STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

PETITIONER

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ADMINISTRATIVE REVIEW DOCKET NO.: EX430028RT

RENT ADMINISTRATOR'S DOCKET NO.: EN430055OM

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on November 25, 2016 by the Rent Administrator concerning the housing accommodations known as 305 W. 45th Street, New York, NY which granted the owner's application for a rent increase based on the installation of a major capital improvement(s), to wit: boiler/burner installation.

The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioner's appeal does not have merit and should be denied.

The tenant-petitioner requests a reversal of the Rent Administrator's order and claims, in substance; that the costs to dismantle and remove the previously installed boiler, prepare the cellar floor and installation of materials for one year of water treatment should be disallowed; that the MCI should be revoked for the owner's concealment of commercial space (laundry room) information in the initial application; that the laundry room's actual use of hot water should be factored into the commercial space allocation; that the useful life of the previously installed boiler has not expired; that the work performed is incomplete; that the work was done in a piecemeal fashion; and that a previous MCI for a chimney was incomplete.

The owner responds by their attorney and claims, in substance, that dismantling and removing the previously installed boiler, preparing the cellar floor and installation of water treatment materials is necessary work directly related to the MCI; that laundry room in question did not exist when the owner initially applied for the MCI rent increase; that the petitioner's assertion that the laundry room's use of hot water does not serve as a limitation on the amount of the approved rent increase; that the previous boiler was installed in 1986 and the useful life has expired; that the work is complete; that the work was completed within one year of commencement; and that the petitioner's claim about the incomplete chimney is irrelevant to the instant case.

The Rent Stabilization Code ("RSC") states that rent increases for MCIs are authorized by the applicable sections of the rent regulation laws, and that the installation of a boiler/boiler meet the criteria for a MCI rent increase, if the facts so warrant. Additionally, pursuant to the applicable rent regulations laws, other necessary

work performed in connection with, and directly related to an MCI may be included in the MCI costs if such other necessary work was completed within a reasonable time concurrent to or after the completion of the MCI to which it relates. Lastly, the DHCR precludes the granting of an MCI rent increase for an installation done in a piecemeal fashion; meaning an installation must have been contemplated as a single unified project and be completed within a reasonable time, given the nature of the work and the size of the building or complex.

The petitioner claims a prior MCI increase was granted at the subject premises for a previously installed boiler/burner and cites Commissioner's Docket No. SA430014RP. A review of the records shows that on December 9, 2004, the order under Docket No. SA430014RP did allow an MCI increase for the prior steam boiler/burner installed in 1986. The Commissioner notes that a steam boiler/burner has a useful life of 25 years and since the subject boiler/burner was completed in 2015 the prior boiler/burner's useful life had expired before it was replaced. The petitioner's further claim that a chimney required for the previously installed boiler/burner was not completed until 1993 and therefore the completion date for the prior boiler/burner is 1993 does not have merit. The record show that the appropriate government sign offs were submitted for the prior boiler/burner and the contract did not include the installation of a chimney.

The petitioner's request that the MCI be revoked for the owner's omission of the commercial space in the herein MCI application is denied. While the petitioner disputes the owner's claim that the MCI application was filed three months before the creation of the laundry room, the record shows the commercial square footage was submitted by the owner while the MCI application was pending and was included in the rent increase calculation. Additionally, the Rent Administrator amended the effective date of the rent increase to December 1, 2016 to account for the late submission of the commercial space information.

Additionally, the petitioner claims that the laundry room's hot water consumption should be factored into the commercial space allocation. It is long established DHCR practice to calculate the commercial space allocation by its square footage as shown on the MCI application. The record shows that a portion of the MCI cost was allocated to the laundry room based on its benefit from the MCI boiler/burner installation. Therefore, the petitioner's claim is without merit.

The petitioner's further claims that the costs to dismantle and remove the previously installed boiler; prepare the cellar floor; and that the costs for the installation of materials for water treatment should be disallowed are without merit. In its response, the owner claims, in substance, that as a matter of course, the previous boiler needed to be removed before the new one could be installed and that the cellar floor must be prepared for the installation as a matter of safety. Additionally, the owner claims that the water contained within the system needed to be tested during the one-year period following installation in order to ensure that the boiler operates as expected. As noted above, pursuant to the applicable rent regulations, other necessary work performed in connection with, and directly related to an MCI may be included in the MCI costs if such other necessary work was completed within a reasonable time concurrent to or after the completion of the MCI to which it relates. In view of the record and facts presented, the Rent Administrator properly determined the work stated above as other necessary work performed in connection with, and directly related to the boiler/burner MCI.

As to the petitioner's claim that the work was done in a piecemeal fashion and is incomplete, the petitioner notes that the owner executed the contract with Abilene Inc. ("Abilene") on December 5, 2013, and claims this is when the work began. The record indicates the work commenced on July 23, 2014, with the delivery and fabrication of the burner/boiler, as evidenced by the invoice from Abilene. The final payment for the installation was on November 2, 2015, upon the delivery of a certificate of operation from the NYC DOB. The Commissioner notes that the owner's application includes all necessary governmental approvals and sign-offs

indicating that the MCI work was properly performed and that the boiler/burner was in good working condition at the time of the installation. The petitioner's claims are therefore unsupported by the record.

Pursuant to Section 26-511.1 (a)(8) of the Rent Stabilization Law and to Section 26-405.1 (a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the laws, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order be affirmed.

ISSUED: APR 7 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

Note: During the period of the current Covid-19 emergency, as a courtesy, if the Article 78 proceeding is commenced by efiling pursuant to the Court Rules service may be effectuated, as limited as follows, by forwarding the court's email indicating the assignment of the Index Number and the documents received by the court, i.e., Notice of Petition, Petition, and other efiled documents to DHCRLegalMail@nyshcr.org. Upon receipt of the complete filings, the receipt of such documents will be acknowledged by email. Only after such acknowledgement of receipt of such documents will the service by email be deemed good service on New York State Division of Housing and Community Renewal (DHCR). DHCR is not the agent for service for any other entity of the State of New York or any third party. In addition, the Attorney General must be served at 28 Liberty Street, 18th Floor, New York, NY 10005. Since Article 78 proceedings take place in the Supreme Court, it is advisable that you consult legal counsel.

There is no other method of appeal.

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JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

FLATBUSH TENANT COALITION

PETITIONERS

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ADMINISTRATIVE REVIEW DOCKET NO.: HQ210024RT

RENT ADMINISTRATOR'S DOCKET NO.: FU210060OM

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioners timely filed administrative appeals against an order issued on April 17, 2019 by the Rent Administrator concerning the housing accommodations known as 125 Lenox Road, Brooklyn, New York, which granted the owner's application for a rent increase based on the installation of a major capital improvement ("MCI"), to wit: an elevator upgrade.

The Commissioner having reviewed the petitioners' appeals and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioners' appeals do not have merit and should be denied.

The Commissioner notes that multiple tenant-petitioners from the subject premises filed petitions for administrative appeal regarding the same MCI. The Commissioner deems it appropriate to consolidate these petitions for a uniform disposition since they pertain to the same order and involve common issues of law and fact.

The tenant-petitioners asserted on appeal, in substance, that the MCI application was not signed by an appropriate representative of the corporation that owns the subject premises; the list of tenants was inaccurate and included rooms of apartments that are not rent stabilized; the contractor's contract did not list the filing fees or other expenses that are not allowed in the MCI; the elevator was defective, dangerous and faulty even after repairs; and there are current immediately hazardous Department of Housing Preservation ("HPD") class "C" violations against the subject premises not rectified by the owner, specifically lead-based paint violations.

It is the well-established policy of this Division that elevator upgrading, including the installation of a new controller and selector, constitutes an MCI for which a rent increase may be warranted. However, the Commissioner notes that, at the time the MCI order was issued, Division policy stated that an owner's

MCI application would not be granted, in whole or in part, if it was determined that on the filing date of the application there were current immediately hazardous class "C" violations of any municipal, county, State or Federal law pending against the subject premises. The correction of class "C" violations may be established by an architect's or engineer's affidavit that they inspected the building and the violations no longer exist. Failure to establish that the conditions noted by the class "C" violations have been remedied will result in denial of the MCI application. For lead-based paint class "C" violations, the violations must be removed from the HPD database before a rent increase can be granted. Failure to establish that the conditions noted by the class "C" violations have been remedied will result in denial of the MCI application.

A review of the record shows that the owner submitted the MCI application signed by the Managing Agent of the subject premises' LLC, a duly appointed agent of the owner, along with copies of the contracts, invoices, estimates, contractors' statements/affirmations, required diagrams, cancelled checks and all necessary governmental approvals, which indicates that the owner correctly complied with the applicable procedures for a major capital improvement rent increase; and that the increase was properly computed based on the proven cost of the installation. Therefore, the Rent Administrator properly determined that the MCI application was complete and that the qualifying scope of the improvements and the amount of the approved costs for the rent increase were appropriate.

The Commissioner notes that the New York City Department of Buildings (DOB) signed off on the elevator installation at issue, which supports a finding that the elevator was in proper working order following the completion of the elevator upgrade. Since the owner submitted the necessary governmental approvals for the elevator upgrading, it was proper for the Rent Administrator to grant the MCI rent increase. As to any problems concerning the elevator's operation due to a lack of proper ongoing maintenance, the tenants may file an Application for Rent Reduction Based upon Decreased Services, if the facts so warrant.

As for the tenant-petitioners' claim that there were HPD class "C" immediately hazardous violations against the subject premises, a review of the record shows that the owner submitted the MCI application on September 20, 2017 with an architect's affidavit, dated August 22, 2017, stating that the open HPD class "C" violations were all rectified. The Managing Agent also provided an affidavit, dated August 23, 2017, stating that the lead-based paint class "C" violations were remedied. The owner later confirmed with DHCR that the lead-based paint violations were removed from HPD's database. Therefore, pursuant to the above stated, the Commissioner finds that the class "C" violations were not a bar to granting the MCI increase and the owner's MCI application was properly granted by the Rent Administrator.

Furthermore, the Commissioner notes that the tenant-petitioners' assertions that the list of tenants was inaccurate and included rooms of apartments that are not rent stabilized, and that the contractor's contract did not list the filing fees or other expenses not allowed in the MCI, were both raised on PAR and not raised below. As such, fundamental principles of the administrative appeal process and applicable sections of the Rent Stabilization Code prohibit a party from raising issues on appeal which were not raised below. Accordingly, the Commissioner is restrained to foreclose consideration of this issue raised by the petitioners in this appeal.

Pursuant to Section 26-511.1 (a)(8) of the Rent Stabilization Law and to Section 26-405.1 (a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any

remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the laws, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order be affirmed.

ISSUED:

APR 08 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
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JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

BSF 548 WEST 164TH STREET HOLDING, LLC

PETITIONER

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ADMINISTRATIVE REVIEW DOCKET NO.: GR430013RO

RENT ADMINISTRATOR'S DOCKET NO.: GM430012OM

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on May 18, 2018 by the Rent Administrator concerning the housing accommodations known as 548 West 164th Street, New York, NY which denied the owner's application for a rent increase based on the installation of a major capital improvement (MCI). The denial of the owner's MCI application for $132,714.00 for elevator upgrading was based on the Rent Administrator's determination that there was a prior elevator upgrading in 2005 with a useful life of 25 years which was granted an MCI rent increase in Rent Administrator's order Docket No. UC430102OM.

The Commissioner having reviewed the Petition for Administrative Review ("PAR") and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations find that the petitioner's appeal does not have merit and should be denied.

The owner-petitioner requests a reversal and claims, in substance, that it had complied with the requirements and met the criteria for filing a request for a useful life waiver; that the elevator upgrading was eligible for an MCI rent increase; and that the Rent Administrator should have off set the costs of the new elevator upgrading from the MCI increase granted in 2006 for the previous upgrade under Docket No. UC430102OM; that it had complied with the schedule of Major Capital Improvements of the Rent Stabilization Code's requirements to qualify for an MCI rent increase; that the DHCR should have partially granted 48% of the MCI rent increase, $69,011.28, being that the previous installation had only exhausted 48% of its useful life.

The owner cites to past MCI applications granted wherein the Rent Administrator accepted an owner's useful life waiver and offset the approved amount by the amount of the prior MCI granted, Docket Nos. RA110015OM, RG110004OM and TA410035OM. The petitioner claims that those cases fall in line with DHCR's policy to grant partial benefits for items wherein the useful life had not expired by subtracting the approved cost of the old item from the claimed cost of the new item.

The applicable sections of the Rent Stabilization Code (RSC), Section 2522.4(a)(2)(i)(d), (e) and DHCR Operations Bulletin 90-2 (OB 90-2) state that an owner who wishes to request a waiver of the useful life requirement, such as the herein elevator upgrading, must apply to the DHCR for such waiver prior to the commencement of the work for which he or she will be seeking an MCI rent increase. Notwithstanding

this requirement, where the waiver requested is for an item being replaced because of an emergency, which causes the building or any part thereof to be dangerous to human life and safety or detrimental to health, an owner may apply to the DHCR for such waiver at the time he or she submits the MCI rent increase application.

Finally, the RSC and OB 90-2 establishes that where it is determined that an item is eligible to be replaced during its useful life, the increase granted shall be the difference between the substantiated cost of the item or equipment and installation and (a) the amount reimbursed from other sources such as insurance proceeds and (b) the amount of any increase previously granted for the same item as an MCI, if such item has not exhausted at least 75% of its useful life at the time of installation.

A review of the record shows that the owner was granted an MCI rent increase for $160,000.00 for an elevator upgrading completed in 2005 under Docket No. UC430102OM. The owner's waiver request submitted with the MCI application included photographs of the elevator and the statement of David DeBellis, a sales representative from D & D Elevator Maintenance Inc. that the elevator and its components were badly worn and that the main machine was leaking lubricant severely. An emergency request for a waiver of useful life requires substantiated proof such as a statement from a duly licensed engineer or architect certifying that the item, herein the elevator, needs to be replaced because of an emergency which causes the building or any part thereof to be dangerous to human life and safety or detrimental to health. The owner's waiver request including the statement from a sales representative fails to establish that due to an emergency the building or elevator is dangerous to human life and safety or detrimental to the health of the tenants. Therefore, the Commissioner finds that the Rent Administrator properly denied the owner's request for a waiver of the useful life requirements and its MCI application.

