MEETING OF: **November 20, 2018**
CALENDAR NO.: **2018-22-A**
PREMISES: **255 18th Street, Brooklyn**
Block 873, Lot 69
BIN No. 3016787

ACTION OF THE BOARD – Appeal Granted.

THE VOTE TO GRANT –
Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta……..…5
Negative:……...……0

THE RESOLUTION:

WHEREAS, this is an appeal, filed by the New York City Department of Buildings ("DOB"), pursuant to New York City Charter §§ 645(b)(3)(e) and 666(6)(a), to revoke Certificate of Occupancy No. 301016898F, dated September 18, 2013, (the "CO") issued for the subject premises; and

WHEREAS, the CO indicates that the premises are occupied by a four-story plus cellar building classified as building occupancy group J-2 under the 1968 Building Code ("1968 BC") with Use Group 16 occupancy ("ordinary use and non-combustible storage") permitted on the cellar and a portion of the first floor, and Use Group 2 occupancy permitted on the first through fourth floors (two dwelling units on the first floor and nine dwelling units on each of the second through fourth floors); and

WHEREAS, DOB submits that the CO was improperly issued due to the unsafe physical condition of the building, its unsuitability for the uses authorized thereon and the fact that the building was not configured to accommodate the uses authorized on the CO at the time of its issuance; and

WHEREAS, specifically, DOB states that the building contains a dry sprinkler system that is unsuitable for residential occupancy; the first floor does not contain two dwelling units, as indicated on the CO; and the cellar is occupied by Use Group 9 artists' studios, not Use Group 16 "ordinary use and non-combustible storage," as indicated on the CO; and

WHEREAS, a public hearing was held on this application on October 11, 2018, after due notice by publication in *The City Record*, with a continued hearing on November 20, 2018, and then to decision on that date; and

WHEREAS, the site is located on the north side of 18th Street, between 5th Avenue and 6th Avenue, in an R6B zoning district, in Brooklyn; and

WHEREAS, the site has approximately 100 feet of frontage along 18th Street, a depth of 100 feet, 10,017 square feet of lot area and is occupied by a four-story plus cellar building; and

PROCEDURAL HISTORY

WHEREAS, on August 5, 1999, Alteration Type 2 Application No. 300925934 was filed at the subject site for work on the second, third and fourth floors, specifically, to "construct interior partitions, install plumbing fixtures and related piping. All as shown on drawings. No change in use, egress or occupancy" (the "Alt 2 Application"); the application was self-certified and signed off by the architect on May 10, 2010; and

WHEREAS, on April 12, 2000, a second architect filed Alteration Type 1 Application No. 301016898 "to change use on 2nd, 3rd [and] 4th floor to dwelling units. No work to be performed under this application. All work filed under [the Alt 2 Application]" (the "Alt 1 Application"); and

WHEREAS, a Post Approval Amendment ("PAA") for the Alt 1 Application was subsequently filed by the architect-applicant that filed the Alt 2 Application on October 5, 2000, (the "2000 PAA" or "Alt 1 Doc 2") to "remo[]ve portion of rear wall, then construct new exterior walls as per plans"; DOB approved the application on October 30, 2000, and issued a permit on November 13, 2000, which expired on August 26, 2001 (the "Alt 1 Permit"); and

WHEREAS, the Alt 1 Permit was not renewed until August 16, 2012, the same day that a DOB inspector conducted a final construction inspection of the premises; and

WHEREAS, on October 19, 2012, DOB sent the owner of the premises ("Owner") and the architect-applicant of the Alt 1 Application a Notice of Intent to Revoke Approval(s) and Permit(s) related to the Alt 1 Application (the "NOI") and a Notice of Objections objecting to the indication, on the Alt 1 Application, that no work was to be performed and that all work had been filed under the Alt 2 Application; the introduction of a new applicant on the Alt 1 Application; the indication of an enlargement/repair of exterior and rear walls without a PW-2 for new work and the failure to provide plans, among other things; and

WHEREAS, on March 12, 2013, a PAA related to the Alt 1 Application was filed by the applicant-architect who filed the Alt 2 Application to answer the objections that accompanied the NOI ("Alt 1 Doc 3") and on August 28, 2013, a PAA related to the Alt 1 Application was filed by the applicant-architect who originally filed that application to amend a PW1 Schedule A ("Alt 1 Doc 4"); and

WHEREAS, the CO was ultimately issued on September 13, 2013, under the Alt 1 Application, though DOB states that it has no record of any plans having accompanied either of the 2013 PAAs; and

