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Testimony before the Board of Standards and Appeals
October 7th, 2008
Case # 81-08-A and 82-08-A
515 East 5th Street and 514-516 East 6th Street

Good morning and thank you for allowing me the opportunity to voice my concerns regarding the issue of the application of the Multiple Dwelling Law (MDL) in reference to 515 E. 5th Street and 514-516 E. 6th Street. I am Councilwoman Rosie Mendez, and I represent Council District 2 where both of the subject 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 active involved with the tenants in these buildings 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. I believe that as development pressure continues unrelentingly in my district, the precedent set in this case, which I hope will be for the integrity of state law and the maintenance of safety standards set nearly a century ago, will be exceptionally important to my constituents and to the preservation of my neighborhood's character. I firmly stand with the tenants at these buildings and with the Urban Justice Center in asking that the BSA override the Department of Building's (DOB) decision to not strictly enforce the MDL.

The MDL has very clear language regarding the ways in which tenement buildings can be expanded upon. 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 these buildings has built additional stories on top, endangering the health and safety of all of the inhabitants of these old law tenements. 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 only exception to this is if the roof height is not increased or if the owners install an elevator. Neither has occurred here.

By granting the permits for the vertical enlargements, DOB has taken it upon itself to override the will of the state legislature which passed the MDL. In our democratic form of government the people have vested the legislature with the power to author the laws and the executive agencies to implement them. It is not within the purview of the DOB or any government agency to add or remove provisions of laws and codes. Any motion to change or modify laws, especially one like this, with important and far-reaching consequences, must be undertaken in a public and deliberative manner, not by arbitrary action of anonymous DOB examiners. The BSA must enforce the basic integrity of the MDL. I firmly believe that by approving the enlargements, the DOB has overstepped its administrative authority as a city agency and defied the legislative will of the State of New York.

Over the past three years DOB and I have exchanged numerous letters regarding these buildings. One of the earliest is a letter to me from DOB in August 2006, regarding 515 E. 5th. In that letter Commissioner Santulli wrote that “it has been the Department’s position that, provided the applicant complies with the Life and Safety requirements of M.D.L. Articles 3 and 5, an enlargement is permissible to six (6) stories or 75 feet, per M.D.L. Article 5.” I was very hopeful when I received that letter, because at that time 515 E. 5th additional floor and a half was not yet completed or occupied, and 514-516 E. 6th St.’s addition was not even anticipated. Because I knew that there was no practical means for this building to meet those “Life and Safety” requirements, I assumed that DOB would deny the permit for the extension.

I was wrong, and I soon became aware that DOB approved the extension which, by the way also violated the Sliver Law, a determination issued by this body in September of last year. My frustration mounted, so in May 2007, I wrote DOB again in an attempt to get a definitive explanation of how it could allow, what appeared to me to be a clear infraction of the MDL. I wrote then what is perfectly relevant to say again here today : “I firmly believe that the provisions of the MDL are necessary and prudent to ensure public safety, and reconsiderations which circumvent this law present an unacceptable level of risk. But I did not get a written response back from DOB for 7 months. In February 2008, the final determination letter I received said, I think incredibly “ Thus, the fire-safety upgrades in the proposed design maintain the spirit and intent of the MDL, given the practical difficulties and unnecessary hardships that would be caused in this particular case by the compliance with the strict letter of the MDL provisions.”

I firmly believe that the DOB should not be given the right to supersede established law – especially regarding public safety – because the agency, in its sole judgment, thinks another approach may be more practical and capture the spirit of the law. Furthermore, the fact remains that the additional sprinklers or firewalls provided in these buildings cannot mitigate the lack of a true secondary means of egress.

One morning in May 2007 a member of my staff received a phone call from a very agitated tenant living at one of the buildings at issue here. The tenant reported that over night there had been a fire in the other apartment on the same floor, the fifth, where that tenant lived with two elderly parents. The fire department had arrived there in time, and the fire was contained in that empty apartment where construction work had been underway. Luckily no one was hurt. I shudder to think what might have happened if the senior citizens there or anyone living on the 6th or 7th floor, had all been crowding the narrow stairwell trying to escape an out of control fire.

I submit that there is a very practical solution in this case – do not allow such building to be made taller and house more people in additional apartments further away from safe exist to the street. It is perverse to argue that the owner needed to build higher and gain additional square footage to generate rental income in order to pay for the fire safety upgrades. Such tenement buildings, at their original heights, have served as standard and profitable housing for numerous decades. In the strong real estate climate that continues in this area, there is no need to allow developers to flaunt the law and justify it by claiming that they are doing so to provide basic safety standards.

Owners must not be allowed to illegally construct “vertical elevations” which provide incentives for speculators to harass existing tenants during the extremely disruptive construction of additional floors, thereby converting buildings from affordable housing to much more expensive units. This clearly signals a policy of profit over people. Without stringent enforcement of the building codes designed to uphold public safety, the DOB is effectively permitting quick and unsafe development in order to let developers and landlords cash in on a rapidly rising real estate market.

By allowing these additions to go unchallenged, the standards by which the DOB enforces the state’s housing codes have ultimately become relaxed and irresponsible. We should not compromise the safety

of New Yorkers. I believe that by not strictly enforcing this crucial provision of the MDL we neglect public safety and the common good. The DOB must maintain its integrity to all New Yorkers and enforce, not interpret State Law. I urge the Board of Standards and Appeals to rule in favor of this appeal and mandate that the DOB strictly enforce the MDL.

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.