

***CORRECTION**

This resolution adopted on October 8, 2013, under Calendar No. 75-13-A and printed in Volume 98, Bulletin Nos. 40-41, is hereby corrected to read as follows:

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APPLICANT – Law Office of Fredrick A. Becker, for 5 Beekman Property Owner LLC by Ilya Braz, owner.
SUBJECT – Application February 20, 2013 – Appeal of §310(2) of the MDL relating to the court requirements (MDL §26(7)) to allow the conversion of an existing commercial building to a transient hotel. C5-5(LM) zoning district.

PREMISES AFFECTED – 5 Beekman Street, south side of Beekman Street from Nassau Street to Theater Alley, Block 90, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Director of the NYC Development Hub, dated February 7, 2013, acting on Department of Buildings Application No. 121329268 reads, in pertinent part:

Proposed conversion of an office building to a Use Group 5 transient hotel does not comply with MDL Section 26(7), in that legally required windows open onto an existing inner court; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, to vary court requirements in order to allow for the proposed conversion of the subject building from office and adult vocational school uses (Use Groups 6 and 9) to a transient hotel (Use Group 5), contrary to MDL § 26(7); and

WHEREAS, a public hearing was held on this application on July 9, 2013, after due notice by publication in *The City Record*, with a continued hearing on August 13, 2013, and then to decision on October 8, 2013; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is a rectangular lot located on the south side of Beekman Street and extending from Theater Alley to Nassau Street, within a C5-5 district within the Special Lower Manhattan District; and

WHEREAS, the site has approximately 100 feet of frontage along Beekman Street, approximately 146 feet of frontage along Nassau Street, approximately 150 feet of frontage along Theater Alley, and a lot area of 14,937 sq. ft.; and

WHEREAS, the site is occupied by a ten-story commercial building that was constructed between 1881 and 1890 and is known as the Temple Court Building and Annex (the “Building”); and

WHEREAS, on February 10, 1998, the Building was designated as an individual landmark by the New York City Landmarks Preservation Commission (“LPC”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 19, 2004, when, under BSA Cal. No. 383-03-A, the Board authorized the retention of an open, unenclosed access stair contrary to the 1938 Building Code and the MDL in connection with a proposed conversion from office and adult vocational school uses (Use Groups 6 and 9) to residences (Use Group 2); and

WHEREAS, in 2009, another application was filed with the Board, under BSA Cal. No. 12-09-A, seeking MDL and 1938 Building Code waivers in connection with a proposed conversion from office and adult vocational school uses (Use Groups 6 and 9) to transient hotel (Use Group 5); this application was withdrawn on July 19, 2011; and

WHEREAS, the applicant notes that, despite the Board’s action under BSA Cal. No. 383-08-A, the Building was never converted to residential use and has been vacant for many years; and

WHEREAS, the applicant now proposes to convert the Building to a transient hotel use (Use Group 5) with 287 rooms (the “Proposal”); and

WHEREAS, the applicant states that while the proposed use is permitted as-of-right in the underlying zoning district, the Building’s existing inner court, as defined by MDL § 4(32), does not comply with the applicable provisions of the MDL; and

WHEREAS, the Board notes that pursuant to MDL § 4(9), transient hotels are considered “class B” multiple dwellings; therefore the proposed hotel use must comply with the relevant provisions of the MDL; and

WHEREAS, pursuant to MDL § 30(2), every room in a multiple dwelling must have one window opening directly upon a street or upon a lawful yard, court or space above a setback located on the same lot as that occupied by the multiple dwelling; and

WHEREAS, the applicant states that of the 287 rooms proposed, 32 rooms (11 percent) would have required windows opening onto the existing inner court; and

WHEREAS, MDL § 26(7) states that, except as otherwise provided in the Zoning Resolution, (1) an inner court shall have a minimum width of four inches for each one foot of height of such court and (2) the area of such inner court shall be twice the square of the required width

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of the court, but need not exceed 1,200 sq. ft. so long as there is a horizontal distance of at least 30 feet between any required living room window opening onto such court and any wall opposite such window; and