WHEREAS, on March 29, 2017, DOB sent an Order of the Commissioner to the applicant-architect of the Alt 1 Application, pursuant to Section 28-208.1 of the Administrative Code of the City of New York and Section 646 of the New York City Charter, ordering the submission of a complete set of drawings for the Alt 1 Application within ten (10) business days; and

WHEREAS, DOB states that the materials submitted in response to that request included a drawing dated October 27, 2007, that had not been approved by DOB and microfiche copies of plans filed with DOB in April and October 2000, none of which reflected the as-built conditions of the building at the subject premises; and

WHEREAS, accordingly, by letter dated December 26, 2017, DOB notified the Owner that additional information was still required in connection with the Alt 1 Application demonstrating that the CO was properly issued; specifically, DOB inquired about a sprinklers application, a certificate of correction relating to ECB Notice of Violation No. 34925271H (dated February 15, 2012, the "2012 NOV")), which charged that the cellar of the building was being occupied as Use Group 9 artists' studios contrary to the CO, and approved plans indicating Use Group 2 dwelling units on the first floor of the building (the letter stated that the only approved plans in DOB's possession did not reflect dwelling units on that floor); and

WHEREAS, DOB states that a representative of the Owner met with DOB staff on January 23, 2018, regarding DOB's remaining objections and this appeal was filed on February 14, 2018; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta, accompanied by Board staff and representatives for the Owner, DOB and the Fire Department, performed an inspection of the first floor and cellar of the subject building on September 14, 2018; and

WHEREAS, on October 12, 2018, prompted by testimony from residential tenants of the subject building at the October 11 public hearing, members of the Fire Department's Bureau of Fire Prevention Task Force conducted a Fire and Life Safety inspection of the entirety of the building at the premises; and

WHEREAS, DOB states that on October 12, 2018, DOB vacated the first floor and cellar levels of the premises at the request of the Fire Department and issued several violations relating to the construction of unlawful partitions on those floors; and

WHEREAS, on October 24, 2018, a DOB inspector observed PVC gas piping, unlawful pursuant to Section 503.4.1 of the Fuel Gas Code, discharging out of an operable window and issued a Stop Work Order, ordering the disconnection of gas at the building; and

WHEREAS, on October 30, 2018, DOB conducted an inspection with the Board's

Compliance Officer, attorney for the tenants of the building, the attorney for the Owner and the Owner's representatives; and

WHEREAS, a follow-up inspection was conducted by Board Commissioners and staff, along with representatives from the Loft Board, DOB and elected officials, on November 14, 2018; and

WHEREAS, the Owner filed an application at DOB to modify the sprinklers in November 2018; and

WHEREAS, the Department of Buildings and the Owner were each represented by counsel for this appeal; and

DOB'S POSITION

WHEREAS, DOB submits that the CO, issued pursuant to approved plans dated August 3, 1999, and May 15, 2000, both filed under the Alt 1 Application and approved October 28, 2000, should never have been issued and must now be revoked; and

WHEREAS, specifically, DOB avers that the following irregularities support the revocation of the CO: (1) non-compliance of the building with Section 27-954(t) of the 1968 BC, which prohibits both automatic dry and dry non-automatic sprinklers in buildings and spaces in occupancy group J-2 with 4 or more dwelling units and not exceeding six stories or 75 feet in height, and Section 277(4) of the Multiple Dwelling Law ("MDL"), which requires a wet-pipe automatic sprinkler system in all areas occupied for manufacturing or commercial purposes and extended to and including public hallways and stairways coincidentally serving residential occupancies; (2) the absence of two dwelling units on the first floor of the building, as represented on the CO, the absence of plans depicting these units and any indication in the Alt 1 Application or Alt 2 Application that plumbing work or a change in use, respectively, were planned for the first floor; (3) occupancy of the cellar with Use Group 9 artists' studios, contrary to the CO, as evidenced by the 2012 NOV, issued prior to the issuance of the CO, and ECB Notice of Violation 35113975Z, dated December 15, 2016 (the "2016 NOV"), issued subsequent to the CO and (4) the absence of 5'-6" recesses in the back wall of the building as indicated on the plans dated August 3, 1999, and required under MDL § 277(7)(b)(i)(E), which states, "in no event shall the distance between [dwelling unit] windows and the rear lot line be less than five feet"; and

WHEREAS, though the plans dated August 3, 1999, indicate, under "Sprinkler Notes" on Drawing No. 3: "Entire building to be sprinklered. Sprinkler application to be filed under separate application," DOB states that it has no records of an associated sprinkler application for the subject premises; and

