

**216-10-A**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 1466 Broadway LP c/o Highgate Holdings, Incorporated, owner.

SUBJECT – Application November 12, 2010 – Appeal pursuant to Section 310(2) of the Multiple Dwelling Law seeking to vary the court requirements under Section 26 of the Multiple Dwelling Law to permit the hotel conversion of an existing commercial building, C6-7 Zoning District.

PREMISES AFFECTED – 1466 Broadway, southeast corner of Broadway and West 42<sup>nd</sup> Street, Block 994, Lot 54, Borough of Manhattan.

**COMMUNITY BOARD #5M**

APPEARANCES – None.

**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 Montanez .....5

Negative:.....0

**THE RESOLUTION –**

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 28, 2010, acting on Department of Buildings Application No. 120483912 reads, in pertinent part:

“Legally required windows open into two inner courts which do not comply with the requirements of MDL § 26(7);” 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 retail uses (Use Groups 6, 9 and 10) to a transient hotel (Use Group 5), contrary to MDL § 26(7); and

WHEREAS, a public hearing was held on this application on January 11, 2011, after due notice by publication in *The City Record*, and then to decision on February 1, 2011; and

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

WHEREAS, the subject site is an irregularly-shaped lot located on the southeast corner of West 42<sup>nd</sup> Street and Broadway, with a portion of the site along the eastern lot line extending through the block to West 41<sup>st</sup> Street; and

WHEREAS, the site has approximately 186 feet of frontage along West 42<sup>nd</sup> Street, 103 feet of frontage along Broadway, and 17 feet of frontage along West 41<sup>st</sup> Street, and is located in a C6-7 zoning district within the Theater Subdistrict of the Special Midtown District; and

WHEREAS, the site is occupied by two adjacent buildings; a 15-story building located on the portion of the lot with frontage on West 42<sup>nd</sup> Street and Broadway (the “Main Building”) and an eight-story building located on the portion of the lot with frontage on West 41<sup>st</sup> Street (the

“Annex”); and

WHEREAS, the applicant states that the Main Building was constructed in 1906 and was used as a hotel, known as the Knickerbocker Hotel, until the early 1920s; the Annex was constructed in the 1890s and was used as a small hotel until the completion of the Main Building, at which point the Annex was incorporated into that building and served as the service entrance to the Knickerbocker Hotel; and

WHEREAS, the Board has exercised jurisdiction over the subject site since 1921 when, under BSA Cal. No. 127-21-A, the Board granted an appeal of a DOB order associated with window materials, in connection with the conversion of the Main Building and the Annex from transient hotel use to retail and office use; and

WHEREAS, in 1979 the owner proposed to convert the Main Building and the Annex to residential use and, under BSA Cal. No. 798-79-A, the Board granted an appeal pursuant to MDL § 310(2) to allow for the proposed residential conversion, which did not comply with the requirement that at least one window in each apartment open onto a street, yard or lawful court, pursuant to MDL §277(7); and

WHEREAS, the applicant notes that, despite the Board’s action under BSA Cal. No. 798-79-A, the Main Building and the Annex were not converted to residential use; and

WHEREAS, currently, the Main Building is partially occupied by office and retail uses and is partially vacant; the Annex is entirely vacant; and

WHEREAS, the applicant proposes to convert the Main Building and the Annex to their original use as a transient hotel with 395 hotel units (the “Proposed Hotel”), which is a permitted use in the underlying zoning district but does not comply with the court requirements of MDL § 26(7); and

WHEREAS, the applicant states that there are currently two narrow courts located at the rear of the Main Building, each less than 16 feet wide, and in order to provide more light and air to the units located in the Proposed Hotel, a portion of the Main Building will be demolished and reconstructed to create a single large court with a width of 68’-9” and a depth of at least 20’-0” (the “Rear Court”); and

WHEREAS, the applicant also proposes to make extensive alterations to the interior of the Main Building in order to provide the Proposed Hotel with 395 hotel units, and to alter the Annex to provide a loading dock on West 41<sup>st</sup> Street and support space for the Proposed Hotel; 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

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by the multiple dwelling; and

WHEREAS, the applicant states that, of the 395 hotel units in the Proposed Hotel, 200 units will have required windows that open onto a street, 105 units will have required windows that open upon the newly created Rear Court, and 90 units will have required windows that open onto an existing court located along the eastern lot line of the site (the "Side Court"); and