The Commissioner notes that the prior cases cited by the owner, Docket Nos. RA110015OM and TA410035OM, are silent on whether a waiver was requested in accordance with OB 90-2. In Docket No. RG110004OM the order states that the owner submitted a waiver request with a statement from an engineer demonstrating the need for the replacement of the item for a waiver.

Lastly, the owner requests that the Rent Administrator should deduct 48% of the claimed $132,714.00 and approve $69,011.28 for the more recent elevator upgrading. This claim is without merit as noted above the owner did not properly submit the emergency request for a waiver of the useful life requirements. Even so, with applying the formula laid out in the RSC and OB 90-2, the substantiated cost of the new elevator upgrade $132,714.00, minus (a) amounts reimbursed from other sources such as insurance or commercial guarantee, which were not part of the record below, minus (b) the amount of the previous MCI increase $160,000.00, nets a negative amount, which makes the owner's claim moot.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order be affirmed.

ISSUED: **APR 8 2022**

Woody Pascal
Deputy Commissioner

State of New York
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Gertz Plaza, 92-31 Union Hall Street
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Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
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JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO.: HV110011RT

RENT ADMINISTRATOR'S DOCKET NO.: GV110065OM

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on September 24, 2019 by the Rent Administrator concerning the housing accommodations known as 93-10 to 93-24 Queens Boulevard which granted the owner's application for a rent increase based on the installation of major capital improvements (MCIs), to wit: facade restoration; elevator upgrading; elevator motor room doors.

The petitioner claims, in substance, that the facade work should not qualify as an MCI because the work which was performed was not a renovation of the facade but was normal repairs required under Local Law 11, the cost of which should not be passed on to the tenants. The petitioner also claims that the rent increase should not be permanent but should have an expiration date. The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioner's appeal does not have merit and should be denied.

The Rent Administrator properly determined the qualifying scope of the improvement and the amount of the approved costs and the rent increase. The Rent Stabilization Law authorizes MCI rent increases for qualifying improvements, and it has been long-established DHCR policy that facade restoration, such as was performed in the proceeding at hand, qualifies as an MCI for which a rent increase may be granted. The record supports a finding that the facade work performed in this case, which included all necessary pointing and waterproofing on all exterior walls, along with brick replacement and replacement of lintels through the facades where such work was determined to be necessary, meets the requirements for MCI-eligibility. In light of this, there was no error by the Administrator in granting an MCI rent increase, as approved, for the facade restoration work at issue in this proceeding.

The petitioner's further claim, that the rent increase should not be permanent, raises no basis for a modification of the Administrator's order. As noted in the Administrator's order, pursuant to the 2019 amendments to the

Rent Stabilization Law, the MCI rent increase which has been granted is in fact temporary and must be removed from the legal regulated rent thirty years after the effective date of the order granting the increase.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order be affirmed.

ISSUED: APR 15 2022

Woody Pascal
Deputy Commissioner

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JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

SP 1143 SECOND LLC

PETITIONER

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ADMINISTRATIVE REVIEW DOCKET NO.: GT410001RO

RENT ADMINISTRATOR'S DOCKET NO.: FT410059OM

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on June 29, 2018 by the Rent Administrator concerning the housing accommodations known as 252 East 61st Street, New York, New York, which partially granted the owner's application for a rent increase based on the installation of major capital improvements ("MCIs"), to wit: a waste compactor; exterior façade restoration; chimney restoration; pointing/masonry; architect and engineer fees; sidewalk bridge; and asbestos inspection. The Rent Administrator granted the waste compactor portion of the MCI application but denied the exterior façade restoration; chimney restoration; pointing/masonry; architect and engineer fees; sidewalk bridge; and asbestos inspection.

The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioner's appeal does not have merit and should be denied.

The owner-petitioner, represented by counsel, asserted on appeal, in substance, that the MCI should have been fully granted because the previously granted pointing and waterproofing MCI for the subject premises did not constitute exterior restoration as defined by the Rent Administrator (see Docket No. UB430072OM), and therefore, should not be a useful life bar to the grant of the current MCI application for pointing and waterproofing of the subject premises. The owner-petitioner also asserted that the Rent Administrator should not be bound by the Petition for Administrative Review ("PAR") order of the previously granted MCI (see PAR Order No. UI430067RT).

It is the established position of the Division that a building-wide comprehensive exterior restoration, which may include parapets, pointing, lintels, cornices, waterproofing, masonry, etc., constitutes an MCI. The owner is not required to perform such work on the entire exposed exterior façade, but it must be performed in a workmanlike manner so that when the work is completed the premises shall remain free from water seepage for a reasonable period of time, and thus the tenants may enjoy the benefit of the intended improvement. The granting of an MCI rent increase for such work contemplates that the building exterior, except for normal maintenance and repairs, will be structurally sound and watertight for the twenty-five (25) year useful life of the exterior restoration.

It is also the established position of the Division that comprehensive pointing and waterproofing as necessary on all exposed sides of a building constitutes an MCI for which a rent increase may be warranted. Pointing need not be of 100% of the entire exposed exterior façade. However, the building façade/premises, except for normal maintenance and repairs, must be structurally sound and free from water seepage for the fifteen-year (15) useful life of a pointing installation.

Below, the Rent Administrator denied the costs for the exterior restoration, chimney/pointing, façade engineer fees, handrail engineer fees, sidewalk bridge, and asbestos inspection. Citing an MCI for the subject premises granted on September 22, 2006, under the previous owner of the subject premises (Docket No. UB430072OM), the Rent Administrator noted that the work performed on the building – pointing, waterproofing, parapet, roof, lintel replacements, masonry replacement, and related work – was an exterior restoration, which has a 25-year useful life and meets the definitional requirements of an MCI. See PAR Order No. UI430067RT. As such, the Rent Administrator determined that the present owner is prohibited from receiving an MCI increase for any subsequent work of a similar nature for the entire duration of the useful life of the exterior restoration. The owner-petitioner's requested MCI increase for exterior restoration and related costs was, therefore, denied. A request for a waiver of the useful life requirement was also denied.

On appeal, the owner-petitioner argues that the previously granted MCI was solely pointing and waterproofing, with a 15-year useful life, not an exterior restoration with a 25-year useful life, and that the current MCI should have been fully granted, as most of that 15-year useful life had expired when the subsequent pointing and waterproofing MCI application was submitted. The Rent Administrator determined below that the work performed on the subject premises in the previously granted MCI (Docket No. UB430072OM) amounted to an exterior restoration. Though the granted MCI order lists pointing and waterproofing as the sole installation, the work performed, based on the description in that MCI application, included lintel replacement, masonry replacement, and related work beyond just pointing and waterproofing.

Here, on appeal, the owner-petitioner has not proven that the previous installation involved solely pointing and waterproofing. The record shows that the work performed was an exterior restoration, as defined by the Rent Administrator, and should be a useful life bar to the grant of the current MCI application for pointing and waterproofing. The owner-petitioner's claim that the previously granted MCI did not constitute exterior restoration is therefore without merit. The claim that the Commissioner's findings in an appeal of the previous MCI (PAR Order No. UI430067RT) should have no precedential value is also without merit.

As for the owner-petitioner's claim that the most recent MCI should also be considered a pointing and waterproofing installation and not exterior restoration, a review of the record shows that the owner's application for the current MCI describes the work performed as an "exterior façade restoration" – pointing & waterproofing, masonry/brick replacement, lintels, and related work; chimney restoration; and architect/engineer fees required for exterior façade restoration – with only 11 years of its useful life expired. As such, the Rent Administrator properly determined that the current MCI is an exterior restoration installation with a 25-year useful life requirement.

When an owner receives an MCI increase, no additional increase is possible unless either the useful life of the prior installation has expired, or the owner has demonstrated that it qualifies for a waiver of the useful life requirement. DHCR Operational Bulletin 90-2 provides, in pertinent part, that where an owner wishes to request a waiver of the useful life requirement, the owner shall apply to the DHCR for such waiver prior to the commencement of the work for which he or she will be seeking an MCI rental increase. However, in cases where the installation in question is being replaced because of an emergency which causes any part of the building to be dangerous to human life or safety, a useful life waiver may be requested at the time the MCI application is filed. The Commissioner notes that under certain circumstances where a waiver of the useful life

schedule is sought, an owner may be required to submit proof that the item or equipment being replaced was properly maintained.

Regarding the subject emergency waiver request provided during the proceeding below, a review of the record shows that an architect's statement was submitted along with the owner's MCI application. The emergency waiver request broadly claimed that the MCI work was performed because "expeditious correction of... exterior building deterioration" was "necessary to preserve the safety and health of the building residents as well as the safety of the general public." However, the Commissioner notes that the architect's statement did not specify what, if any, hazardous façade conditions were creating a danger to both residents and the general public, and the record otherwise failed to include sufficient detail for the Rent Administrator to conclude that the work was meant to resolve immediately hazardous, emergency concerns. Furthermore, the owner's claim that the façade work, which began in May 2015, was performed due to conditions that necessitated immediate emergency repairs is contradicted by the record, which includes documents indicating that the subject façade improvements were planned at least 12 months in advance, in part to comply with the timelines of Sub-Cycle 8A of the Facade Inspection Safety Program mandated by Local Law 11 of New York City.

Finally, the record fails to establish that the earlier façade improvement was kept in proper repair. The Commissioner notes that the present owner of the subject premises, where the previous owner obtained an exterior restoration MCI increase in 2006, remained obligated to keep said installation in proper repair. A subsequent exterior restoration MCI, in such a short time, leads to the conclusion that the first installation was not performed in a workmanlike manner or that the exterior restoration was not thereafter kept in proper repair by the present owner. While there still may be extraordinary circumstances beyond the owner's control which necessitate the restoration of the building's exterior prior to the expiration of its useful life, the burden of proof rests on the owner to establish such circumstances. Such circumstances were not proven in the owner-petitioner's current MCI application.

Pursuant to Section 26-511.1 (a)(8) of the Rent Stabilization Law and to Section 26-405.1 (a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the laws, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order be affirmed.

ISSUED: APR 15 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

VARIOUS TENANTS OF 955 WALTON AVENUE

PETITIONERS

ADMINISTRATIVE REVIEW DOCKET NO.: FT610025RT

RENT ADMINISTRATOR'S DOCKET NO.: EN610031OM

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named petitioners timely filed an administrative appeal against an order issued on June 22, 2017 by the Rent Administrator concerning the housing accommodations known as 955 Walton Avenue, Bronx, New York, which granted the owner's application for a rent increase based on the installation of major capital improvements ("MCIs"), to wit: elevator upgrading and electrical work; gas piping; and concrete work in the backyard and courtyard.

The Commissioner having reviewed the petitioners' appeal and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioners' appeal does not have merit and should be denied.

The tenant-petitioners of the subject premises, represented by the Urban Justice Center, asserted in their appeal, in substance, that the elevator upgrading did not meet the criteria for an MCI increase because the entire elevator was neither upgraded nor replaced, as there is no mention of replacement of a selector in the MCI application; the elevator work was completed in a piecemeal fashion because the north elevator was not repaired during the time the south elevator was repaired; the elevator, even after repairs, was still defective; the subject premises had Department of Housing Preservation ("HPD") class "C" violations; the gas piping was completed in a piecemeal fashion; the cost of the gas piping did not reflect the work performed and was of "shoddy" workmanship; and the owner did not maintain the building.

First, according to established DHCR policy, for an elevator upgrade to qualify as an MCI the owner must install new controllers and selectors or a new electronic dispatch overlay system and must obtain the needed municipal approval as specifically stated in the MCI Application Instructions. See Docket No. PL110046RO. A review of the record shows that the owner upgraded the north elevator of the subject premises. The MCI application specified that a controller was installed along with a "variable control system," which, based on the description of the installation, is the functional equivalent of an electronic dispatch overlay system. As such, the Rent Administrator properly determined that the elevator upgrade qualified for an MCI rent increase.

The Commissioner notes that the Department of Buildings ("DOB") signed off on the elevator application on October 14, 2014, and signed off on the electrical work on October 18, 2014, which supports a finding that the elevator was in proper working order following the completion of the elevator upgrade. As to any problems concerning the elevator's operation due to a lack of proper ongoing maintenance, the tenants of the subject premises may file an Application for Rent Reduction Based upon Decreased Services, if the facts so warrant.

Second, at the time the MCI order was issued, Division policy stated that an owner's MCI application would not be granted, in whole or in part, if it was determined that on the filing date of the application there were current immediately hazardous violations of any municipal, county, State or Federal law pending against the subject premises. The correction of class "C" violations may be established by an architect's or engineer's affidavit that they inspected the building, and the violations no longer exist. For lead-based paint class "C" violations, the violations must be removed from the HPD database before a rent increase can be granted. Failure to establish that the conditions noted by the class "C" violations have been remedied will result in denial of the MCI application.

Here, the subject premises had only two non-lead-based paint class "C" violations on record on the date the MCI application was filed. A review of the record shows that the owner submitted an architect's affidavit dated February 10, 2016, which established that the two violations were rectified by building management. As such, pursuant to the rent laws and regulations in effect at the time, these violations would not be a bar to the granting of the MCI increase, as the tenant-petitioners contend on appeal.

Third, it is established DHCR policy that building-wide gas piping, which requires the installation of new gas lines in every apartment of the subject premise, meets the criteria for an MCI increase. The record shows that the owner replaced meter bars in the basement and replaced multiple feet of gas pipe connected to the stoves of each apartment from the basement to the 6th floor of the building. The tenant-petitioners asserted on appeal that the gas piping installation was completed in a piecemeal fashion; however, the DOB work permit for the installation, approved on August 17, 2015, was signed off by DOB on October 1, 2015. This time frame would suggest that the gas piping installation was completed expeditiously in 45 days, and not in a piecemeal fashion, as the tenant-petitioners contend.

The tenant-petitioners also asserted on appeal that the re-piping installation did not reflect the cost of the gas piping and was of "shoddy" workmanship. The record shows that the owner made repairs to the gas piping in response to the tenants' complaints and photos of the repaired apartments were submitted to the tenants by the owner. No responses disputing the repairs were received from the tenants after they were served copies of the photographs, which suggests that any defects in workmanship were resolved.