WHEREAS, DOB states that the presence of a dry sprinkler system is a Class I (Immediately Hazardous) violation that, standing alone, warrants the revocation of the CO; and

WHEREAS, DOB additionally submitted a set of plans dated August 3, 1999, associated with the Alt 2 Application, showing "Existing Storage, Trucking, Shipping & Receiving (CO # 120140/48) (No Work Done Here)" on the first floor and nine artists' studios on each of the second through fourth floors; and

WHEREAS, accordingly, DOB states that the Alt 2 Application was incorrect in its statement that it would not result in a change in use, egress or occupancy; and

WHEREAS, DOB reiterates that department records reflect outstanding violations at the premises at the time of issuance of the CO (specifically, the 2012 NOV), that certificates of occupancy may not be issued when there are outstanding violations and that that fact additionally necessitates the revocation requested in this appeal; and

WHEREAS, DOB submits that non-compliances at the time of the issuance of the CO cannot be cured by work to correct those non-compliances performed after the CO was issued—the only remedy is to vacate the improperly issued CO, as requested herein, and replace it with a new certificate of occupancy; and

OWNER'S POSITION

WHEREAS, the Owner disputes that the CO did not reflect the as-built conditions of the building at the time of the final construction inspection and that any non-compliances with the CO are more suitably addressed by the issuance of violations and the Owner's correction or, in the alternative, a modified CO; and

WHEREAS, the Owner also disputes that the Alt 2 Application was intended to convert the building to Use Group 9 artists' studios and points to the absence, in the application itself, of any reference to "artist studios" and the express disclaimer, also contained in the application, that there was "No change in use, egress or occupancy" therein proposed; and

WHEREAS, the Owner states that, while the Alt 2 Application was self-certified by the applicant-architect, a Letter of Completion was issued by DOB, stating that the work under the Alt 2 Application was completed and signed off in the Building Information System on May 10, 2000, and that, based on the nature of the work filed on the application, a new certificate of occupancy was not required; and

WHEREAS, the Owner asserts that the PAA filed on March 12, 2013, (Alt 1 Doc 3) and plans associated therewith, were examined and approved by a DOB examiner on April 5, 2013, and that the PAA filed on August 28, 2013, (Alt 1 Doc 4) was examined and approved by a DOB examiner on September 3, 2013, in response to the NOI, and that DOB's failure to locate the plans approved with those PAAs does not lead to the conclusion that plans were not provided by the Owner's representatives, as required; and

WHEREAS, the Owner submits that all four of the objections to the issuance of the CO raised by DOB may be corrected and do not require the revocation of the CO; and

WHEREAS, specifically, the Owner states that, with regards to the sprinklers installed at the building: the NOI, generated as the result of an audit of the Alt 1 Application in 2012, mentions neither a deficient sprinkler system nor the requirement of a wet-pipe automatic system; the 2013 PAAs filed in response to the NOI were reviewed and approved by DOB plan examiners; there have been no DOB or ECB violations issued on the basis of a non-compliant sprinkler system at the premises; the first mention of a need for a wet-pipe sprinkler system in the building came in the December 26, 2017, letter from DOB, four years after the approval of the Alt 2 Application; that DOB has neither identified the change in occupancy that prompted the requirement of a wet-pipe sprinkler system nor indicated how the installation of a wet-pipe automatic system at the premises would provide additional protection, MDL § 277 is not applicable at the site and that any non-compliance, which the Owner does not concede, will be remedied by Alteration Type 2 Application No. 340632042, filed on September 12, 2018, by the Owner to modify the existing sprinkler system to a wet-pipe automatic sprinkler system; and

WHEREAS, with regards to the absence of two dwelling units on the first floor, as indicated on the CO, the Owner submits that Schedule As for the Alt 1 Application filed on August 12, 2000, and August 28, 2013, both indicate dwelling units on the first floor of the building at the premises; while dwelling units do not presently exist on the first floor, there is evidence of construction having occurred on that floor (i.e. the installation of electrical outlets, cabling, pipes, patch work on the floors); meters located in the cellar demonstrate that utilities ran to dwelling units once located on the first floor; and the Owner plans to file the appropriate applications at DOB to "reinstall" the two dwelling units on the first floor; and