WHEREAS, pursuant to MDL § 4(32), both the Rear Court and the Side Court are considered "inner courts;" 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 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 proposed 68'-9" width of the Rear Court complies with the minimum width requirement of MDL § 26(7), however, the Rear Court will have an area of 1,685 sq. ft., which will not equal twice the square of the required width of that court (6,074 sq. ft.), and although the area of the Rear Court will exceed 1,200 sq. ft., not all of the windows opening onto that court will be located at least 30 feet from an opposite-facing wall; thus, the Rear Court will not comply with MDL § 26(7); and

WHEREAS, the applicant further states that the proposed width of the Side Court of 92'-5" complies with the minimum width requirement of MDL § 26(7), however, the Side Court has an area of only 811 sq. ft., which does not equal twice the square of the required width of that court (6,074 sq. ft.) and is less than 1,200 sq. ft.; thus, the Side Court will not comply with MDL § 26(7); 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 Main Building was constructed in 1906 and the Annex was constructed in the 1890s; therefore both buildings are 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 notes that the proposed conversion of the Main Building and the Annex to hotel use will require extensive and costly alterations to both buildings, including the demolition of a significant portion of the Main Building in order to create the Rear Court, major alterations to the Annex, including the construction of a new loading dock and hotel support facilities, and extensive interior alterations to the Main Building in order to convert its existing office and retail uses into a modern, code-compliant hotel; 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), even greater portions of the Main Building would have to be demolished and significant modifications to the layout of the Proposed Hotel would have to be made; and

WHEREAS, specifically, the applicant states that: (1) in order for the Rear Court to meet the minimum area requirements of MDL § 26(7), it would have to be enlarged from a depth of approximately 20 feet to a depth of at least 30 feet; (2) a 20-ft. deep rear yard, as required pursuant to ZR § 33-26, would have to be provided at the eastern end of the Main Building; and (3) none of the Main Building's hotel units could have windows that open onto the existing non-complying Side Court; instead, all of the units that did not face a street would have to have windows that open onto the complying Rear Court or the 20-ft. deep rear yard; and

WHEREAS, the applicant submitted alternate plans for a complying hotel, which reflect that a substantially greater portion of the Main Building would have to be demolished under the complying scenario than would be required under the proposed scenario, and as a result, a complying hotel would yield only 359 hotel units as compared to the 395 hotel units in the Proposed Hotel; and

WHEREAS, the applicant states that, due to the need to create a new 20-ft. rear yard, the complying scenario also results in a significantly greater amount of structural work, including: (1) providing temporary support and bracing for the existing building during and after demolition; (2) installing new columns and beams at the new rear of the Main Building to support the existing framing at each floor; (3) making field welded connections between the existing framing and the new building; (4) installing new structural slabs at the new building rear; (5) providing new transfer framing to

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support the new columns; (6) providing structural protection for nearby buildings during demolition and construction; and (7) constructing a new building façade in the area adjacent to the newly created rear yard; and

WHEREAS, the applicant represents that, although some of the additional costs associated with the complying scenario would be offset by the reduced costs associated with fitting out the smaller number of hotel units, the complying scenario would nonetheless result in significantly higher costs per hotel unit than the Proposed Hotel; and

WHEREAS, in support of this statement, the applicant submitted a study comparing the construction costs associated with the complying hotel design and the Proposed Hotel design, and a letter from the proposed operator which estimates the revenues that would be generated by each scenario; these documents indicate that the complying hotel scenario would have significantly higher costs on a per room basis and would generate substantially less annual revenue than the Proposed Hotel; 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, as noted above, the Main Building and Annex were originally operated as a transient hotel; and

WHEREAS, the applicant notes that, given that the use of the Main Building and the Annex as a transient hotel pre-dated the 1929 enactment of the MDL, the existing court configuration would be permitted as a pre-existing non-compliance if the buildings had not been subsequently converted to office and retail use; and

WHEREAS, the applicant represents that the subject proposal merely seeks to return the buildings to their original use as a transient hotel, which will have the additional benefits of complying with all other modern code requirements and providing increased access to light and air for the hotel units facing the Rear Court as compared to the previous hotel use; and

WHEREAS, the applicant states that, during the site's previous operation as a hotel, the Main Building had its present configuration, including the two narrow courts now located at the rear of that building and the existing Side Court, and a substantial number of the hotel units had windows that opened onto these courts; and

WHEREAS, the applicant further states that the Rear Court for the Proposed Hotel will be substantially larger than the narrow rear courts that served the former hotel; and