Finally, the Commissioner notes that the tenant-petitioners' assertions that the elevator work was completed in a piecemeal fashion because the north elevator was not repaired during the time the south elevator was repaired, and that the owner did not maintain the building, were not raised below. Fundamental principles of the administrative appeal process and applicable sections of the Rent Stabilization Code prohibit a party from raising issues on appeal which were not raised below. Accordingly, the Commissioner is restrained to foreclose consideration of these issues raised by the petitioners in this appeal.

Pursuant to Section 26-511.1 (a)(8) of the Rent Stabilization Law and to Section 26-405.1 (a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross

rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the laws, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order be affirmed.

ISSUED: APR 15 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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Note: During the period of the current Covid-19 emergency, as a courtesy, if the Article 78 proceeding is commenced by efiling pursuant to the Court Rules service may be effectuated, as limited as follows, by forwarding the court's email indicating the assignment of the Index Number and the documents received by the court, i.e., Notice of Petition, Petition, and other efiled documents to DHCRLegalMail@nyshcr.org. Upon receipt of the complete filings, the receipt of such documents will be acknowledged by email. Only after such acknowledgement of receipt of such documents will the service by email be deemed good service on New York State Division of Housing and Community Renewal (DHCR). DHCR is not the agent for service for any other entity of the State of New York or any third party. In addition, the Attorney General must be served at 28 Liberty Street, 18th Floor, New York, NY 10005. Since Article 78 proceedings take place in the Supreme Court, it is advisable that you consult legal counsel.

There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEALS OF

ADMINISTRATIVE REVIEW DOCKET NO.: ER910024RT

[redacted]

PETITIONERS

RENT ADMINISTRATOR'S DOCKET NO.: ZL910019OM

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ORDER AND OPINION PARTIALLY GRANTING PETITION FOR ADMINISTRATIVE REVIEW FILED BY THE TENANT OF APARTMENT [redacted] AND DENYING PETITIONS FOR ADMINISTRATIVE REVIEW FILED BY THE TENANTS OF APARTMENTS [redacted]

The petitioners timely filed administrative appeals against an order issued on May 18, 2016 by the Rent Administrator concerning the housing accommodations known as 120, 130, and 140 Pelham Rd., New Rochelle, NY, which granted the owner's application for a rent increase based on the installation of major capital improvements (MCIs), to wit: façade restoration, which included balcony repair and balcony replacement costs; bulkhead cladding; balcony coating; garage waterproofing; and professional consulting fees.

The Commissioner having reviewed the petitioners' appeals and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the appeal filed by the tenant-petitioner of Apartment [redacted] at 120 Pelham Road has some merit and should be granted in part, while the appeals filed by the tenants of Apartments [redacted] at 120 Pelham Road do not have merit and should be denied.

The tenant-petitioners filed separate appeals which, in sum, raise issues with the balcony improvements performed at the subject premises. The tenant of Apartment [redacted] at 120 Pelham Road claims that "all balconies in building 120, line D were replaced with the exception of Apartments [redacted] and "no substantive repairs were actually made" to her apartment's balcony. The tenant of Apartment [redacted] at 120 Pelham Road claims that her apartment's balcony work was performed incorrectly and that she should not be subject to a rent increase for work related to the building's parking garage since she does not utilize the space. The tenant of Apartment [redacted] at 120 Pelham Road states that she does not have a balcony or car and therefore should not be subject to the MCI increase and claims that the balcony work performed throughout the building was of poor quality. Finally, the tenant of Apartment [redacted] at 120 Pelham

Road claims that the increase is unaffordable and that building services are not being maintained at the subject premises.

At the outset, the Commissioner notes that the tenants of Apartments [redacted] did not raise the above-stated objections to the owner's MCI application during the proceeding below. Fundamental principles of the administrative appeal process and Section 2510.3 of the Emergency Tenant Protection Regulations prohibit a party from raising issues on appeal which were not raised below. Accordingly, the appeals raised by the tenants of Apartments [redacted] are hereby dismissed.

As for the remaining tenant-petitioners, the Commissioner finds that the claims raised by the tenant of Apartment [redacted] have some merit and should be granted in part, while the claims raised by the tenant of Apartment [redacted] are without merit and should be denied.

The tenant-petitioner of Apartment [redacted] states that her apartment's balcony work was inadequate, since the balcony roof remains cracked and peeling and the balcony floor is still prone to water drainage issues. In response, the owner states that the condition of Apartment [redacted] balcony has already been inspected by the Division and the tenant's complaints were found to be without merit. In support of this statement, the owner submits a copy of a DHCR "Rent Reduction Based Upon a Decrease of Services" application filed by the tenant of Apartment [redacted] in 2010 (Docket No. YG910077S) based on balcony complaints similar to those raised in the instant appeal proceeding. The Rent Administrator denied the tenant's request for a rent reduction in Docket No. YG910077S after a March 2011 Division inspection found drainage problems with Apartment [redacted] balcony but no defects to the balcony's ceiling or railing and no evidence of leaks through the balcony bricks. According to the MCI application filed by the owner below, certain balcony-related MCI work was still underway at the subject premises when the Division's March 2011 inspection was performed.

The Commissioner finds that the March 2011 service-related inspection result cited in the owner's response is not persuasive in the instant appeal proceeding in light of a subsequent MCI-related balcony inspection performed at Apartment [redacted] during the proceeding below. A review of the record shows that two years after the above-mentioned March 2011 inspection, a second inspection of Apartment [redacted] balcony was conducted by the Division in July 2013. This later inspection was performed in response to the tenant-petitioner's statement below that the MCI work was inadequate and the balcony of Apartment [redacted] remains in poor condition. The July 2013 inspection requested by the Rent Administrator and performed during the MCI proceeding below substantiated the tenant's claims, finding evidence of standing water in several areas of the balcony and drainage issues; evidence of peeling surface paint; and evidence that the balcony ceiling is cracking and showing evidence of falling paint/plaster.

The Commissioner notes that during the proceeding below, the owner was notified of the balcony conditions found in the Division's July 2013 inspection. The owner's agent responded in a September 27, 2013 mailing to the Division that "access to address the balcony issues of Apartment.. [redacted] at 120 Pelham Road [has] been scheduled for Saturday, September 28 and a copy of the invoices and Purchase Orders will be forwarded as soon they are available." However, no additional evidence regarding the conditions of the balcony in Apartment [redacted] was submitted by the owner prior to the issuance of the subject MCI order in 2016.

The Commissioner therefore finds, for the reasons stated above, that the Rent Administrator erred in not exempting Apartment [redacted] from the subject MCI increase. Accordingly, the Commissioner finds that the subject MCI order should be modified to permanently exempt Apartment [redacted] from that portion of the rent increase attributable to balcony costs. A review of the MCI application submitted by the owner below reveals that $347,735.79 of the total approved MCI cost related to balcony work at the subject premises (including $265,235.79 in balcony-related work claimed as part of the owner's façade restoration MCI and $82,500 in approved "balcony coatings" costs claimed by the owner as a separate line item). The Commissioner therefore finds that the owner's total approved MCI amount of $662,841.67 should be reduced by $347,735.79 for the rent increase applicable to Apartment [redacted] of 120 Pelham Road, and the per room, per month rent increase for Apartment [redacted] of 120 Pelham Road should be reduced by $3.75, from $7.15 per room per month to $3.40 per room per month, calculated as follows: $662,841.67 minus $347,735.79 equals $315,105.88 minus the allocated commercial share of $945.32 equals $314,160.56 divided by 108 months divided by 856 rooms equals a reduced rent increase for apartment [redacted] to $3.40 per room per month.

The owner is hereby directed to refund any excess rent collected from any tenant(s) of Apartment [redacted] at 120 Pelham Road as a result of this order by crediting to the tenant(s) such excess rent at the rate of 20% per month, commencing on the first rent payment date after issuance of this order of the Commissioner until all overpayment has been refunded.

As for the tenant-petitioner of Apartment [redacted] additional claim that she does not use the building's parking garage and therefore should not be subject to a rent increase related to garage waterproofing, the Commissioner notes that the evidence of record indicates that the garage in question is attached to the subject premises, and its preservation is thus required to maintain the structural integrity of the building. Accordingly, the Commissioner finds that the MCI-qualifying waterproofing work performed on the building's parking garage benefits all of tenants of the subject premises, whether or not they use the garage.

Regarding the tenant-petitioner of Apartment [redacted] claim that she should not be subject to a rent increase since her balcony was not completely replaced, it is the established position of the Division that balcony restoration work may qualify for an MCI rent increase where all of the balconies in a building have been replaced or substantially restored, or where lesser work (e.g., concrete restoration on balconies where necessary) is performed in conjunction with other qualifying work, such as pointing and waterproofing. The balcony work in the instant proceeding included balcony concrete restoration or balcony replacement where necessary and was performed in conjunction with a qualifying façade restoration MCI. The complete replacement of all balconies at the subject premises was therefore not required for such work met the requirements of other necessary work directly related to a qualifying MCI. As such, the tenant of Apartment [redacted] claim that only certain balconies in her line of apartments were replaced does not warrant a revocation or modification of the subject MCI rent increase order.

Pursuant to Section 26-511.1(a)(8) of the Rent Stabilization Law and to Section 26-405.1(a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the

laws, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that the petitions brought by the tenants of Apartments [redacted] be denied and the petition brought by the tenant of Apartment [redacted] be granted in part; that the Rent Administrator's order be modified to reduce the permanent rent increase of Apartment [redacted] at 120 Pelham Road from $7.15 per room per month to $3.40 per room per month, in accordance with this order and opinion; and as modified, the Rent Administrator's order is affirmed; and it is further

ORDERED, that the owner credit the tenant of Apartment [redacted] at 120 Pelham Road any excess rent collected as a result of this order at the rate of 20% per month commencing on the first rent payment date after issuance of this order of the Commissioner until all overpayments have been refunded.

ISSUED: APR 19 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]

[redacted]

PETITIONERS

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ADMINISTRATIVE REVIEW
DOCKET NOs.: JR210001RT
JS210030RT

RENT ADMINISTRATOR'S
DOCKET NO.: GV210116OM

ORDER AND OPINION GRANTING APARTMENT [redacted] TENANT'S PETITION AND DENYING APARTMENT [redacted] TENANT'S PETITION FOR ADMINISTRATIVE REVIEW

The petitioners timely refiled administrative appeals against an order issued on April 29, 2021 by the Rent Administrator concerning the housing accommodations known as 700 Ocean Avenue, Brooklyn, NY 11226 which granted the owner's application for a rent increase based on the installation of major capital improvements, to wit: parapet, façade, sidewalk bridge and engineering fees.

The Commissioner deems it appropriate to consolidate these petitions for a uniform disposition since they pertain to the same order and involve common issues of law and fact.

The Commissioner having reviewed the petitioners' appeals and any and all supporting documentation, any and all statements made by affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that apartment [redacted] tenant's appeal should be granted and apartment [redacted] tenant's appeal should be denied.

The petition of the tenant of apartment [redacted] alleges that the apartment consists of 6 rooms and not the 7 rooms stated in the MCI order. In its response, the owner agrees with the tenant that the apartment consists of 6 rooms.

The petition of the tenant of apartment [redacted] claims that the parapet and façade work claimed by the owner were not done; and that draft and leaks are coming from the bedroom and living room windows of the apartment.

Regarding apartment [redacted] tenant's petition, as the owner agrees with the tenant's claim that the apartment consists of 6 rooms, there does not appear to be any dispute between the parties as to the issue of room count. Therefore, the Commissioner finds that the tenant's petition should be granted, and the owner should refund to the tenant any excess MCI rent collected based on 7 rooms instead of 6 rooms, if it had not already done so.

Regarding apartment [redacted] tenant's petition, the claim that parapet and façade work were not performed is without merit. The record shows that the owner properly substantiated its application with submission of the requisite supporting documentation, including copies of the project engineer's drawing for the work, the contract, the contractor's affirmation that the work was performed, and invoices and cancelled checks evincing payment for the work. Therefore, the Commissioner finds that based on the record the parapet and façade work was performed, and the owner complied with the applicable procedures for a major capital improvement rent increase; and that the rent increase was properly computed based on the proven cost of the MCI installation. Also, the claim that there are draft and leaks in the apartment is unsubstantiated and without merit. The record shows that in response to this claim, the owner submitted below, a sworn statement of the building manager stating that he thoroughly inspected the tenant's apartment on 3/19/2020 and found no leaks, and the ceiling was in sound condition. Said statement was served on the tenant on 7/23/20, however, the tenant did not rebut the statement. Thus, the tenant's claim does not form a basis to disturb the Rent Administrator's order. This order and opinion is issued without prejudice to the right of the tenant to file with the Division application for reduction in rent based on the owner's failure to maintain services, if the facts so warrant.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that apartment [redacted] tenant's petition be granted, apartment [redacted] tenant's petition be denied, and that the Rent Administrator's order is otherwise affirmed.

ISSUED: APR 22 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

Note: During the period of the current Covid-19 emergency, as a courtesy, if the Article 78 proceeding is commenced by efiling pursuant to the Court Rules service may be effectuated, as limited as follows, by forwarding the court's email indicating the assignment of the Index Number and the documents received by the court, i.e., Notice of Petition, Petition, and other efiled documents to DHCRLegalMail@nyshcr.org. Upon receipt of the complete filings, the receipt of such documents will be acknowledged by email. Only after such acknowledgement of receipt of such documents will the service by email be deemed good service on New York State Division of Housing and Community Renewal (DHCR). DHCR is not the agent for service for any other entity of the State of New York or any third party. In addition, the Attorney General must be served at 28 Liberty Street, 18th Floor, New York, NY 10005. Since Article 78 proceedings take place in the Supreme Court, it is advisable that you consult legal counsel.

There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	**ADMINISTRATIVE REVIEW DOCKET NO.: EQ210005RT**
[redacted]	
PETITIONERS	**RENT ADMINISTRATOR'S DOCKET NO.: CW210040OM**

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioners timely filed an administrative appeal against an order issued on March 28, 2016 by the Rent Administrator concerning the housing accommodations known as 563 to 565 Manhattan Avenue, Brooklyn, NY, which partially granted the owner's application for a rent increase based on the installation of major capital improvements (MCIs), to wit: pointing and waterproofing, window replacement, electrical rewiring, backflow preventer, intercom system, CCTV surveillance system, oil to gas conversion, new main entrance/vestibule doors, and new fireproof exit doors. The Rent Administrator denied all costs related to the fireproof exit doors and CCTV surveillance system.