WHEREAS, with regards to the occupancy of the cellar, the Owner submits that while the 2012 NOV and 2016 NOV are still open and cite "art studios" on the first floor and cellar, the phrases "artist studio" and "ordinary use" are not defined in the Zoning Resolution; the cellar does not include living spaces; uses in Use Group 16 include crafts that artists may also be engaged in, including blacksmith's shops, sign painting shops and carpentry, custom woodworking or custom furniture making shops, thus the artists' studios located in the cellar are consistent with Use Group 16 uses; Use Group 16 use at the premises is non-conforming, thus, pursuant to ZR § 52-322, space previously dedicated to such use may be converted as-of-right to any use in Use Groups 6, 7B, 7C, 7D, 8, 9, 10, 11B or 14 or interchanged with Use Groups 11A or 17; that the use of the cellar space is appropriate and may require "the as of right amendment [to the CO] to include permitted alternate uses," but that the subject application is excessive; and

WHEREAS, with regards to the absence of the 5'-6" recesses in the rear wall of the building, the Owner reiterates that MDL § 277 does not apply at the subject site because the building is a fire-proof manufacturing building, but, if the Board were to determine that such

section is, indeed, applicable at the premises, the Owner can pursue a variety of options—including setting the rear windows back from the property line and obtaining an easement legalizing the lot line windows—to cure this condition; and

ADDITIONAL SUBMISSIONS & TESTIMONY

WHEREAS, the Board was in receipt of 18 letters in support of this application, including 15 letters from tenants of the dwelling units at the site stating that they were surprised by the issuance of the CO, which they surmise to have been obtained by fraudulent means because there had been no work in the building prior to the issuance date and the CO fails to reflect the actual conditions of the building; they have had neither heat nor cooking gas in their units since May 2017; they have been utilizing plug-in heaters, which have caused multiple electrical shorts in the building and left tenants, who are responsible for paying electricity, with thousands of dollars in monthly electricity bills; the building has a long history of code violations and shoddy work, often performed without proper permits; that the building is not satisfactorily maintained, with recurring issues like a malfunctioning entry buzzer, a broken front door, unsanitary trash storage, leaky pipes, mold and "concrete walls" that are not insulated and freeze in the winter; that the landlord failed to abide by a settlement, reached with the tenants in October 2018 pursuant to a negotiation through the New York City Loft Board (the "Loft Board"), which obtained jurisdiction over the building on June 16, 2015, pursuant to 29 RCNY § 2-08(b)(2)(i)(D), to insulate and weatherproof dwelling unit walls prior to heat season; and that the landlord and building management's consistent failure to address the building's poor conditions is evidence of neglect and an absence of intention to ever address the objections raised in this appeal, thus, the Applicant should not be permitted more time to correct the non-compliances identified herein by the DOB; and

WHEREAS, tenants additionally complain about the lack of adequate fire safety in the building; the faulty aged electrical wiring in the building; the lack of proper ventilation in their units; cracks in exterior walls; and the removal, rather than repair, of the elevator after the roof of the stairwell and elevator shaft was blown off the building by a tornado in September 2010 and the landlord failed to attend to the condition for months; the tenants also provided photographs of their dwelling units, including mezzanines, rear windows located on the rear lot line, electric heaters, gas exhaust pipes punched through exterior walls venting onto sidewalks and adjacent properties, mold, ice on the interior walls and windows of their dwelling units and digital thermometers registering interior temperatures of 50 degrees and below; and

WHEREAS, the Board was also in receipt of three letters from neighbors of the subject building, noting the building's poor physical condition, specifically, the accumulation of trash and graffiti at the exterior, the long-standing presence of a sidewalk shed without any other indicia of construction at the site, mold, loitering at the site and a crumbling façade; and

WHEREAS, tenants also appeared at public hearings and provided oral testimony in support of the application, averring that revocation of the CO would enable the proper operation and maintenance of the building for residential occupancy and questioning how a building, so obviously unfit for residential occupancy, could obtain a certificate of occupancy for such use; and

WHEREAS, specifically, the tenants submit that, if the CO is revoked, the building will return to the jurisdiction of the Loft Board, which would call the tenants and landlord to a narrative conference to finally resolve fire, gas, heat and other safety issues in the building; and

WHEREAS, letters from two separate registered architects who inspected the site separately on May 6, 2014, and September 23, 2016, were also submitted into the record; and

WHEREAS, an architect who inspected the site in 2014 ("Architect 1") states in his signed and sealed letter that during his visit, he visited 6 of the 29 dwelling units and the ground floor, which did not contain dwelling units; surveyed the existing conditions of the cellar, boiler room, public spaces, roof, building exterior and main staircase and observed that the building is built full to the lot lines on three sides; and

