT the restrictive declaration shall be noted on the certificate of occupancy and on any temporary certificate of occupancy, if any be issued;

THAT the recorded restrictive declaration shall substantially conform to the form and substance of the following:

> DECLARATION made this ___ of _____, 2017, by 230 West 97th Street, LLC, hereinafter referred to as the "Grantor," hereinafter referred to as the "Declarant," with a principal office located at 421 Seventh Avenue, 11th Floor, New York, NY 10001.
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> WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of Manhattan, designated as Block 1868 Lot 44, on the Tax Map of the City of New York, hereinafter referred to as Parcel A (the "Subject Premises"), more particularly described by a metes and bounds description set forth in Schedule A annexed hereto and by this reference made a part hereof:
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> WHEREAS, the Declarant has requested the New York City Board of Standards and Appeals (the "BSA") act upon BSA Cal. No. 68-15-A; and
>
> WHEREAS, the BSA, requires Declarant to execute and file this restrictive declaration prior to obtaining a Certificate of Occupancy for the subject Premises.
>
> NOW, THEREFORE, in consideration of BSA approval to allow the 2,708 square foot penthouse enlargement, contrary to the height regulations of Section 211 of the New York State Multiple Dwelling Law, Declarant does hereby declare that Declarant and his successors and/or assigns shall be legally responsible for operating and maintaining the Subject Premises in compliance with the following restrictions:
>
> 1. Declarant covenants and agrees that it will not increase the rent, as of the date of this agreement, of any rent-regulated or rent-stabilized tenant, as a result of the safety improvements required by the BSA in connection with its approval under BSA Cal. No. 68-15-A.
> 2. This declaration may not be modified, amended or terminated without the prior written consent of the BSA.
> 3. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns; Failure to comply with the terms of this declaration may result in the revocation of a building permit or Certificate of Occupancy as well as any other authorization or waiver granted by the BSA; and
> 4. This declaration shall be recorded at the city register's office against the Subject Premises and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to any building located on the subject Premises and in any deed for the conveyance thereof.
>
> IN WITNESS WHEREOF, Declarant has made and executed the foregoing restrictive declaration as of the date hereinabove

written.

THAT the dimensions of the proposed dwelling units in the penthouse shall be subject to review by the Department of Buildings;

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

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, April 4, 2017.

***The resolution has been amended. Corrected in Bulletin Nos. 29-31, Vol. 106, dated August 2, 2021.**

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.