

**95-14-A**

APPLICANT – Bernard Marson, for BBD & D Ink., owner.

SUBJECT – Application May 5, 2014 – MDL 171 &4.35 to allow for a partial one-story vertical enlargement (*Penthouse*) of the existing 3 story and basement building located on the site. Pursuant to the 310 MDL. R8 zoning district.

PREMISES AFFECTED – 237 East 72nd Street, north Side of East 72nd Street 192.6' West of 2nd Avenue, Block 1427, Lot 116, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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

**THE VOTE TO GRANT –**

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez .....4  
Negative:.....0

**THE RESOLUTION –**

WHEREAS, the decision of the Department of Buildings (“DOB”), April 8, 2014, acting on DOB Application No. 121931320 reads, in pertinent part:

Hereafter converted dwelling cannot be increased in height or stories, per MDL 171(2)(a); and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, to permit, on a site within R10A zoning district, a one-story vertical enlargement of four-story residential building, contrary to MDL §§ 4.35 and 171; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, with continued hearings on November 18, 2014, January 27, 2015 and April 21, 2015, and then to decision on May 19, 2015; and

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

WHEREAS, the subject site is the north side of East 72nd Street, between Second Avenue and Third Avenue, within an R10A zoning district; and

WHEREAS, the site has 17’-6” of frontage along East 72nd Street and approximately 1,788 sq. ft. of lot area; and

WHEREAS, the site is occupied by a four-story residential building classified under the MDL as a Hereafter Converted Class A multiple dwelling; and

WHEREAS, the applicant states that the building has approximately 3,630 sq. ft. of floor area (2.03 FAR) and a building height of 49’-10”;

WHEREAS, the applicant states that the building is Class 3, non-fireproof building, which was constructed in approximately 1922, and has four dwelling units, one on each of the existing stories); and

WHEREAS, the applicant proposes to construct a fifth story, which will result in an enlargement of approximately 351 sq. ft. and a total building floor area of 3,981 sq. ft. (2.23 FAR); further, the height of the building will increase to approximately 64’-3”;

WHEREAS, MDL § 171(2)(a) states that it is unlawful to “increase the height or number of stories of any converted dwelling or to increase the height or number of stories of any building in converting it to a multiple dwelling”; and

WHEREAS, because any increase in height or number stories of a converted multiple dwelling is prohibited, and the proposed increase of the existing building is from four stories to five stories and from 49’-10” to 64’-3”, the proposal does not comply with the requirements of MDL § 171(2)(a); and

WHEREAS, accordingly, the applicant seeks a waiver of MDL § 171(2)(a); and

WHEREAS, the Board notes that, pursuant to MDL § 310(2)(a), it 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 subject building was constructed in approximately 1922; 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 § 171 specifically relates to building height; therefore, the Board has the power to vary or modify the subject provisions 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 MDL §§ 171(2)(a) prohibits a vertical enlargement of the subject building; and

WHEREAS, in addition, the applicant states that it is impractical to horizontally enlarge the building due to the existing configuration of the building on the lot and the rear yard requirements of the Zoning Resolution; and

WHEREAS, the applicant also notes that the existing building, including the greenhouse at the basement level, has a depth of approximately 67 feet, the lot depth is approximately 102 feet, the lot width is approximately 17 feet and a rear yard with a minimum depth of 30 feet is required under ZR § 23-47; as such, at the first two stories of the building, a horizontal enlargement would yield approximately five additional feet of building depth yet require substantial structural modifications, at significant cost (though the upper stories would be enlarged by approximately 20 feet); and

WHEREAS, accordingly, the applicant asserts that although a horizontal enlargement is technically feasible, it is impractical for half the units in the occupied building because the additional living space would not justify the

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costs or inconvenience of construction; and

WHEREAS, the applicant represents that because neither a vertical enlargement nor a horizontal enlargement is permitted, the MDL restrictions create a practical difficulty and an unnecessary hardship in that they prevent the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, specifically, the applicant notes that the subject district permits an FAR of 3.14, and the proposed enlargement would increase the FAR of the building from 2.03 to 2.23; and

WHEREAS, based on the above, the Board agrees that there is a practical difficulty and an unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the applicant states that the requested variance of MDL §§ 171(2)(a) 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 states that the proposal includes numerous fire safety improvements to mitigate the existing fire infirmities inherent in the pre-1929 building; and

WHEREAS, the applicant 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, accordingly, the applicant represents that the proposed construction promotes the intent of the law because: (1) the new unit will cause minimal impact, as it will not increase the number of dwelling units (the fifth story will be part of a duplex with the fourth story); (2) it will be modest in size and set back from the front and rear facades, thereby providing sufficient light and ventilation to any occupants therein with minimal impacts on light and ventilation of neighboring residents; and (3) it will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant proposes to provide the following fire safety improvements: (1) a new stair bulkhead to the roof will be built to replace the existing scuttle; (2) a new skylight in the bulkhead roof will provide natural light and ventilation for the stairway; (3) additional sprinkler heads will be provided within the existing fourth story and the fifth story will be fully-sprinklered; (4) new stairway sprinkler heads will be added to the ceiling of the new bulkhead; (5) the new doors to the fourth story and fifth story will be fireproof, self-closing doors; (6) the entire stairway from cellar to

fifth story will be enclosed with two-hour fire-rated walls; (7) access to the fifth floor roof will be provided via a stair; (8) a stair landing with a minimum width of 3’-0” will be constructed in front of the fourth story entrance; (9) four existing stair winders will be eliminated; (10) firestopping will be provided in accordance with the 2014 Building Code; (11) the cellar ceiling and third story ceiling will have a two-hour fire rating; and (12) the cellar will be fully-sprinklered; and

WHEREAS, the applicant represents 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, based on the above, the Board finds that the proposed variance to the height requirements of MDL §§ 171(2)(a) 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 requirements of MDL §171(2)(a) is appropriate, with certain conditions set forth below.

*Therefore it is Resolved*, that the decision of the Department of Buildings, dated April 8, 2014, is *modified* and that this application is *granted*, limited to the decision noted above, on condition that construction will substantially conform to the plans filed with the application marked, "Received, May 19, 2015"-(4) sheets; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically filed DOB objections related to the MDL;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; specifically, no relief has been granted with respect to any provision of the Building Code; and

THAT DOB shall verify compliance with the applicable provisions of the Building Code, Zoning Resolution, 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, May 19, 2015.

**A true copy of resolution adopted by the Board of Standards and Appeals, May 19, 2015.**

**Printed in Bulletin No. 22, Vol. 100.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