WHEREAS, Architect 1 also observed that the records on file at DOB relating to this building contain "bizarre irregularities"; specifically, he alleges that the architect of record for the site indicated on Alt 1 Doc 2 was different from the architect of record indicated on the Alt 1 Application and there was no record of a formal amendment permitting such change; that because an Alteration Type 2 Application can neither result in a change in use or occupancy of a

building nor require a change to a certificate of occupancy, if the plans for the Alt 2 Application indicated residential use at the site, it should not have been approved by DOB; and that it would have been very difficult to remove a portion of the rear wall, as indicated in the 2000 PAA, of an occupied building and there was no evidence of this work having occurred at the premises; and

WHEREAS, Architect 1 alleged that the building does not comply with the requirements of the 1968 BC, the Multiple Dwelling Law or the Zoning Resolution for legal light and air in residential occupancies or DOB Technical Policy and Procedure Memo #9/93, which requires either wire glass or sprinkler heads to be installed at all lot line windows; that the building contains serious fire hazards, including combustible construction at the cellar level, obstruction of means of egress and the absence of a 3-hour rated enclosure in the boiler room; and identified several non-compliances with applicable law of the 6 dwelling units he surveyed, including the absence of legally required windows, the presence of mezzanines that did not provide a minimum of 7 feet headroom and raised platforms that provided neither protective handrails nor sprinklers; the lack of legal mechanical ventilation in bathrooms; the presence of illegal wiring, open plumbing drains and unvented plumbing fixtures; and the presence of illegal gas space heaters; and

WHEREAS, Architect 1 stated that "[t]he most disturbing issue" in the subject building is the lack of legal windows for the dwelling units located at the rear, which have only lot line windows, and that this defect can only be cured by removing portions of the rear wall of the building to provide windows set back from the property line, thus, it is "abundantly clear" that the CO is "significantly flawed"; and

WHEREAS, an architect who inspected the premise in September 2016 ("Architect 2") states in his letter to the Board, which was neither signed nor sealed, that he investigated DOB filings for the site online, as well as observed conditions in the cellar, first floor, public stairs, roof and portions of the subject building exterior visible from the sidewalk and alleged that the Alt 2 Application was used to change the use and occupancy of the building contrary to the job description; the Alt 2 Application falsely states that the work involved would not result in a change in use or occupancy because it subdivided the second through fourth floors, whose legal use was for the manufacturing of burlap bags, into 27 spaces with three-piece bathrooms and dedicated gas meters, uses that were clearly not associated with the existing legal manufacturing use; the Alt 1 Application was a "clumsy attempt to legitimize" the subdivision of the second through fourth floors into dwelling units under the Alt 2 Application as evidenced by the timing of its filing one month prior to the sign off of the Alt 2 Application on May 10, 2000; the work of removing portions of the rear wall and constructing new exterior walls as indicated on Alt 1 Doc 2 was never performed, but the CO was, nevertheless, issued; 15 of the 27 dwelling units existing at the site on the second through fourth floors fail to provide legal windows in compliance with MDL § 277(7)(b)(i); the Alt 1 Application job description was misleading in its indication that no work was to be performed under the application; the renewal of the Alt 1 Application in 2011 after its expiration in 2001 made applicable Chapter 11 of the 2008 New York City Building Code ("2008 BC") and ANSI standards, meaning, among other things, that the elevator in the building must be converted to an automatic passenger elevator, or, in the alterative, provide freight elevator service, to provide an accessible route to the building's dwelling units, but the elevator was dismantled under Job No. EBN2441/13 SO, approved by DOB on January 28, 2014; the building fails to comply with Quality Housing requirements set forth in Article II, Chapter 8 of the Zoning Resolution; interior bathrooms, toilets, kitchens and public hallways leading to the stairs lack required mechanical ventilation; refuse storage in the building does not comply with 2008 BC § 1213; and that there are 12 open ECB violations at the site, six of which existed prior to the issuance of CO and should have been corrected and removed prior to the issuance of the CO; and