The Commissioner having reviewed the petitioners' appeal and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioners' appeal does not have merit and should be denied.

The tenant-petitioners request a modification of the order and claim that the Rent Administrator's commercial space calculation of "approximately 11.99%" was inaccurate, and failed to take into consideration a statement by the owner below that the correct commercial share was 12.88%. The tenants also claim, in substance, that the Rent Administrator failed to take into consideration additional areas used by the commercial tenant such as the building's backyard, which would raise the commercial share of the building to over 30%. In addition, the petitioners allege that the rewiring MCI was poorly done and did not improve any services provided to the tenants and therefore failed to benefit the tenants of the building.

Pursuant to the Rent Stabilization Code, where the subject building contains commercial rental space in addition to residential rental space, and the Division determines that such commercial

space benefits from a major capital improvement, the Division shall allocate the approved cost of such improvement between the commercial rental space and the residential rental space based upon the relative square feet of each rental area.

A review of the record below shows that in response to multiple DHCR requests the owner disclosed that, of the 6,600 square feet of total space in the building, 850 square feet (or 12.88%) was used for commercial purposes. The record below also indicates that the building's commercial tenant benefitted from all approved MCI costs except for those related to the new intercom system and new main entrance/vestibule doors. In calculating the commercial allocation portion of the MCI rent increase, the Rent Administrator therefore multiplied the total approved MCI costs that benefitted the building's commercial space ($95,958.40 in approved pointing & waterproofing, rewiring, oil to gas conversion, windows, and backflow preventer costs) by 12.88% (0.1288) and determined the commercial share of the final approved MCI cost to be $12,359.44. The tenants' claim that the Rent Administrator used an incorrect commercial allocation percentage of 11.99% is therefore unsupported by the record.

The tenant-petitioners alternatively allege, in substance, that the commercial share of the building is in fact closer to 30% if additional areas used by the commercial tenant, such as the building's backyard, are taken into consideration. The Commissioner notes that such method of calculating the commercial deduction would be improper under the Division's above-mentioned commercial allocation policy as outlined by the Rent Stabilization Code.

As for the tenant-petitioners' claim that the rewiring work was incomplete and should not qualify for an MCI rent increase since "[t]he work involved the replacement only of the meters/panel in the cellar and the lines running up to the individual apartments" and "the wiring in any given apartment remains unchanged," a review of the record of the instant proceeding shows that the owner met the criteria of a rewiring MCI. It is the established position of the Division that the adequate rewiring of a building requires the installation of new electric service to the building, new copper risers and feeders that extend from the property box in the basement to every housing accommodation of sufficient capacity at the apartment panel to accommodate the installation of air conditioner circuits and outlets, as well as the actual installation of two dedicated double outlets in the kitchen to accommodate heavy duty appliances. During the application proceeding below, the owner provided adequate documentation, including copies of a contract, cost breakdowns, a contractor's statement, and New York City Department of Buildings sign-offs confirming that the owner complied with the above-mentioned requirements. The Commissioner notes that it is not necessary that all apartments receive all new outlets in every room for the owner to qualify for a rent increase for rewiring the premises. Accord: Docket No. PB230022RT. The claim that the installation failed to qualify as a rewiring MCI is therefore without merit.

Regarding the tenant-petitioners' claim that the electrical rewiring MCI failed to benefit the tenants because the work was poorly done and did not improve the services provided to the tenants, the Commissioner finds that the Administrator properly relied on all of the necessary supporting documentation submitted by the owner, including governmental approvals which substantiate that the rewiring installation was in good working order, in order to determine that the work in question was correctly performed. In addition, a review of Division records reveals

that there are no outstanding rent reductions based on a failure to maintain building-wide services in effect at the subject premises.

Pursuant to Section 26-511.1(a)(8) of the Rent Stabilization Law and to Section 26-405.1(a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the laws, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order be affirmed.

ISSUED: APR 21 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

Note: During the period of the current Covid-19 emergency, as a courtesy, if the Article 78 proceeding is commenced by efiling pursuant to the Court Rules service may be effectuated, as limited as follows, by forwarding the court's email indicating the assignment of the Index Number and the documents received by the court, i.e., Notice of Petition, Petition, and other efiled documents to DHCRLegalMail@nyshcr.org. Upon receipt of the complete filings, the receipt of such documents will be acknowledged by email. Only after such acknowledgement of receipt of such documents will the service by email be deemed good service on New York State Division of Housing and Community Renewal (DHCR). DHCR is not the agent for service for any other entity of the State of New York or any third party. In addition, the Attorney General must be served at 28 Liberty Street, 18th Floor, New York, NY 10005. Since Article 78 proceedings take place in the Supreme Court, it is advisable that you consult legal counsel.

There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: JX610015RO
LAFAYETTE NELSON APTS LLC - OWNER	
PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: IV610018OM

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ORDER AND OPINION REMANDING PROCEEDING TO THE RENT ADMINISTRATOR

The petitioner timely filed a petition for administrative review (PAR) against an order issued on November 9, 2021, by the Rent Administrator concerning the housing accommodations known as 820 To 822 Colgate Avenue, Bronx, NY 10473 which denied the owner's application for a rent increase based on the installation of a major capital improvements, to wit: new roof and architectural fees. The new roof was denied as MCI ineligible on the grounds that it was a liquid applied system used as a waterproofing membrane, and not a complete roof replacement.

The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the proceeding should be remanded to the Rent Administrator for further processing.

The owner's petition by counsel alleges, in substance, that the new roof qualifies as an MCI as the roofing material – Sikalastic Roofpro roofing system is identical to the single-ply rubber roof material authorized by Section 2522.4(a)(3)(e) of the Rent Stabilization Code, and has 20 year warranty similar to 20 years useful life of single ply rubber roof; that Sikalastic Roofpro roofing system is a new technology whose installation includes a complete rip-off of existing roof down to the concrete base, the application of an insulation layer that is 12-14 inches thick, and then the application of four (4) Sikalastic roofing layers as single-ply polymer applied in between cure of each layer and once cured become a single monolithic waterproof resin (rubber) sheet spanning across the entire roof similar to the single-ply rubber; that the DHCR has previously granted MCI rent increase for Sikalastic Roofpro roofing system under Docket No. FR610049OM, and under Docket No. HM130089OM for Siplast Parapro roof which is also liquid applied resin roof similar to Sikalastic Roofpro; that the new roof replacement meets all the MCI requirements pursuant to Section 2522.4(a)(2)(d) of the Code.

The owner subsequently supplemented the PAR with a letter from the New York City (NYC) Department of Buildings (DOB) which shows that in 1999 the DOB approved liquid applied roof as acceptable roofing materials. Counsel for the owner argues that even though the letter is being submitted for the first time on appeal it should be accepted because evidence of MCI eligibility of the new roof was not requested at the proceeding below.

The tenants answered and opposed the PAR stating that the roof replacement is non-MCI repair and maintenance work; the roof installation is defective; the owner is not maintaining building services; and that the MCI rent increase will create a financial burden for them.

PAR DOCKET NO.: JX610015RO

The Commissioner notes that it has consistently been the DHCR's policy as outlined in the Policy Statement 91-2, MCI Eligibility/Roofing, that roofing installations consisting of only a single ply of traditional asphalt-based materials (a top sheet) will not be eligible for an MCI increase. However, the Policy Statement provides an exception to the prohibition on MCI eligibility for single ply installations for new technology materials that are proven to have acceptable useful life as recognized in Operational Bulletin 90-2, Useful Life Schedule for Major Capital Improvements.

A review of the record shows that MCI eligibility of the liquid applied new roofing system under the exception provided by Policy Statement 90-2 was not considered at the proceeding below. The Commissioner notes that this very same Sikalastic Roofpro roofing system was determined by the Rent Administrator to qualify as an MCI in a prior proceeding under Docket No. FR610049OM, and the DHCR inspection of the new Sikalastic Roofpro roof conducted on 06/01/2021 found that the new roof was working properly. The owner has now submitted at PAR evidence that the liquid applied system was approved as acceptable roofing material by the NYC DOB in 1999. The Commissioner finds pursuant to Section 2529.7 (d) of the Rent Stabilization Code that the evidence should be accepted because the owner was not afforded an opportunity to submit the evidence at the proceeding below.

In light of the DOB approval of the Sikalastic Roofpro liquid applied roofing as an acceptable roofing material, and the 20-year warranty of the new roofing which is similar to 20 years useful life of MCI authorized for single ply rubber roof under Operational Bulletin 90-2, the Commissioner deems it appropriate to remand this proceeding to the Rent Administrator for further processing to reconsider MCI eligibility of the Sikalastic Roofpro roofing system pursuant to Policy Statement 91-2. As the record shows that the new roof installation was completed before the 6/14/2019 effective date of the Housing Stability and Tenant Protection Act (HSTPA), a waiver of the Reasonable Cost Schedule for the new roof should be considered pursuant to Operational Bulletin 2021-1 during the remand proceeding.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this proceeding be, and the same hereby is, remanded to the Rent Administrator for further review and processing in accordance with this order and opinion.

ISSUED: APR 28 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: KM610026RO
LAFAYETTE NELSON APTS LLC - OWNER	
PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: IW610003OM

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ORDER AND OPINION REMANDING PROCEEDING TO THE RENT ADMINISTRATOR

The petitioner timely filed a petition for administrative review (PAR) against an order issued on November 9, 2021, by the Rent Administrator concerning the housing accommodations known as 801 to 825 Boynton Avenue, Bronx, NY 10473 which denied the owner's application for a rent increase based on the installation of a major capital improvement, to wit: new roof and architectural fees. The new roof was denied as MCI ineligible on the grounds that it was a liquid applied system used as a waterproofing membrane, and not a complete roof replacement.

The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the proceeding should be remanded to the Rent Administrator for further processing.

The owner's petition by counsel alleges, in substance, that the new roof qualifies as an MCI as the roofing material – Sikalastic Roofpro roofing system is identical to the single-ply rubber roof material authorized by Section 2522.4(a)(3)(e) of the Rent Stabilization Code, and has 20 year warranty similar to 20 years useful life of single ply rubber roof; that Sikalastic Roofpro roofing system is a new technology whose installation includes a complete rip-off of existing roof down to the concrete base, the application of an insulation layer that is 12-14 inches thick, and then the application of four (4) Sikalastic roofing layers as single-ply polymer applied in between cure of each layer and once cured become a single monolithic waterproof resin (rubber) sheet spanning across the entire roof similar to the single-ply rubber; that the DHCR has previously granted MCI rent increase for Sikalastic Roofpro roofing system under Docket No. FR610049OM, and under Docket No. HM130089OM for Siplast Parapro roof which is also liquid applied resin roof similar to Sikalastic Roofpro; that the new roof replacement meets all the MCI requirements pursuant to Section 2522.4(a)(2)(d) of the Code; that in a letter dated May 27, 1999 the New York City (NYC) Department of Buildings (DOB) approved liquid applied roof as acceptable roofing materials. Counsel for the owner argues that even though the DOB letter is being submitted for the first time on appeal it should be accepted because evidence of MCI eligibility of the new roof was not requested at the proceeding below.

The tenants answered and opposed the PAR stating that the roof replacement was is non-MCI repair and maintenance work for which the owner is responsible; the roof installation is defective; there are water leaks in various apartments and in the building exterior walls due to the owner's failure to maintain required services,

including the roof, necessitating the roof replacement; and that the MCI rent increase will create a financial burden for them.

The Commissioner notes that it has consistently been the DHCR's policy as outlined in the Policy Statement 91-2, MCI Eligibility/Roofing, that roofing installations consisting of only a single ply of traditional asphalt-based materials (a top sheet) will not be eligible for an MCI increase. However, the Policy Statement provides an exception to the prohibition on MCI eligibility for single ply installations for new technology materials that are proven to have acceptable useful life as recognized in Operational Bulletin 90-2, Useful Life Schedule for Major Capital Improvements.

A review of the record shows that MCI eligibility of the liquid applied new roofing system under the exception provided by Policy Statement 90-2 was not considered at the proceeding below. The Commissioner notes that this very same Sikalastic Roofpro roofing system was determined by the Rent Administrator to qualify as an MCI in a prior proceeding under Docket No. FR610049OM, and the DHCR inspection of the new Sikalastic Roofpro roof conducted on 05/25/2021 found that the new roof was working properly. The owner has now submitted at PAR evidence that the liquid applied system was approved as acceptable roofing material by the NYC DOB in 1999. The Commissioner finds pursuant to Section 2529.7 (d) of the Rent Stabilization Code that the evidence should be accepted because the owner was not afforded an opportunity to submit the evidence at the proceeding below.

In light of the DOB approval of the Sikalastic Roofpro liquid applied roofing as an acceptable roofing material, and the 20-year warranty of the new roofing which is similar to 20 years useful life of MCI authorized for single ply rubber roof under Operational Bulletin 90-2, the Commissioner deems it appropriate to remand this proceeding to the Rent Administrator for further processing to reconsider MCI eligibility of the Sikalastic Roofpro roofing system pursuant to Policy Statement 91-2. As the record shows that the new roof installation was completed before the 6/14/2019 effective date of the Housing Stability and Tenant Protection Act (HSTPA), a waiver of the Reasonable Cost Schedule for the new roof should be considered pursuant to Operational Bulletin 2021-1 during the remand proceeding.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this proceeding be, and the same hereby is, remanded to the Rent Administrator for further review and processing in accordance with this order and opinion.

ISSUED: **APR 28 2022**

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a [illegible] art under Article 78 of the Civil Practice Law and Rules seeking judicial review. [illegible] filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: IR110001RT

[redacted]

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: GR110012OM

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ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely refiled an administrative appeal against an order issued on March 16, 2020 by the Rent Administrator concerning the housing accommodations known as 64-85 Booth Street, Rego Park, NY 11374 which granted the owner's application for a rent increase based on the installation of major capital improvements, to wit: garage roof, concrete, façade/balconies and architectural services.

The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioner's appeal should be granted.

The petitioner alleges that his apartment is a studio consisting of only 1 room and not the 2 rooms stated in the MCI order. In its answer dated 7/13/2020 the owner agrees with the tenant that the apartment has 1 room and not 2 rooms.

As the owner agrees with the tenant's claim that the apartment has 1 room there does not appear to be any dispute between the parties as to the issue of room count.

