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Testimony before the Board of Standards and Appeals
September 22, 2009
Case # 217-09-A
514-516 East 6th Street

Good morning and thank you for allowing me the opportunity to testify today in opposition to the issuance of ten separate variances in order to allow the vertical enlargement at 514-516 East 6th Street. I am Councilwoman Rosie Mendez, and I represent Council District 2 where these properties are located.

The buildings in question are of great concern to me not only as a Councilmember, but also as a community resident. My office has been actively involved with the tenants in these and various other buildings owned by the same landlord since the earliest days of my tenure in the City Council, and my office and I have been constantly pressuring the DOB to improve its enforcement of numerous issues during that entire period. In Nov. 2008 I appeared before you, to voice my concern that this building, along with 515 East 5th Street violated the provisions of the Multiple Dwelling Law (MDL) and I was pleased that this body voted to revoke the vertical enlargement permit for these buildings. I firmly stand with the tenants at these buildings and the surrounding community in asking that the BSA oppose the issuance of numerous variances. The precedent set in this case, which I hope will be for the integrity of state law and the maintenance of basic safety standards, will be exceptionally important to my constituents and to the preservation of my neighborhood's character.

The MDL has very clear language regarding the ways in which tenement buildings can be enlarged. Article 7 (Tenements) of the MDL categorically prohibits the enlargement of such buildings unless and until they are brought into full compliance with all applicable code requirements governing new construction. The owner of this building has built additional stories on top, endangering the health and safety of all of the inhabitants of this old law tenement. In 1929, the State Legislature deemed that already existing tenements could be maintained, but that they should not be enlarged vertically so as to exceed five stories unless they met the minimal height and bulk, fire protection, egress and other requirements of the MDL. The singular exception to this rule is if the roof height is not increased above the curb. In this case, the one exception does not apply and no one can argue that the buildings, as altered, meet the minimal requirements of the MDL.

I do not believe that one property owner should have the authority to unilaterally determine what safety measures are equivalent or exceed the MLD provisions that have stood the test of time for 80 years. The issuance of multiple variances in this case would allow that to happen and would open the flood gates to others.
Furthermore, the fact remains that the providing sprinklers or adding layers of sheetrock to combustible stair construction cannot mitigate the lack of a true secondary means of egress. The owner argues that somehow the penthouse should not count as a seventh story, but there are sleeping rooms on that floor. I fail to see how a sleeping occupant of that space would flee a fire any easier because he/she can descend to the 6th floor. With no

secondary means of egress, occupants of the penthouse are clearly in increased danger. In addition, none of the purported mitigation measures address the lack of elevator accessibility as mandated for buildings of this size by the MDL. The City needs more accessible housing accommodations and has made provisions for this in its own buildings codes which, since 1968, have required an elevator for new construction exceeding four stories. With more consciousness about the needs of the elderly and the disabled, there is simply no justification for allowing a seventh story.

It is perverse to argue that the owner needs to build higher and gain additional square footage to generate rental income in order to pay for essential fire safety upgrades. Such tenement buildings, at their original heights, have served as standard and profitable housing for numerous decades. There are dozens of comparable buildings like these in my district and hundreds in the City as a whole. In any event, the applicant has provided no financial analysis for the assertion that the safety accommodations could not be made.

These buildings, as altered, violate the New York City Zoning Resolution which was changed on November 19, 2008. I am proud to have worked hard with community residents on this rezoning, which ensures that the Lower East Side stays true to its low-rise, mixed use character. The two buildings are located in a R7B district, which allows only 3.0 FAR no matter the use. At the time of the new zoning went into affect, the applicant's permit had been revoked. Accordingly, the building should be required to comply with the lower zoning, but it is overbuilt.
In addition, I would like to emphasize that this owner added the vertical enlargements based on the claim that he was entitled to additional FAR by providing community facility use (6.5 FAR allowed in a R7-2 zone) at the first floor in the form of Use Group 4 Medical Offices. Subsequently the filed plans were modified and now show commercial use which is being occupied exclusively by non-conforming Use Group 6 commercial uses, including a veterinarian that was removed under a padlock order imposed by DOB on a different building whose owner is the same as this property's owner. I suggest that before the BSA makes a determination on this matter, that DOB conduct an inspection to ensure that the buildings comply with all zoning and use group criteria. While there, DOB might also confirm that the penthouses, as built, conform to the approved plans which show that the penthouses cover less than one-third the roof area, and that the "recreation rooms" shown on the plans in the cellar are not actually being used as sleeping rooms. From our knowledge of these spaces the plans appear not to conform to actuality.

These buildings should not have been allowed to be enlarged. During the renovation, the DOB failed in its responsibility to enforce the MDL and to require the owner to strictly adhere to the zoning. This owner should not now be allowed to single-handedly rewrite safety standards that were set in place by the State of New York, in an effort to allow an over-built building to remain. If these ten variances are granted, I am extremely fearful that owners of tenement buildings throughout my district and elsewhere in New York will take it upon themselves to replicate the example set here. The safety implications of that are dire. There have been too many tragedies associated with DOB in the past year to take the risk that the substitutions made in this case really are equivalent to the establish standards. I urge the Board of Standards and Appeals to deny the owner's application.

Again I thank you for the opportunity to testify on this matter which I think is so important for my district and the city as a whole.