WHEREAS, specifically, the Rear Court will have an area of 1,685 sq. ft., which exceeds the generally

prescribed area of 1,200 sq. ft. set forth in MDL § 26(7), and will have a depth of at least 20 feet, therefore providing the hotel units that face it with as much light and air as a 20-ft. rear yard, which is the rear yard that is required under the Zoning Resolution for commercial uses, including transient hotels; and

WHEREAS, the applicant states that although the Side Court has a relatively shallow depth of nine feet, the windows in the Proposed Hotel that open onto the court will receive light and air as a result of the conditions on the subject site and the adjacent sites; and

WHEREAS, as to the conditions on the subject site, the applicant notes that the eight-story Annex is located at the southern end of the site, directly opposite the Side Court; therefore, the ninth through 15<sup>th</sup> stories of the Main Building rise above the Annex and the windows in these upper story units that open onto the Side Court will be exposed to light and air from the south; and

WHEREAS, the applicant states that the southernmost hotel units on the ninth through 15<sup>th</sup> floors that face the Side Court to the east will also have south-facing windows, and will therefore receive light and air from the Side Court as well; and

WHEREAS, as to the conditions on adjacent sites, the applicant states that four of the sites located directly to the east of the subject premises constitute a single zoning lot for which a zoning lot development agreement ("ZLDA") has been executed; the relevant adjacent sites include the lot that abuts the Annex to the east on West 41<sup>st</sup> Street (Lot 16), the lot that abuts the Main Building to the east on West 42<sup>nd</sup> Street (Lot 49), and the two lots located directly east of Lot 49 (Lots 148 and 47); and

WHEREAS, the applicant notes that Lot 16 has a depth of 98'-8" and is occupied by a five-story building located on the street line at West 41<sup>st</sup> Street to a depth of 61'-0", with the remaining 37'-8" of Lot 16, including the segment that abuts the Side Court, occupied by a one-story building and a shallow rear yard; therefore, Lot 16 allows a significant amount of light and air to reach the Side Court; and

WHEREAS, the applicant represents that the aforementioned ZLDA imposes a light and air easement on Lot 16 prohibiting any new construction that significantly exceeds the height of the existing five-story and one-story building elements; thereby largely preserving the light and air that currently reaches the Side Court; and

WHEREAS, the applicant submitted a copy of the ZLDA into the record; and

WHEREAS, the applicant states that Lots 49 and 148 are currently vacant and any new development on these sites will likely include a rear yard, which will allow additional light and air to reach the Side Court; and

WHEREAS, the applicant further states that the units in the Proposed Hotel that face the Side Court, along with all other units in the hotel, will be air conditioned and mechanically ventilated, ensuring that adequate fresh air

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reaches these units; and

WHEREAS, at the Board's request, the applicant analyzed a scenario whereby the MDL non-compliance related to the Side Court was eliminated by having the corridor leading to the units in the southeastern portion of the Main Building located adjacent to the Side Court and having the windows in those units open onto the Rear Court; and

WHEREAS, the applicant submitted alternate plans for this lesser variance scenario, which reflect that the revised arrangement would require that the number of units in the Proposed Hotel be reduced from 395 to 371; and

WHEREAS, the applicant also submitted a revenue estimate indicating that the lesser variance scenario would generate substantially less annual revenue than the proposed scenario, thereby creating practical difficulty and unnecessary hardship; and

WHEREAS, the applicant also notes that in the lesser variance scenario the required windows in a number of the Main Buildings most southerly units would open onto an 8'-3" wide portion of the Rear Court, which is even narrower than the Side Court and directly abuts a 16-story building that is located on the adjacent lot to the west (Lot 9); therefore, the lesser variance scenario would provide certain units with less light and air than the proposed scenario; and

WHEREAS, the applicant notes that the Landmarks Preservation Commission ("LPC") designated the Main Building and the Annex (together, the former Knickerbocker Hotel) as an individual landmark in 1988; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission approving the proposed exterior alterations, dated December 17, 2010; and

WHEREAS, based on the above, the Board finds that the proposed variance to MDL § 26(7) 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 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 Manhattan Borough Commissioner, dated October 28,

**A true copy of resolution adopted by the Board of Standards and Appeals, February 1, 2011.**

**Printed in Bulletin No. 6, Vol. 96.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

2010, is modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received December 23, 2010" - two (2) 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, February 1, 2011.