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West and East Village, Chelsea, Soho, Noho, Little Italy, Chinatown and Lower East Side, Since 1933

Villager photo by Jefferson Siegel

A cyclist passing by 515 E. Fifth St., the building that sticks up a story taller than its neighbors. There is also a rooftop penthouse, not visible from the street.

Added stories on tenements' tops are illegal, board rules

By Albert Amateau

In an unusual action, one city agency reversed the action of a sister city agency when the Board of Standards and Appeals ruled at the end of last month that the Department of Buildings was wrong to issue permits to add two extra floors to two East Village tenements.

The B.S.A. ruled that the additions to the five-story buildings at 515 E. Fifth St. and 514-516 E. Sixth St. violated the state's 1929 Multiple Dwelling Law in regard to fire safety and elevator requirements.

However, the landlord of the two properties, Benjamin Shaoul, who has been at loggerheads with the rent-regulated tenants of the two buildings for more than two years, had convinced the Department of Buildings in 2006 to issue the "vertical enlargement" permits on the grounds the construction project would provide more fire safety than required by state law.

Nevertheless, Standards and Appeals on Nov. 25 agreed with the tenants, Community Board 3 and elected officials, including City Councilmember Rosie Mendez, that the additions violated both the Multiple Dwelling Law and city building codes.

Under the Multiple Dwelling Law, the new sixth and seventh floors on the E. Fifth St. building required an elevator to be added to the building, but the owner did not install one, the appeal noted. The B.S.A. ruled that the Buildings Department had no authority to grant waivers to the law and ordered the alteration permits reversed.

Harvey Epstein, of the Urban Justice Center and lawyer for the tenants, said he thought the next step should be an order to demolish the illegal added stories.



“Whatever happens, this ruling sends an important message to property owners that they can’t circumvent the law by manipulating the Department of Buildings,” Epstein said.

Over the past two years, however, the additional floors at 515 E. Fifth St. have been completed and new market-rate residential tenants have moved into four duplex apartments.

At the same time, three apartments were illegally enlarged to three-bedroom units on the second, fourth and fifth floors of the Fifth St. building and now have market-rate tenants.

“I feel sorry for those tenants, but Shaoul and the Department of Buildings have known for two years that we were fighting the project,” said Monte Schapiro, a resident of the E. Fifth St. building and a tenant leader. “Back in July 2006, I spoke to Chris Santulli, who was with the Buildings Department Manhattan Office, and I said we were going to challenge this [permit] because it’s not legal. He said he believed it was legal but if we won, the department would have to deal with it then,” Schapiro said.

“We have a serious problem of overcrowding in this building and it’s directly attributable to the new apartments,” Schapiro said. “The tenants in those illegal apartments have a recourse to law to make money claims against the landlord.”

A Buildings spokesperson issued a statement last week saying, “Our decision to grant the waivers were based on equivalent fire safety measures being put in place. However, we will respect and honor the decision by the B.S.A.” But the department would not say how it would honor the decision or what would be its next step.

In any case, Marvin Mitzner, an attorney with Blank Rome LLP and lawyer for Shaoul on the two buildings, said on Dec. 2 that he would appeal the B.S.A. ruling.

“The question is whether the Buildings Department rather than the B.S.A. has the power to allow modifications to the Multiple Dwelling Law,” Mitzner said. “The developer has significantly improved fire safety conditions by installing sprinklers throughout the building, hard-wired smoke detectors and emergency lighting. Also exit corridors were made fire-rated and an additional fire escape was installed.”

Tenants of the two buildings were outraged because a week before the Nov. 25 B.S.A. decision, Buildings lifted a stop-work order at 514-516 E. Sixth St. on the additional floors there, which have not been completed.

The order was reinstated on Dec. 2 after repeated complaints by Councilmember Mendez’s office. Lisa Kaplan, Mendez’s chief of staff, said she has made four calls to D.O.B., on Nov. 25 and 26, Dec. 1 and the morning of Dec. 2, about the stop-work order.

Schapiro said last week that workers were at the E. Sixth St. building on Dec. 2.

“I think they were working to complete those apartments and get them leased,” he said. “The developer knows the courts would be loath to displace tenants once those units are occupied. But

the B.S.A. decision states that all the permits are revoked. We hope the reinstatement of the stop-work on Dec. 2 will put an end to construction there,” Schapiro said.

Epstein said that lifting the stop-work order was a move to negate the B.S.A. ruling.

“The Department of Buildings is supposed to protect residents,” he said. “That action did the opposite.”

A stop-work order was also in effect for the E. Fifth St. building, and the developer is on notice that the original permits for both buildings are revoked, Kaplan said.

Tenants of 515 E. Fifth St. last year had won a B.S.A. appeal reversing a building permit based on the claim that the two additional stories violate a regulation in city zoning commonly known as the “Sliver Law,” which limits the height of buildings relative to their width. That ruling was upheld in State Supreme Court, but the developer filed another appeal to the Appellate Division, which is still pending.

“We’ve won two B.S.A. appeals on Department of Buildings permits and the department hasn’t done anything to enforce the decisions,” said Schapiro. “I think D.O.B. has put up a sign telling developers that if they want to do anything in rent-regulated buildings to add market-rate units, they can go right ahead.”

Because of the two additional floors on the two buildings, Shaoul was supposed to apply for a new certificate of occupancy, but that has not happened, Schapiro said. And, during the past two years, more than \$100,000 in fines was levied against the developer because of violations in the two buildings, he added. “None of those fines were paid,” noted Schapiro.

As for the future, Schapiro acknowledged that if the developer were forced to remove the two extra floors on the two buildings, the noise and disruption of the deconstruction would be considerable.

“We had to put up with a lot over the past two years when they were putting them up,” he recalled. “But the landlord shouldn’t be allowed to derive income from those apartments. They don’t have a certificate of occupancy and they were built illegally with the intention of driving out rent-regulated tenants.”