Based upon the foregoing, the Commissioner finds that the tenants' petition should be granted and that the owner should refund to the petitioner any excess MCI rent collected based on 2 rooms instead of 1 room if it had not already done so.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be granted as both the tenant and the owner agree that apartment [redacted] is 1 room, and that the Rent Administrator's order is otherwise affirmed.

ISSUED: APR 28 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
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Right to Court Appeal

This [illegible] gu[illegible] sione[illegible] be further appealed by either party, only by filing a [illegible] ling in court under Article [illegible] e Civil Practice Law and Rules seeking judicial review. [illegible] dline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance [illegible] e Deputy Commissioner's order. This 60-day deadline for appeal may be extended by exec[illegible] orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In prep[illegible] ng your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: JX610003RO
LAFAYETTE NELSON APTS LLC - OWNER	
PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: IV610030OM

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ORDER AND OPINION REMANDING PROCEEDING TO THE RENT ADMINISTRATOR

The petitioner timely filed a petition for administrative review (PAR) against an order issued on November 9, 2021, by the Rent Administrator concerning the housing accommodations known as 880 Colgate Avenue, Bronx, NY 10473 which denied the owner's application for a rent increase based on the installation of a major capital improvement, to wit: new roof and architectural fees. The new roof was denied as MCI ineligible on the grounds that it was a liquid applied system used as a waterproofing membrane, and not a complete roof replacement.

The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the proceeding should be remanded to the Rent Administrator for further processing.

The owner's petition by counsel alleges, in substance, that the new roof qualifies as an MCI as the roofing material – Sikalastic Roofpro roofing system is identical to the single-ply rubber roof material authorized by Section 2522.4(a)(3)(e) of the Rent Stabilization Code, and has 20 year warranty similar to 20 years useful life of single ply rubber roof; that Sikalastic Roofpro roofing system is a new technology whose installation includes a complete rip-off of existing roof down to the concrete base, the application of an insulation layer that is 12-14 inches thick, and then the application of four (4) Sikalastic roofing layers as single-ply polymer applied in between cure of each layer and once cured become a single monolithic waterproof resin (rubber) sheet spanning across the entire roof similar to the single-ply rubber; that the DHCR has previously granted MCI rent increase for Sikalastic Roofpro roofing system under Docket No. FR610049OM, and under Docket No. HM130089OM for Siplast Parapro roof which is also liquid applied resin roof similar to Sikalastic Roofpro; that the new roof replacement meets all the MCI requirements pursuant to Section 2522.4(a)(2)(d) of the Code.

The owner subsequently supplemented the PAR with a letter from the New York City (NYC) Department of Buildings (DOB) which shows that in 1999 the DOB approved liquid applied roof as acceptable roofing materials. Counsel for the owner argues that even though the letter is being submitted for the first time on appeal it should be accepted because evidence of MCI eligibility of the new roof was not requested at the proceeding below.

The tenants answered and opposed the PAR stating that the roof replacement is non-MCI repair and maintenance work for which the owner is responsible; the roof installation is defective; the owner is not maintaining building services, including the roof necessitating the roof replacement; and that the MCI rent increase will create a financial burden for them.

The Commissioner notes that it has consistently been the DHCR's policy as outlined in the Policy Statement 91-2, MCI Eligibility/Roofing, that roofing installations consisting of only a single ply of traditional asphalt-based materials (a top sheet) will not be eligible for an MCI increase. However, the Policy Statement provides an exception to the prohibition on MCI eligibility for single ply installations for new technology materials that are proven to have acceptable useful life as recognized in Operational Bulletin 90-2, Useful Life Schedule for Major Capital Improvements.

A review of the record shows that MCI eligibility of the liquid applied new roofing system under the exception provided by Policy Statement 90-2 was not considered at the proceeding below. The Commissioner notes that this very same Sikalastic Roofpro roofing system was determined by the Rent Administrator to qualify as an MCI in a prior proceeding under Docket No. FR610049OM, and the DHCR inspection of the new Sikalastic Roofpro roof conducted on 05/14/2021 found that the new roof was working properly. The owner has now submitted at PAR evidence that the liquid applied system was approved as acceptable roofing material by the NYC DOB in 1999. The Commissioner finds pursuant to Section 2529.7 (d) of the Rent Stabilization Code that the evidence should be accepted because the owner was not afforded an opportunity to submit the evidence at the proceeding below.

In light of the DOB approval of the Sikalastic Roofpro liquid applied roofing as an acceptable roofing material, and the 20-year warranty of the new roofing which is similar to 20 years useful life of MCI authorized for single ply rubber roof under Operational Bulletin 90-2, the Commissioner deems it appropriate to remand this proceeding to the Rent Administrator for further processing to reconsider MCI eligibility of the Sikalastic Roofpro roofing system pursuant to Policy Statement 91-2. As the record shows that the new roof installation was completed before the 6/14/2019 effective date of the Housing Stability and Tenant Protection Act (HSTPA), a waiver of the Reasonable Cost Schedule for the new roof should be considered pursuant to Operational Bulletin 2021-1 during the remand proceeding.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this proceeding be, and the same hereby is, remanded to the Rent Administrator for further review and processing in accordance with this order and opinion.

ISSUED: APR 28 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

Note: During the period of the current Covid-19 emergency, as a courtesy, if the Article 78 proceeding is commenced by efiling pursuant to the Court Rules service may be effectuated, as limited as follows, by forwarding the court's email indicating the assignment of the Index Number and the documents received by the court, i.e., Notice of Petition, Petition, and other efiled documents to DHCRLegalMail@nyshcr.org. Upon receipt of the complete filings, the receipt of such documents will be acknowledged by email. Only after such acknowledgement of receipt of such documents will the service by email be deemed good service on New York State Division of Housing and Community Renewal (DHCR). DHCR is not the agent for service for any other entity of the State of New York or any third party. In addition, the Attorney General must be served at 28 Liberty Street, 18th Floor, New York, NY 10005. Since Article 78 proceedings take place in the Supreme Court, it is advisable that you consult legal counsel.

There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEALS OF	**ADMINISTRATIVE REVIEW DOCKET NO.: EP410034RT**
[redacted]	
PETITIONERS	**RENT ADMINISTRATOR'S DOCKET NO.: DP410024OM**

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ORDER AND OPINION GRANTING PETITIONS FOR ADMINISTRATIVE REVIEW

The petitioners timely filed administrative appeals against an order issued on March 31, 2016 by the Rent Administrator concerning the housing accommodations known as 185 West Houston Street, New York, New York which granted the owner's application for a rent increase based on the installation of major capital improvements ("MCI"), to wit: new roof and pointing and waterproofing.

The Commissioner having reviewed the petitioners' appeals and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioners' appeals have merit and should be granted.

The petitioners request a modification of the Rent Administrator's order and allege, in substance, that according to DHCR Policy Statement 93-2, the room count for their apartments is four and not five; that their kitchen is windowless and contains less than 59 square feet; and each petitioner submitted a floor plan depicting the layout of the "D" line apartments.

The owner submitted an answer which objected to the petitioners' appeals by stating, in substance, that the floor plans provided by the tenants show five total rooms (three bedrooms, a living room, and a kitchen).

Policy Statement 93-2, in pertinent part, defines a room for MCI purposes as follows:

1. A windowless kitchen containing at least 59 square feet or a kitchen of any size with window. In either case, a kitchen must be enclosed by at least three sides, excluding the sides that contain the entranceway.
2. An enclosed area with window containing at least 60 square feet.

3. An enclosed area without window containing at least 80 square feet.

Bathrooms, walk-in closets, porches, terraces and hallways are not rooms.

An "enclosed area" is an area bounded by ceiling-to-floor walls, one or more of which may contain an entranceway. An entranceway to an enclosed area must be either a door or an open archway that usually has dimensions similar to those of a standard size door frame, but which may be as large as a double-sized door frame. A sliding door or other type of door will generally qualify as an entranceway to an enclosed area. However, where two adjacent, otherwise enclosed areas are separated by an archway greater in size than a double-sized door or are distinguished from each other by a clearly perceptible difference in geometric form (such as an "L" shape), and where each of those areas contains at least 60 square feet and at least one window, such adjacent areas shall be considered two rooms.

A dwelling unit will be determined to have the same number of rooms as other like dwelling units (as determined, for example, from alteration plans or by comparison to other dwelling units in the line) notwithstanding that it has been altered or customized in a manner which would have resulted in a lower room count if the other principles set forth in this Policy Statement had been applied.

The record of the instant proceeding supports the petitioners' claim that their apartments contain only four rooms. A review of the record reveals that the petitioners submitted diagrams of the "D" line apartments below and on appeal. The diagrams submitted indicate that the "D" line apartments have four rooms in accordance with DHCR Policy Statement 93-2: (1) a combined living room/dining foyer with window containing a total of 323.72 square feet; (2) a bedroom with window containing 132.61 square feet; (3) a bedroom with window containing 182.88 square feet; and (4) a bedroom with window containing 90.51 square feet. The kitchen area is not considered a room for MCI purposes because it is windowless and contains only 51.67 square feet.

The Commissioner notes that the subject issue of room counts for apartments [redacted], [redacted], and [redacted] has also been resolved in prior Rent Administrator orders. In docket numbers GH410042OM and JF410085OM, the owner acknowledged during the Rent Administrator's proceedings that the building's "D" line of apartments each have four rooms and not five.

Accordingly, the Rent Administrator's order is modified to reflect a room count of four rooms for apartment [redacted] [redacted] and [redacted] The owner is directed to bill the tenants for the MCI in accordance with this change and refund any excess rent collected within 12 months from the date of the issuance of this order.

Pursuant to Section 26-511.1(a)(8) of the Rent Stabilization Law and to Section 26-405.1(a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years.

Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the laws, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that these petitions of the tenants in apartments [redacted], [redacted] and [redacted] are granted; that the order of the Rent Administrator is amended to change the room count in apartments [redacted], [redacted] and [redacted] to four rooms; and that otherwise the Rent Administrator's order is affirmed.

ISSUED: APR 29 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEALS OF	ADMINISTRATIVE REVIEW DOCKET NO.: ER410018RT
VARIOUS TENANTS OF 320 EAST 52ND STREET	RENT ADMINISTRATOR'S DOCKET NO.: CU410042OM
PETITIONERS	

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ORDER AND OPINION DENYING PETITIONS FOR ADMINISTRATIVE REVIEW

The petitioners timely filed administrative appeals against an order issued on May 10, 2016 by the Rent Administrator concerning the housing accommodations known as 320 East 52nd Street, New York, NY which granted the owner's application for a rent increase based on the installation of a major capital improvement (MCI), to wit: new chimney/boiler flue and related work.

The Commissioner having reviewed the Petitions for Administrative Review ("PARs") and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations find that the petitioners' appeals do not have merit and should be denied.

Various tenant-petitioners filed identical appeals requesting and claiming in substance that the owner failed to substantiate that the chimney/boiler flue ("chimney") was installed for the purposes of tenant safety; that the drawings submitted by the owner below do not pertain to the installation; that the denial of the owner's application to modify services under Docket No. DR410003OD should serve as a basis for reversal as the installation directly relates to the unapproved Water Source Heat Pump HVAC ("WSHP HVAC") system; and that the Tenant Protection Unit's findings related to the WSHP HVAC system should have served as a basis for denial below.

The tenant of Apartment [redacted] filed a separate administrative appeal claiming that the new chimney is non-operational and therefore fails to benefit the tenants of the subject premises; that the 7th and 9th floors of the subject premises are being used by a commercial tenant; and that the owner has received NYC Department of Buildings ("DOB") violations for performing electrical work without permits.

The owner responded through an agent and states in substance that the newly installed chimney is better for the environment, eliminates the risk of fire and that the improvement is not related to the new Water Source Heat Pump HVAC ("WSHP HVAC") system.

It is the established position of the Division that in order to qualify as a major capital improvement, a chimney installation must involve a complete replacement emanating from the heating source or a new chimney where none previously existed.

During the proceeding below, the owner provided copies of a contractor's statement which confirmed the chimney work done at the subject premises involved the complete replacement of the original chimney and that it was emanating from a heat source. The owner also submitted copies of the contracts, invoices, and cancelled checks which indicate that the owner correctly complied with the applicable procedures for an MCI rent increase, and that the increase was properly computed based on the proven cost of the installation. The Commissioner notes that the owner was not required to provide architectural drawings or any municipal agency approvals for the type of MCI installed. Furthermore, there is no DHCR requirement that an owner must prove an MCI installation improves tenant safety. The tenant-petitioners' claims that the owner failed to provide necessary governmental permits; failed to prove that the installation increased tenant safety; and failed to provide drawings related to the chimney are therefore without merit.

Next, the petitioners claim that the DHCR's denial of the owner's Modification of Services application, Docket No. DR410003OD, issued on May 6, 2016, should be a basis for reversal, and assert that the chimney installation was directly related to the unapproved WSHP HVAC installation. In consideration of these claims, a physical inspection of the subject premises was conducted at PAR on March 16, 2021. The report of said inspection reveals that the subject chimney located on the southwest corner of the subject building is related to a boiler system which includes a central heat source providing hot water to the tenants' sinks/bathroom faucets. This central hot water heat source was found to be separate from the boilers connected to the above-mentioned wall-mounted WSHP HVAC units. Therefore, the Commissioner finds that the new chimney is part of the mechanism by which the tenants currently receive hot water and meets the definitional requirements of an MCI for which a rent increase may be warranted.

The petitioners' claim that the Tenant Protection Unit's ("TPU") letter from April 4, 2016 should have served as a basis for denying the MCI application is without merit. As stated above, the agency inspection found that the chimney is part of the system by which the tenants receive hot water. In connection with the TPU's findings, the petitioners make note of Docket Nos. EP410173S and EP410181S both granted after May 10, 2016 but effective as of May 1, 2016. Both orders reference the April 4, 2016 letter wherein it was found that the owner caused the tenants to pay the utility cost for heating their apartments. It should be noted that the orders are still in effect as a review of the agency records indicate that the owner has not been granted an order restoring the rent. The Commissioner also notes that paragraph VII(1) of the Rent Administrator's order herein states that service reduction orders bar collectability of this increase for any period in which such reduction order is in effect.