WHEREAS, with regards to fire safety issues, Architect 2 stated that the dry valve system installed in the building must be removed and replaced with an automatic wet sprinkler system that complies with the 2008 BC; an automatic wet standpipe system must be installed pursuant to 2008 BC § 905.3.1 because the floor area on each floor of the building exceeds 10,000 square feet; a fire alarm and command center must be provided because there are more than 16 dwelling units in the building; lot line windows that are not fireproof self-closing must be provided with sprinkler protection and wire or tempered glass; smoke and carbon monoxide detectors must be provided throughout the building; the skylights at the top of the stairs are wire glass when they must be plain glass with wire screens over and under them, pursuant to MDL § 277(10); wood stud partitions throughout the building must be replaced with non-combustible construction; the gas meter room must be properly enclosed and vented; gas space heaters must be properly vented and supplied with fresh air from the exterior of the building; installation of

gas ranges, hot water heaters and gas clothes dryers must be filed with DOB as a legalization; the refuse room must be properly separated from the egress hallway; and paths of egress on the first floor and cellar must be delineated, have adequate light and illuminated exit signs; and

WHEREAS, Architect 2 additionally remarked that the first floor and cellar of the building may be converted to legalize the Use Group 9 artists' studios located thereon, but such application has not yet been filed; and

WHEREAS, in response to the Owner's contention that the issuance of a Letter of Completion is conclusive with regards to the appropriateness of the Alt 2 Application filing, DOB states that the Letter of Completion cited by the Owner is undated, Letters of Completion are automatically generated, do not involve internal review by DOB personnel and any self-certified filing would have resulted in the creation of such letter; and

THE BOARD'S FINDINGS

WHEREAS, pursuant to § 28-118.17 of the Administrative Code, the Commissioner of the Department of Buildings is authorized to request in writing that the Board "revoke, vacate, or modify a certificate of occupancy . . . whenever the certificate is issued in error . . ."; and

WHEREAS, the Board observes that, as of the date of the vote, there was an active stop work order on the property, 38 open ECB violations, 21 open DOB violations and approximately $100,000 in penalties owed; and

WHEREAS, the record is devoid of any evidence that the first floor of the subject building was ever converted to residential use or evidence that the first floor was converted to residential occupancy and then converted back, and inspections of the premises reveal that half of the first floor is occupied by Use Group 9 artists' studios; and

WHEREAS, though that space could have been converted from Use Group 16 to Use Group 9 as-of-right, the CO does not reflect Use Group 9 occupancy, therefore, the CO was obviously improperly issued with regards to the first floor; and

WHEREAS, the Owner's argument that DOB has failed to identify a change in use of the building that could necessitate a change in the sprinklers installed at the subject is contrary to the evidence presented in this case, most notably, both Schedule As, filed on April 12, 2000, (Alt 1 Doc 1) and August 28, 2013, (Alt 1 Doc 4), which indicate proposed changes in use of the second, third and fourth floors from Use Group 16 offices and manufacturing of burlap bags, Use Group 16 storage and Use Group 16 manufacturing of burlap bags, respectively, to Use Group 2 dwelling units; and

WHEREAS, nevertheless, the Board is not convinced that the failure to provide a wet-pipe automatic sprinkler system in the building justifies revocation of the CO in its entirety, that such non-compliance may be cured, and that the Owner's intention to cure that defect is evidenced by the November 2018 filing to modify the sprinklers; and

WHEREAS, the Board finds, however, that the failure of the as-built conditions of the building to comply with the August 3, 1999, plans, specifically the 5'-6" recesses indicated (in both plan and section) in the rear wall of the building for the provision of legal light and air to the 15 dwelling units located at the rear of the building in compliance with MDL § 277(7)(b), is incurable absent significant construction that may require temporarily relocating tenants of those dwelling units; and

WHEREAS, the Board finds the Owner's argument that MDL § 277 does not apply at the subject site to also be contrary to the evidence, specifically the August 3, 1999, plans which, on Drawing 1, include handwritten notes regarding compliance with the various sub-parts of that section, including a note that, consistent with the 5'-6" recesses indicated to be constructed on floors two through four, the plans comply with MDL § 277(7)(b); and

WHEREAS, additionally, there is no evidence that such recesses did, in fact, exist at the time of the CO's issuance and were subsequently removed; and

WHEREAS, accordingly, the Board finds that the as-built conditions of the building at the subject premises do not presently conform to the plans upon which the issuance of the CO was based, nor did they comply at the time the CO was issued; thus, the CO was unlawfully

issued and must be revoked.

Therefore, it is Resolved, that the application to revoke Certificate of Occupancy No. 301016898F is *granted*.

Adopted by the Board of Standards and Appeals, November 20, 2018.

CERTIFICATION

This copy of the Resolution
dated November 20, 2018
is hereby filed by
the Board of Standards and Appeals
dated February 15, 2019

Carlo Costanza
Executive Director