WHEREAS, the applicant states that the Building's existing inner court with a height of 121 feet does not comply with the requirements of MDL § 26(7), in that it has a width of approximately 30'-8¼" and a depth of approximately 16'-2¾", and an area of 514 sq. ft., but is required, per MDL § 26(7) to have a minimum width of 40'-3" and a minimum depth of 30'-0" and an area of 1,200 sq. ft.; as such, the applicant requests that the Board waive compliance with that provision pursuant to MDL § 310; 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 in the 1880s and completed around 1890; therefore it 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 § 26(7) specifically relates to the minimum dimensions of courts; therefore the Board has the power to vary or modify the subject provision pursuant to MDL § 310(2)(a)(3); 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, in order for all of the hotel units in the proposed hotel to have windows that open onto a street or a lawful yard or court, as required by MDL § 30(2), extensive structural work would be required to enlarge the inner court to a complying dimension, including construction of new foundations below the annex cellar, shoring of the two existing floor beams down to the foundation, the installation of three new beams on the edge of the new opening, the installation of a new metal deck and concrete topping between the edge beam and the remaining interior floor beam, the demolition of each floor and wall for one story below, and the installation of a new light well façade; and

WHEREAS, as an alternative to the creation of a complying court, the applicant explored the feasibility of a design in which the inner court was not altered and the rooms were configured so that no room used the inner

court to satisfy MDL § 30(2); and

WHEREAS, the applicant represents that both complying configurations significantly increase costs and reduce revenue; and

WHEREAS, specifically, the applicant represents that providing a complying inner court would result in a reduction in the number of hotel rooms from 287 to 263 (24 rooms) and a loss of 6,669 sq. ft. of floor area; further, the construction cost of providing a complying court would exceed the proposed design cost by approximately \$23,000 per room; and

WHEREAS, as to the design in which the inner court is not altered and the rooms are reconfigured, the applicant represents that such a design would result in a reduction in the number of rooms from 287 to 255 (32 rooms) and construction costs in excess of the proposed design of approximately \$27,000 per room; and

WHEREAS, further, the applicant asserts that both complying designs would generate significantly less annually than the proposal; specifically, the complying inner court design would generate approximately \$2,500,000 less than the proposal and the reconfigured rooms design would generate approximately \$3,400,000 less than the proposal; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of MDL § 26(7); and

WHEREAS, the applicant states that the requested variance of MDL § 26(7) is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, the applicant represents that the Building was constructed to meet the demands of a late-19th Century office and, as such, is unsuitable to satisfy the demands of a modern office, but can be altered to provide transient accommodations to business travelers and tourists in Lower Manhattan; and

WHEREAS, the applicant notes that only 11 percent of the rooms will use the existing inner court for light and ventilation and that, because the rooms will be occupied for less than 30 days, and, presumably, by visitors who will spend a significant portion of their time touring the city or conducting business outside their room, the impact of the deficient court upon the health, safety and welfare of the occupants of the hotel will be, at most, negligible; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the building, which, as noted above, was designated by LPC as an individual landmark in 1998; and

WHEREAS, the applicant submitted a Certificate of No Effect from LPC approving the proposed interior alterations, dated April 30, 2013, and a Permit for Minor Work from LPC approving the exterior alterations, dated March 27, 2013; and

WHEREAS, based on the above, the Board finds that the proposed variance to MDL § 26(7) will maintain

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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 Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of MDL § 26(7) is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decision of the Executive Director of the NYC Development Hub, dated February 7, 2013, acting on Department of Buildings Application No. 121329268, is modified and that this application is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received June 3, 2013" - twelve (12) sheets; and on further condition:

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

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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 8, 2013.

***The resolution has been amended to the 18th WHEREAS, and 28th WHEREAS. Corrected in Bulletin Nos. 1-3, Vol. 99, dated January 23, 2014.**

**A true copy of resolution adopted by the Board of Standards and Appeals, October 8, 2013.
Printed in Bulletin Nos. 40-41, Vol. 98.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