Finally, the Commissioner notes that the tenant of Apartment [redacted] did not raise any claims during the proceeding below related to commercial space or DOB violations. Fundamental

principles of the administrative appeal process and Section 2529.6 of the Rent Stabilization Code prohibit a party from raising issues on appeal which were not raised below. Accordingly, the Commissioner is constrained to foreclose consideration of these issues raised by the petitioner in the instant appeal proceeding. As for the tenant-petitioner from Apartment [redacted]'s remaining claim that the new chimney is not currently in use and therefore fails to benefit the tenants of the subject premises, as stated above, an inspection of the subject premises has confirmed that the chimney connects to a boiler system which includes a central heat source providing hot water to the tenants' sinks/bathroom faucets (separate from the heat sources connected to the WSHP wall-mounted units, which the tenant alleges are not in use). The tenant-petitioner's claim that the new chimney is non-operational and provides no benefit to the tenants of the subject premises is therefore without merit.

Pursuant to Section 26-511.1 (a)(8) of the Rent Stabilization Law and to Section 26-405.1 (a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the laws, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that these petitions be denied and that the Rent Administrator's order be affirmed.

ISSUED: MAY 4 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]

PETITIONER

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ADMINISTRATIVE REVIEW
DOCKET NO.: JM210005RT

RENT ADMINISTRATOR'S
DOCKET NO.: GR210073OM

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on December 21, 2020, by the Rent Administrator concerning the housing accommodations known as 96 Wyckoff Street, Brooklyn, NY 11201 which granted the owner's application for a rent increase based on the installation of a major capital improvement (MCI) to wit: electrical upgrade.

The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioner's appeal does not have merit and should be denied.

The tenant's petition alleges that the $26,000.00 granted for MCI work item set up and install 7 meters should be disallowed because no such work was performed; that the MCI application states that the MCI work, including installation of the 7 new meters started on 04/12/2016 and was completed on 07/26/2017, however, his electric bills show that his apartment's meter with # 5158731 as of 02/10/2009, before the start of the MCI work, still bears the same meter # 5158731 as of 08/09/2017 almost one month after the MCI work was completed, an indication that the old meter was not replaced with a new one; that he called Con Ed who informed him that all ConEd meters are owned and installed only by Con Ed, and then confirmed to him that no new meter was installed for his apartment during the MCI work.

The owner answered and opposed the PAR stating that cost of Con Ed meters was not included in the MCI contract, and the cost breakdown which it submitted below and on appeal shows that the cost of the 7 new Con Ed meters was not included in the claimed MCI cost; and that the cost breakdown also shows that the actual cost of the MCI electrical upgrading, including installation of the new meters is in line with the amounts listed in the DHCR Reasonable Cost Schedule.

The Rent Administrator properly determined the qualifying scope of the improvements and the amount of the approved costs and the rent increase. The tenant's claim that $26,000.00 approved for set up and install 7 meters should be disallowed is without merit. The record shows that the owner in its response dated 3/14/2019 submitted below, explains that the $26,000.00 amount is for the supply, installation and wiring of the electrical meter boxes

by the contractor and does not include cost of Con Ed electric meters which are provided by Con Ed who only places the electric meter into the meter box supplied, installed and wired by the contractor. The record further shows that the cost breakdown dated 10/01/2020 submitted below specifically lists the cost of each item of the electrical upgrade including the installation of new meters resulting in a total cost of $6,450.00 per apartment which is the same $6,450.00 amount authorized by the DHCR Operational Bulletin 2021-1 as a reasonable cost for rewiring/electrical upgrading. The record also shows that the owner properly substantiated its MCI application with submission of the requisite supporting documentation, including copies of the contract, the contractor's affirmation that the MCI electrical upgrading, including installation of 7 new meters was performed, and cancelled checks evincing payment for the work. Therefore, the Commissioner finds that the owner complied with the applicable procedures for a major capital improvement rent increase; and that the rent increase was properly computed based on the proven cost of the MCI installation. The fact that the tenant's electric bills show that his apartment's meter #5158731 remained the same before the start and the completion of the MCI work is not sufficient to establish his claim that the new meters were not installed, and his claim that Con Ed confirmed that the meters were not installed is unsubstantiated. The Commissioner finds that these claims are not sufficient to disturb the Rent Administrator's order.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order be modified.

ISSUED: MAY 6 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: HM410003RT

[redacted]

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: FU410030OM

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on November 29, 2018 by the Rent Administrator concerning the housing accommodations known as 55 Delancey Street, New York, NY which granted the owner's application for a rent increase based on the installation of a major capital improvement (MCI) to wit: façade restoration.

The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioner's appeal does not have merit and should be denied.

The tenant-petitioner requests a reversal and modification of the Rent Administrator's order and claims in substance that the owner did not complete the pointing and waterproofing for the entire building; that the owner's submitted costs to the NYC Department of Buildings (DOB) are less than the costs claimed on the owner's application below; that the claimed cost for the work was inflated; that the Rent Administrator disregarded four class "C" immediately hazardous violations from NYC Housing Preservation and Development (HPD); and that the owner's claimed costs for general conditions/mobilization should not have been approved.

The owner responds through its agent and states in substance that the DHCR inspected the work completed at the subject premises and found it to be satisfactory; that the owner submitted the proper documentation for the pointing and waterproofing with its application; that the DOB does not require the total cost of the work to be included on the PW-3 cost affidavits; that the four class "C" immediately hazardous HPD violations were resolved before the owner submitted its application; and that the costs for general conditions/mobilization was addressed during the proceeding below.

The Rent Administrator properly determined the qualifying scope of the improvement and the amount of the approved costs and the rent increase. Pursuant to the Rent Stabilization Code, pointing and water-proofing qualifies as an MCI, provided that the work has been performed as necessary on all exposed sides of the building. Thus, pointing and waterproofing, such as was

performed by the owner, may qualify as an MCI even though work may not have been performed on the entire area of the building's exterior, so long as evidence is provided that such work was performed in all areas where it was determined to be necessary. Accord: Docket No. GV410030RT.

In the instant proceeding, the record contains requisite evidence in the form of a statement from the contractor which performed the exterior work, that pointing and waterproofing had been performed on all areas of the outer exterior walls where a prior examination had shown it to be necessary. In addition, upon the DHCR's request the owner submitted an engineer's statement confirming that the façade was in good condition and water-tight. The fact that additional waterproofing was subsequently determined to be needed, and was performed on a small area, 50 square feet, does not present grounds for a finding that the work as completed, does not qualify as an MCI. Furthermore, there is no indication in the record that any costs for this subsequent façade work were included in the subject MCI application, and DHCR records indicate that the owner has not filed any MCI rent increase applications for any subsequent exterior work. Lastly, a DHCR inspection of the subject premises on September 12, 2018 reported that the west side wall appeared to have renovated pointing and brick replacement, no damaged bricks, and no defects or damages on the mortar surface of the building. The Commissioner thus finds no error by the Administrator in relying on the existing record in order to determine that the façade waterproofing, as performed, qualifies as an MCI.

Next, the petitioner claims in essence that the Rent Administrator failed to address the discrepancy between a PW3 cost affidavit submitted by the owner to the DOB, wherein the owner claimed $150,000.00 for 2000 square feet of façade work, and the MCI claimed cost of $378,701.50 for 1000 square feet of façade work. The record including the MCI order shows that the sum of $271,894.74 was approved for the MCI rent increase after disallowed costs were subtracted. Moreover, the approved amount was based on the actual cost of the MCI installation as the owner properly substantiated the MCI application with submission of the requisite supporting documentation, including copies of the contract, contractor's affirmation and cancelled checks evincing payment. Furthermore, the DHCR does not consider cost estimates found in DOB permit applications as final figures nor are they considered binding. Accordingly, the Commissioner finds that the Rent Administrator properly calculated the approved amount in the MCI rent increase. Also, the Commissioner notes that at the time the MCI order was issued, the increase was properly based on actual costs.

The petitioner's claim that the price of the work was inflated based on their submission below of various examples of masonry hardware that was one third of the price claimed in the MCI application is without merit. The Commissioner notes that a review of the record reveals that, as stated above, the owner substantiated the application with the required documentation and the tenant's submission of the cost of various masonry items from MasonPro, Inc., and The Home Depot are not sufficient to warrant a modification of the Rent Administrator's order.

As for the claim that there were 4 HPD non-lead paint related class "C" immediately hazardous violations against the building, the correction of said violations may be established by an architect's or engineer's affidavit stating that they inspected the building and the violations no longer exist. Accord: Docket No. GQ210036RT. A review of the record shows that the owner submitted with its application an engineer's affidavit on September 14, 2017, stating that the four open HPD class "C" immediately hazardous violations were remedied and no longer existed.

Therefore, pursuant to the above stated, the Commissioner finds that the owner's MCI rent increase application was properly granted by the Rent Administrator. As to the two additional class "C" immediately hazardous violations issued against the owner after the subject MCI application was filed, it is noted that the subject MCI order was issued prior to the enactment of HSTPA, therefore any violations posted in the HPD database subsequent to the filing of the application did not present a bar to granting MCIs, nor do they serve as a basis for reversing the Rent Administrator's order.

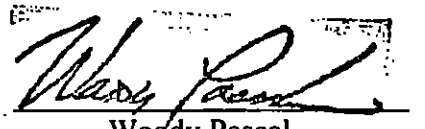
The claim that the record does not show that the owner ever properly justified the $13,750.00 in claimed costs for general conditions/mobilization is meritless. It is established DHCR policy that a reasonable amount of necessary mobilization costs may be included in the approved amount for an MCI-qualifying installation. Accord: Docket No. AO110016RO. On November 13, 2017, the Rent Administrator sent the owner a request for additional information, specifically that the owner submit a cost breakdown for the general conditions/mobilization of $13,750.00, and the costs for scaffolding and insurance. The owner responded and stated that the scaffolding was included in the cost of the job and there was no cost for insurance included in the contract. Further, the owner's representative cited to a letter dated April 27, 2017 which indicated that the general conditions/mobilization detailed in the contract included the costs for delivery and movement of all materials and the costs for startup of the job. As the costs for the general conditions/mobilization were included in the contract submitted with the application and were necessary for completion of the work, the Commissioner finds that the Rent Administrator properly included the general conditions/mobilization costs in the approved MCI amount.

Pursuant to Section 26-511.1(a)(8) of the Rent Stabilization Law and to Section 26-405.1(a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the laws, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order be affirmed.

ISSUED: MAY 18 2022



Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
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Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

Note: During the period of the current Covid-19 emergency, as a courtesy, if the Article 78 proceeding is commenced by efiling pursuant to the Court Rules service may be effectuated, as limited as follows, by forwarding the court's email indicating the assignment of the Index Number and the documents received by the court, i.e., Notice of Petition, Petition, and other efiled documents to DHCRLegalMail@nyshcr.org. Upon receipt of the complete filings, the receipt of such documents will be acknowledged by email. Only after such acknowledgement of receipt of such documents will the service by email be deemed good service on New York State Division of Housing and Community Renewal (DHCR). DHCR is not the agent for service for any other entity of the State of New York or any third party. In addition, the Attorney General must be served at 28 Liberty Street, 18th Floor, New York, NY 10005. Since Article 78 proceedings take place in the Supreme Court, it is advisable that you consult legal counsel.

There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: FV130002RT

[redacted]

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: FM130024OM

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ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on September 19, 2017 by the Rent Administrator concerning the housing accommodations known as 72-36 112th Street, Flushing, New York, which partially granted the owner's application for a rent increase based on the installation of major capital improvements ("MCIs"), to wit: elevator upgrading, elevator cab doors, and elevator motor room roof.

The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioner's appeal has merit and should be granted.

The tenant-petitioner of apartment [redacted] taking issue with their room count only, asserted on appeal, in substance, that their apartment has one room; a studio apartment with a kitchen that is windowless and fifty-four (54) square feet in size. The tenant-petitioner submitted a detailed diagram of apartment 108 in support of their appeal consistent with the hand drawn diagram of the same provided by the tenant-petitioner to the Rent Administrator below.

The owner responded, asserting, in substance, that they provided the Rent Administrator with a floor plan of the second floor of the subject premises below, which showed that apartment [redacted] presumably above apartment [redacted] has four rooms. Thus, the owner argued, apartment [redacted] similarly has four rooms. On appeal, the owner asserted the same, stating that because an inspection of apartment [redacted] could not be conducted, the Rent Administrator's room count determined below should stand. The owner, however, failed to submit on appeal a detailed diagram of apartment [redacted] in support of their assertion, relying solely on their previously submitted floor plan of the second floor.

The Division subsequently mailed the owner a Request for Additional Information stating that the floor plan submitted by the owner below "was not sufficient" and requested that the owner provide further evidence of apartment [redacted] exact measurements and layout. In response, the owner maintained that adequate floor plans were already provided. The owner failed to submit any floor plans or diagrams of apartment [redacted] as requested.

Below, the Rent Administrator requested an inspection of apartment [redacted] as the diagrams of the apartment submitted by the tenant-petitioner and owner were dissimilar. Because the tenant-petitioner failed to provide access to the apartment, the Rent Administrator relied on the owner's submitted floor plan of the second floor and determined that apartment [redacted] has four rooms.

The Division's policy statement 93-2 defines a "room" for MCI purposes as either a windowless kitchen containing at least fifty-nine (59) square feet or a kitchen of any size with a window (in either case, a kitchen must be enclosed by at least three sides, excluding the side(s) that contain(s) the entranceway); or an enclosed area with window containing at least sixty (60) square feet; or an enclosed area without window containing at least eighty (80) square feet. Bathrooms, walk-in closets, porches, terraces, and hallways are not rooms.

The record of the proceeding supports the tenant-petitioner's claim that their apartment contains only one room. The tenant-petitioner's diagrams of apartment [redacted] submitted below and on appeal indicate that the apartment has one room in accordance with DHCR Policy Statement 93-2: a combined living room/bedroom with windows containing a total of 198 square feet; and a 54 square-foot windowless kitchen enclosed by three sides. The kitchen area is not considered a room for MCI purposes because it is windowless and contains less than 59 square feet. Accordingly, the Rent Administrator's order is modified to reflect a room count of one room for apartment [redacted]

Pursuant to Section 26-511.1 (a)(8) of the Rent Stabilization Law and to Section 26-405.1 (a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the laws, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition is granted and that the Rent Administrator's order is amended to change the room count in apartment [redacted] to one room; and that otherwise the Rent Administrator's order is affirmed; and it is further

ORDERED, that the owner shall credit any excess rent collected from the tenant(s) of apartment [redacted] within 12 months from the date of the issuance of this order.

