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**REPORT ON LEGISLATION BY THE
LAND USE, PLANNING AND ZONING COMMITTEE**

**A.2664
S.1073**

**M. of A. Weprin
Sen. Golden**

AN ACT to amend the multiple dwelling law, in relation to granting the commissioner of buildings of the city of New York the power to waive provisions of the multiple dwelling law with regard to the construction or alteration of multiple dwellings in such city

THIS BILL IS APPROVED

The New York City Bar Association’s Land Use, Planning and Zoning Committee supports the enactment of A.2664/S.1073, which would authorize the Commissioner of Buildings of the New York City to vary or modify a provision or requirement of the Multiple Dwelling Law (MDL) in its application to the construction or alteration of multiple dwellings in New York City, where strict compliance with such law would cause practical difficulties or unnecessary hardships.

BACKGROUND

For several years prior to 2008, the New York City Department of Buildings (DOB) granted waivers of the MDL where strict enforcement gave rise to practical difficulty or unnecessary hardship, so long as public health, safety and welfare were preserved. Such waivers—an example of which would be for DOB to permit a stair with a deficient width to be sprinklered instead of requiring that it be widened to comply with the requirements of the MDL - were seen as a logical parallel to DOB's authority to waive Building Code requirements on the same findings. In 2008, the New York City Board of Standards and Appeals (BSA), in resolving an appeal, concluded that DOB lacked the authority to grant MDL waivers, and that the BSA itself was the agency authorized to grant such waivers by the law.¹ Since then, property owners have had to incur costs to file applications with the BSA pursuant to Section 310 of the MDL (which speaks to variances) to obtain waivers that were formerly available at DOB through a basic ministerial process. The proposed legislation would authorize the DOB Commissioner to vary or modify “any provision or requirement of the MDL” where strict compliance results in practical difficulty or unnecessary hardship as long as the spirit and intent of the law are maintained and public safety is preserved.

¹ See BSA Cal. Nos. 81-08-A and 82-08-A (holding that DOB has no authority to approved alternative safety measures, except as set forth in MDL § 277.16).

IMPACTS/CONCERNS

The legislation could encourage investment, discourage deferred maintenance, and improve the quality of lower-income housing by allowing older buildings to be renovated with greater flexibility. This, in turn, will help address the perpetual housing shortage in the city. The legislation could also allow property owners to utilize their unused development rights. For example, because many existing multiple dwellings cannot be enlarged as-of-right, in spite of having unused development potential, the MDL conflicts with the City's own Zoning Resolution. The legislation will also allow local officials - rather than Albany - to have final say over how to build in the City. And finally, DOB may be better qualified to make determinations regarding the substantive issues of the MDL (fire protection, public safety and welfare) and so the legislation aligns legal authorization with professional qualification.

However, because this legislation could shorten the timeframe for obtaining building permits (especially in the case of older existing buildings), it could have the effect of hastening gentrification. By virtue of its substance, the legislation could also be seen as benefitting property owners at the expense of community residents.

The Committee does not believe that criticism is valid. First, DOB can already waive the MDL for certain buildings that were not originally constructed as residences and BSA can waive it in all others (assuming certain findings can be made), so the primary function of the legislation is to reduce bureaucracy. Second, by decreasing the costs associated with renovating older buildings, the legislation would create an incentive to preserve and improve older buildings, providing residents with an opportunity to remain in place (the opposite of gentrification) and for older buildings to be brought to current safety standards. Third, by reducing the total cost of developing buildings, the law would allow owners to achieve a reasonable return on their investments at a lesser scale (*i.e.* fixing the old building makes more sense than tearing it down to build a new one). Fourth, the waivers that DOB will be able to grant (currently available from BSA), tend to include upgrades to buildings that were not widely available at the time the MDL was drafted, such as sprinkler systems, hard-wire smoke detectors, and fire retardant building materials. Adding such elements to older buildings, and repairing older building in general, is an overall benefit to community residents.

RECOMMENDATION

The Committee believes that the benefit of the legislation outweighs the possible concerns. For the reasons that are described above, the Committee encourages the adoption of this legislation to amend the NYS Multiple Dwelling Law to grant DOB broad waiver authority.

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