ISSUED: MAY 18 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
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Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]

PETITIONER

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ADMINISTRATIVE REVIEW DOCKET NO.: JN410008RT

RENT ADMINISTRATOR'S DOCKET NO.: GX410093OM

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on December 30, 2020 by the Rent Administrator concerning the housing accommodations known as 150 West 225th Street, Bronx, New York which granted the owner's application for a rent increase based on the installation of a major capital improvement, to wit: concrete resurfacing with related engineering services.

The petitioner claims, in substance, that the Administrator's order shows an incorrect room count for Apartment [redacted] The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by adversely affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioner's claim is beyond the scope of review in this proceeding and the appeal should thus be denied.

The record shows that on February 21, 2019, the Administrator mailed notices of the MCI application to all tenants at the subject premises, including the petitioner. This notice stated the room count for the petitioner's apartment as shown in the MCI application and provided the petitioner with an opportunity to challenge the stated room count. Although the petitioner did submit a response to the Notice of the MCI application, dated March 11, 2019, this response did not raise the issue of an inaccurate room count. The record thus shows that the claim of an incorrect room count raised by the petitioner on appeal was not raised during the proceeding before the Administrator. Fundamental principles of the administrative review process and Section 2529.6 of the Rent Stabilization Code prohibit a party from raising an issue on appeal which was not raised below though it could have been so raised, and therefore, by law the petitioner's claim alleging an inaccurate room count for Apartment [redacted] may not be considered on appeal.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order be affirmed.

ISSUED: MAY 19 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
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Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	**ADMINISTRATIVE REVIEW DOCKET NO.:** JN410002RO
NELSON MANAGEMENT GROUP	**RENT ADMINISTRATOR'S DOCKET NO.:** GX410093OM
PETITIONER	**OLAD NO.:** 3120

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ORDER AND OPINION GRANTING-IN-PART PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on December 30, 2020 by the Rent Administrator concerning the housing accommodations known as 150 West 225th Street, Bronx, New York which partially granted the owner's application for a rent increase based on the installation of a major capital improvement (MCI), to wit: concrete resurfacing with related engineering services. In partially granting the MCI, the Administrator excluded from the approved MCI amount the costs of various items of work which were determined as not eligible to be included as part of the qualifying MCI. The owner has filed a petition in Supreme Court requesting an expedited review of the instant appeal (OLAD No. 3120).

The petitioner claims, in substance, that the costs of additional items of work which were disallowed by the Rent Administrator should be included in the approved MCI amount, in that these items constituted other necessary work which was directly related to the MCI qualifying concrete resurfacing. The petitioner also claims that the provisions of the Housing Stability and Tenant Protection Act of 2019 (HSTPA) should not be retroactively applied to the MCI at issue in this proceeding. The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the appeal has some merit and should be granted in part as further described herein below.

Various tenants responded objecting to the owner's appeal, claiming in substance that the work is cosmetic; that the area which the tenants have access to has been reduced; that the garage, tennis courts and basketball courts flood after it rains; that the improvements are owner's responsibility and the MCI rent increase causes financial hardship.

The subject premises are situated on a steep grade which slopes down towards an active railway (the Metro-North Hudson Line) running along the bank of Spuyten Duyvil Creek. The owner applied for an MCI rent increase for the resurfacing of all concrete courtyards, walkways, etc. within the property line of the premises, together with the resurfacing of the concrete decks within the attached multi-level garage. All of the concrete surfaces at issue are horizontally supported above the sloping terrain, thus creating sudden drop-offs beyond the edges of the concrete areas. The resurfaced concrete areas are designated as: 1) the "Plaza," which is a large open area wrapping around part of the building, accessible to the tenants, forming the roof of the garage below

and connected to West 225th Street by way of a pedestrian bridge; 2) the "Court," which is a separate platform overhanging the Metro-North tracks; 3) the "Promenade," which is a walkway overhanging the Metro-North tracks adjacent to but at a different level from the Plaza; 4) the multi-level Garage located beneath the Plaza. The Plaza itself consists of three distinct sections: an eastern section in front of and to the left of the building entrance, a passageway along the south side of the building and a western section extending from the rear of the building. Photos submitted by the owner show that, prior to the start of the concrete resurfacing work, the eastern section of the Plaza contained some small planters with attached seating, while the western section was mostly concrete open space with some raised planters and playground equipment at its farther end. There were lighting fixtures in the east section and a portion of the west section of the Plaza, as well as raised planters with shrubs around the abutting walls of the apartment building. The photo of the Court shows a fenced-off tennis court and there is evidence that this area also contained a basketball court (not shown in any photos).

The owner claims that in order to resurface the concrete in these areas, all of the above-described features had to be removed and therefore the costs of replacing these amenities, fencing and lighting should be included in the approved MCI amount. The record contains photos taken after the completion of the concrete resurfacing, some of which were submitted by the owner and some of which are attached to the report of a DHCR inspection conducted on November 7, 2019. These photos show that all of the above-described original features located in the Plaza have been removed and disposed-of, and new planters, plantings, playground equipment, seating and lighting have been installed in alternate locations. Also, some additional features which did not exist prior to the concrete work, such as a large pergola and grassy areas, have now been installed. The photos of the Court show that the tennis and basketball facilities have been restored with new markings, equipment, fencing and lighting. The DHCR inspection report notes that a portion of the west section of the Plaza—the farther end where the pre-existing planters and playground equipment have been removed—has been separated by a solid fence with a locked gate and is now inaccessible to the tenants.

On appeal, the owner specifically claims that the following disallowed items of work should be included in the approved MCI amount: hardscaping and landscaping which includes the new pergola, new planters and plantings, new lawns and new soil and fill; electrical work which includes new lighting fixtures, new branch wiring and raceways, new receptacles and new panel boards; plumbing work which includes new hose bibs, a new irrigation system and testing of storm water piping; removal and replacement of fencing; the restoration of the basketball and tennis courts; the new playground; steel repair work; removal and disposal of the top slab in the Court; payments made to Metro-North for its personnel and services. In support of its claim, the petitioner cites prior DHCR decisions, in particular Dockets HR110013RO and HR110021RO in which MCIs were granted for the resurfacing of grade-level parking areas which formed the roofs of below-grade garages, and the costs of restoring landscaping and lighting located within the grade-level parking areas were included in the approved MCI amount.

It is noted, the petitioner has raised no claim that the disallowed items of work, standing alone, qualify as MCIs, but rather, claims that the referenced items constitute "other necessary work" which should be included as part of the MCI-qualifying concrete resurfacing. Pursuant to Section 2522.4(a)(2)(ii) of the Rent Stabilization Code (Code), in order for ancillary work to be included as part of a qualifying MCI, the record must show that the work in question was necessary and directly related to the underlying MCI qualifying installation. It has been established DHCR policy that the cost of any additional work which is not shown by the record to have been necessary and directly related to the underlying MCI installation will be excluded from the approved MCI amount (see e.g., Dockets BR610048RO; BX110002RP). On appeal, the petitioner has submitted a statement from an engineer verifying that the reconstruction of the concrete surfaces could not have been performed without first removing all of the pre-existing above-surface features (landscaping, fencing, lighting and recreational equipment). The evidence, however, does not support the petitioner's claim that it was necessary,

upon completion of the concrete work, to then install entirely new above-surface features which had not previously existed or to replace the pre-existing features with such significantly different ones.

In prior cases, DHCR has determined that work which was undertaken to restore pre-existing above-surface amenities that had to be removed in order to perform concrete resurfacing may qualify as other necessary work directly related to the underlying MCI. However, installations which were not shown to be necessary work directly related to the underlying MCI have been disallowed. It is noted that in Dockets HR110013RO and HR110021RO, cited by the petitioner, the Commissioner affirmed the Administrator's disallowance of that portion of the landscaping which was found to be cosmetic and/or completed for repair and maintenance purposes and was not shown to be necessary for and directly related to the underlying MCI.

The record of the proceeding at hand supports a finding that some of the disallowed work at issue entails a restoration of amenities which had existed prior to the start of the concrete resurfacing, and thus these items do constitute necessary work directly related to the concrete resurfacing. However, some of the disallowed work, as mentioned above, entails the installation of new features or items which are not supported by the record as necessary work which restored the amenities that had to be removed. Each of the disallowed items of work raised in the petition will be addressed individually.

1) Pergola (Plaza Base Bid item 13a). As noted above, the evidence shows that no such feature existed in the Plaza area prior to the start of the concrete work, and thus the installation of this item does not entail the restoration of a pre-existing amenity. Therefore, this item does not qualify as necessary work directly related to the MCI qualifying concrete resurfacing and remains disallowed.

2) New planters and plantings, lawns and soil (Plaza Base Bid items 13e, 13f, 13g; Plaza Alternate-1 items 2c, 2d; Change Order 3; Change Order 8). Based on the evidence in this case, the petitioner has not established that the new landscaping which has been installed was necessary work directly related to the concrete resurfacing. The evidence in this case thus supports a finding that the new landscaping goes beyond the scope which was necessary to restore the previously existing planters and plantings, and therefore does not qualify as necessary work directly related to the MCI qualifying concrete resurfacing. The photos taken after completion of the concrete resurfacing show that significantly new landscaping has been installed throughout the entire Plaza, much of which is in new locations where no such amenity previously existed. The photo evidence also shows that there were no lawn areas existing in the Plaza prior to the start of the concrete work, and thus the installation of the new lawns does not entail the restoration of a pre-existing amenity. Therefore, the new planters, plantings and lawns do not qualify as necessary work directly related to the MCI qualifying concrete resurfacing and remain disallowed. The cost of providing soil and fill is solely related to the disallowed planters and lawns and thus also remains disallowed.

3) Electrical work consisting of lighting, receptacles, branch wiring, branch raceways and panel boards (Plaza Base Bid items 19–24; Plaza Alternate-1 items 5–8; Court Alternate-2 items 9–13; Garage Alternate-1 items 10–14). The photos taken after completion of the concrete resurfacing show a new and extensive lighting system throughout the Plaza and in the Court, including light fixtures in areas where none had existed previously, such as overhead lights attached to the pergola and waist-high fixtures along newly formed pathways which had not previously existed. Evidence that the new Plaza and Court lighting goes beyond the scope which was necessary to restore the lighting which had existed prior to the concrete work is further evinced by the fact that totally new branch wiring and panel boards were installed to service the new lighting. Therefore, the new lighting, branch wiring, branch raceways and panel boxes do not qualify as necessary work directly related to the MCI qualifying concrete resurfacing and remain disallowed.

With regard to the lighting in the Garage levels, the photo evidence submitted by the owner shows that, prior to the start of the concrete replacement, the lighting within the Garage was attached either to the underside of the steel framing supporting the concrete slab of the level above or to the vertical walls. The evidence thus does not support a finding that there had been lighting located on top of the concrete slabs which had to be removed and replaced in order to resurface the concrete decks. In view of the evidence in the record, the petitioner has not established that the removal of the pre-existing lighting system and subsequent installation of totally new lighting, wiring, raceways and panel boards was a necessary part of the resurfacing of the concrete decks in the Garage. Therefore, the electrical work performed in the Garage remains disallowed.

As to the installation of new electrical receptacles, there is no evidence of receptacles having previously existed in locations which necessitated the removal and subsequent reinstallation of these items in order for the concrete resurfacing to be performed. Therefore, the installation of the new receptacles remains disallowed.

4) Plumbing work consisting of new hose bibs, irrigation and testing of same (Plaza Base Bid items 16–18; Plaza Alternate-1 item 4). Based on the evidence in this case, the petitioner has not established that the new irrigation system which has been installed was necessary work directly related to the concrete resurfacing. As per the findings above, the newly installed landscaping does not qualify as necessary work directly related to the concrete resurfacing. The evidence in this case supports a finding that the new irrigation system has been installed to service the new landscaping which was disallowed. Therefore, this item does not qualify as necessary work directly related to the MCI qualifying concrete resurfacing and remains disallowed. With regard to the hose bibs, as with the electrical receptacles (described above), there is no evidence of hose bibs having previously existed in locations which necessitated the removal and subsequent reinstallation of these items in order for the concrete resurfacing to be performed. Therefore, the installation of the new hose bibs remains disallowed.

5) Testing of storm water piping (Promenade Base Bid item 10; Court Alternate-1 item 11; Garage Base Bid item 12). It has been long-established DHCR policy that the testing of a new installation, even when performed in connection with a qualifying MCI, is not eligible to be included in the approved MCI amount (see e.g. Docket GN430025RO).

6) Fencing. The installation of a perimeter fence around a grade-level courtyard or walkway generally does not qualify as other necessary work directly related to the concrete resurfacing. However, in the proceeding at hand, given that the edges of the concrete areas at issue must be fenced off as a safety measure due to the sudden drop-offs beyond, the evidence supports a finding that the restoration of the perimeter fencing does constitute necessary work directly related to the concrete resurfacing in this case. Therefore, the cost associated with restoring any such perimeter fencing is to be included in the approved MCI amount. The record shows that the following disallowed fence work consisted of the restoration of perimeter fencing which had been removed in order to perform the concrete resurfacing: Change Order #9 ($17,000.00), a portion of Change Order #10 ($18,940.77) and Court Base Bid item 4 ($4,644.48). In addition, Change Order #1, in the amount of $14,478.00, states that the fencing at issue was installed to restore pre-existing fencing along the edge of the Garage structure (i.e., perimeter fencing) which had been removed. The record thus supports a finding that the restoration of the forgoing fencing was a necessary part of the concrete resurfacing, and therefore the costs of these items, in the total amount of $55,063.25, are to be included in the approved MCI amount.

With regard to the disallowed cost of removing the pre-existing fencing in the Court (Court alternate-1 items 2b and 2c for $3,258.47), as noted above, the evidence shows that, in order to resurface the concrete areas, all pre-existing above-surface features, including fencing, had to be removed. In light of this, the removal of the pre-existing fencing in the Court was necessary work directly related to the concrete resurfacing, and therefore, the costs of this work are to be included in the approved MCI amount.

As to the "privacy" fencing which has been disallowed (Plaza Base Bid items 13k, 13l, 13m), the record shows that this is new fencing within the Plaza (not perimeter fencing) installed along the newly formed pathways which had not previously existed and to cordon off the previously accessible western portion of the Plaza so that it is no longer accessible to the tenants. The photo evidence shows that no such non-perimeter fencing existed in the Plaza prior to the start of the concrete work, and thus the installation of this fencing does not entail the restoration of a pre-existing amenity. Therefore, this item does not qualify as necessary work directly related to the MCI qualifying concrete resurfacing and remains disallowed.

7) Basketball and tennis courts (Court Alternate-2 items 5 and 6 for $5,395.00). The evidence indicates that, prior to the start of the concrete resurfacing, there were pre-existing basketball and tennis facilities located in the Court. In that these features were pre-existing amenities which had to be removed in order to perform the concrete resurfacing, the restoration of these features to the same or similar condition as existed prior to the start of the concrete work does constitute necessary work directly related to the concrete resurfacing. Therefore, the costs of restoring the basketball and tennis facilities are to be included in the approved MCI amount.

8) Playground equipment (Plaza Base Bid item 13i; Change Order 8). Based on the evidence in this case, the petitioner has not established that the new playground which has been installed was necessary work directly related to the concrete resurfacing. Although the photos taken prior to the start of the concrete work do show a small area containing playground equipment at the far western end of the Plaza, (which the owner stated below had been abandoned) the western end of the Plaza where the prior equipment had been located is now inaccessible to the tenants. The photos taken after completion of the concrete replacement show that a new playground containing significantly different equipment has been built in a different location of the Plaza. This evidence supports a finding that the relocated playground is a new installation and not a restoration of the pre-existing small playground area. Therefore, this item does not constitute necessary work directly related to the MCI qualifying concrete resurfacing and remains disallowed.

9) Steel repair work (Garage Base Bid item 5a). Contrary to the petitioner's assertion, the Administrator did not exclude the costs of any structural steel work which was necessary to provide proper support to the concrete slabs. The description of the disallowed item 5a in the bid form submitted with the application states that the work to be performed consisted of scraping and painting only. It has been long established DHCR policy that scraping and painting, even when performed in connection with a qualifying MCI, constitutes ordinary repairs and maintenance, the cost of which is not eligible to be included in the approved MCI amount (see e.g., Dockets AP430018RO; CS610036RO). Therefore, the cost associated with the scraping and painting remains disallowed.

10) Top slab removal in the Court (Court Alternate-1 item 2a for $95,866.68). The cost of this item has been excluded because the description of the work, as stated in the bid form submitted with the MCI application, is duplicative of work which is described in items 4a, 4b and 4c. Item 2a describes the work to be undertaken as the removal and disposal of the existing top slab "throughout the work area," while items 4a, 4b and 4c describe the work to be undertaken as "remove, prepare and replace deteriorated concrete at all topside repair locations as directed by the architect." The overlapping work as described for these items, with item 2a stating that the top slab in the Court is to be removed entirely and items 4a, 4b and 4c stating that the concrete top is to be removed only in certain locations as directed by the architect, supports a finding that the work described in these two items is duplicative. Therefore, the cost associated with the complete removal of the top slab in the Court remains disallowed.

11) Payments to Metro-North. The executed contract between the owner and Infrastructure Repair Service (the contractor which performed the construction work at issue) states that any amounts payable to Metro-North for its personnel and services were not included in the agreed-upon contract sum, but were to be reimbursed

separately by the owner to the contractor, as incurred. In fact, the record shows that the owner made these payments directly to Metro-North. The record also shows that the claimed MCI cost for the construction work (not including the engineering fees), as stated in the MCI application, was $8,133,320.10, which is exactly the amount of the final contract sum, after all executed change orders, for the work performed by Infrastructure. The record thus supports a finding that the payments made by the owner to Metro-North were not included in the claimed MCI costs, and therefore, it was improper to deduct the Metro-North payments from the amount claimed for the construction work. Accordingly, the approved MCI amount is to be adjusted so that the $339,258.44 total of these expenses is not deducted from the claimed MCI costs.

In view of the findings above, the following additional costs are to be included in the approved MCI amount: $58,321.72 for fencing removal and reinstallation; $5,395.00 for the restoration of the basketball and tennis facilities; $339,258.44 for payments to Metro-North which were improperly deducted. The Rent Administrator's order is modified to increase the $5,687,118.15 total approved cost by $402,975.16, and an additional rent increase of $2.68 per room per month is granted, modifying the MCI rent increase from $37.85 to $40.53 per room per month, calculated as follows:

1. Previously approved cost	$5,687,118.15
Plus amounts approved on PAR	$ 402,975.16
Adjusted total approved cost	$6,090,093.31
2. Commercial allocation	$ 77,953.19
3. Net approved cost	$6,012,140.12
4. Amortized (divided by 150 months)	$ 40,080.93
5. Total number of rooms	989
6. Adjusted rent increase per room per month	$ 40.53

The amount of the rent increase is modified to include an additional amount of $2.68 so as to equal $40.53 per room, per month, subject to the limitation on collectability and effective as provided in the Rent Administrator's order.

The petitioner's further claim, that the provisions of HSTPA should not be retroactively applied to the MCI at issue in this proceeding, is without merit. The Court of Appeals decision in *Regina Metropolitan Co., LLC v. DHCR*, 35 N.Y.3d 332 (2020), cited by the owner, addressed the issue of whether the outcome of an administrative proceeding which was pending when HSTPA became effective may be determined based on the amendments to the law embodied in HSTPA. In *Regina*, the court determined that it was improper for DHCR to have applied one particular part of HSTPA to cases which were pending before the Administrator when HSTPA became effective, specifically, the provisions which amended the method of calculating rent overcharges contained in Part F of HSTPA. The *Regina* decision set forth an in-depth analysis for determining whether HSTPA can properly be applied to pending proceedings. In reaching its finding regarding Part F, the court in *Regina* invoked the criteria established by the US Supreme Court in the case of *Landgraf v. USI Film Prods* to determine whether the application of a new law to a pending proceeding would have a "retroactive effect" by impacting a party's "substantive rights." As set forth in *Regina*, applying a new statute to a pending proceeding has retroactive effect if doing so "would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." Applying these criteria to Part F, which greatly increased the amount of overcharged rent the owner was liable for, the court in *Regina* found that Part F imposed "new liability" and thus had a retroactive effect. As noted above, the Court of Appeals expressly limited its review in *Regina* to specific overcharge amendments found within one section of HSTPA, Part F, whereas a different section of HSTPA, specifically Part K, relates to MCI proceedings.

ADMINISTRATIVE REVIEW DOCKET NO. JN410002RO

In light of the analysis set forth by the Court of Appeals in *Regina* for determining whether a new statute may be applied to a pending proceeding, the Commissioner finds that the application of HSTPA's MCI amendments to the proceeding at hand did not have an unjust retroactive effect on the owner-petitioner. Given the fact that the heavily-regulated New York City rent stabilized housing market has been historically subject to changing legislative priorities, the courts have established that "rent regulation does not confer vested rights," (*Schutt v. DHCR*, 717 N.Y.S.2d 565, 566 (1st Dept. 2000)). It is noted, this is not a case where the petitioner holds a pre-HSTPA judgement related to the subject MCI rent increase, in which case such rights may have been adjudicated and fixed by the courts (See *Harris v Israel*, 142 N.Y.S.3d 497 (1st Dept. 2021)). Nor does petitioner have a pre-existing DHCR order that would then create overcharge/rent refund liability. The Commissioner thus finds that the application of Part K to the pending MCI proceeding did not impair a vested right the owner possessed prior to the enactment of the statute but was simply an application that was to be in accordance with the rules in effect when determined. Petitioner's "right" as it vested prior to HSTPA was an ability to make an application for an increase that would then be subject to review and a determination. The Commissioner also finds that applying Part K's provisions to the petitioner's MCI proceeding did not increase the owner's liability for past conduct, as was the case in *Regina*. Unlike the provisions of Part F, which, by increasing the amount of overcharged rent to be refunded, imposed an additional liability on the owner for past conduct, Part K, as applied in the instant proceeding, only alters the amount which the owner can collect as an MCI rent increase when reviewed going forward. Furthermore, the application of Part K to this proceeding did not impose new duties on the owner with respect to transactions already completed.

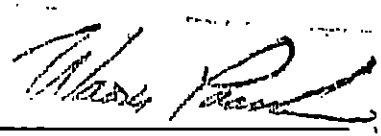
For the reasons stated above, the Commissioner finds that applying the MCI amendments contained in Part K of the HSTPA to the owner's pending MCI application in the proceeding at hand did not have a retroactive effect prohibited in *Regina*. In light of this, the petitioner's claim that it was improper for the Administrator to apply the MCI provisions contained in HSTPA to the instant proceeding is without merit. For the reasons noted above, the application of Part K's provisions to a pending administrative proceeding in which an Administrator's order has not been issued before the effective date of the new law is distinct from cases in which a petition for administrative review is pending against an Administrator's order issued prior to the effective date of the new law. Further, in those cases the scope of an administrative appeal is limited to the question of whether there was an error by the Administrator in determining the outcome of the administrative proceeding based on the law which was in effect at the time the Administrator's order was issued.

As for the tenants' claim the disallowed work was cosmetic, this appeal has considered those claims. As for the other claims raised, the Commissioner notes that the scope of review is limited by the issues raised by the owner's petition. The Commissioner notes that the tenants may file with this Division an application for a rent reduction based on the owner's failure to maintain services if the facts so warrant.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be granted-in-part as set forth herein above, and that the Rent Administrator's order be affirmed as modified.

ISSUED: MAY 19 2022



Woody Pascal
Deputy Commissioner

State of New York
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Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

Note: During the period of the current Covid-19 emergency, as a courtesy, if the Article 78 proceeding is commenced by efiling pursuant to the Court Rules service may be effectuated, as limited as follows, by forwarding the court's email indicating the assignment of the Index Number and the documents received by the court, i.e., Notice of Petition, Petition, and other efiled documents to DHCRLegalMail@nyshcr.org. Upon receipt of the complete filings, the receipt of such documents will be acknowledged by email. Only after such acknowledgement of receipt of such documents will the service by email be deemed good service on New York State Division of Housing and Community Renewal (DHCR). DHCR is not the agent for service for any other entity of the State of New York or any third party. In addition, the Attorney General must be served at 28 Liberty Street, 18th Floor, New York, NY 10005. Since Article 78 proceedings take place in the Supreme Court, it is advisable that you consult legal counsel.

There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
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JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	**ADMINISTRATIVE REVIEW DOCKET NO.: IV230001RT**
[redacted]	
PETITIONER	**RENT ADMINISTRATOR'S DOCKET NO.: HO230108OM**

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ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on September 17, 2020 by the Rent Administrator concerning the housing accommodations known as 707 Beverley Road, Brooklyn, NY, which granted the owner's application for a rent increase based on the installation of a major capital improvement (MCI), to wit: elevator upgrading.

The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioner's appeal has merit and should be granted.

The tenant-petitioner claims that their vacancy lease commencing March 15, 2020 does not contain a provision properly notifying the tenant of the pending MCI application and docket number therewith.

The owner responds and states that it will not be increasing the rent for the tenant in apartment [redacted] for the new elevators.

The Commissioner notes that for the MCI increase granted by the Administrator's order to be collectible during the term of the petitioner's vacancy lease, such vacancy lease would have to contain a specific clause advising the tenant of the docket number of the pending proceeding and advising that the rent charged was subject to an additional increase during the term of the lease as provided by Section 2522.5(d)(4) of the Rent Stabilization Code and established Division precedent. In the absence of same, said increase is not collectible until the expiration of the vacancy lease, provided the renewal lease contains a general authorization provision for the adjustment of the rent pursuant to a DHCR order. A review of the subject vacancy lease provided by the tenant-petitioner supports their claim that the tenant was not properly advised of the pending MCI increase.

Accordingly, the Commissioner finds that the tenant of apartment [redacted] is exempt from the rent increase provided for in the Administrator's order until the expiration of the initial lease on March 14, 2021. If the tenant has been charged for said MCI rent increase during the vacancy lease term or in violation of the abovementioned renewal lease requirements, the tenant's remedy is to file a complaint of a rent overcharge with this agency.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be granted; that the Rent Administrator's order be modified by exempting apartment [redacted] from the rent increase until the expiration date of the initial lease, March 14, 2021; and that as so modified said Administrator's order be, and the same hereby is affirmed, and it is further

ORDERED, that the owner refund any excess rent which may have been collected from the tenant of apartment [redacted] during the term of term of the tenant's vacancy lease as a result of the Rent Administrator's order.

ISSUED: MAY 27 2022

Woody Pascal
Deputy Commissioner

State of New York
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Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
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JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: IP110001RT
[redacted]	
PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: GV110033OM

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ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on March 13, 2020 by the Rent Administrator concerning the housing accommodations known as 9851 Queens Boulevard, Flushing, NY, which granted the owner's application for a rent increase based on the installation of a major capital improvement (MCI), to wit: facade.

The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioner's appeal has merit and should be granted.

The petitioner-tenant of apartment [redacted] requests a reversal and claims in substance that they were informed they would not be subject to an MCI rent increase during the term of their initial lease, signed in November 2019.

The owner answers and claims that the petitioner should be required to pay the MCI increase along with all the other tenants, since the tenants of apartment [redacted] signed the November 2019 lease "before the MCI was issued" and, according to the owner, the lease "explicitly includes a clause about MCI increases." While the tenant suggests the lease was a vacancy lease, the owner refers to the subject lease as a "renewal lease" and attaches a copy of the November 2019 lease in question, which is entitled "Renewal Lease Form." However, a review of the record below supports the conclusion that the subject lease was in fact a vacancy lease. Notably, Supplement 5 of the subject MCI application filed by the owner in 2018 includes a Schedule of Tenants listing apartment [redacted] as vacant. In addition, portions of the subject lease and its riders reserved for vacancy leases, such as the "Vacancy Lease Rent Calculation" section, were completed by the owner. The Commissioner notes that the owner has not submitted to this agency a required annual registration filing reflecting apartment information for [redacted] since 2015.

Pursuant to Section 2522.5(d)(4) of the Rent Stabilization Code and established Division precedent, for the MCI increase granted by an Administrator's order to be collectible during the term of a vacancy lease, such vacancy lease would have to contain a specific clause advising the tenant of the docket number of the pending proceeding and advising that the rent charged was subject to an additional increase during the term of the lease. In the absence of same, said increase is not collectible until the expiration of the vacancy lease, provided the renewal lease contains a general authorization provision for the adjustment of the rent pursuant to a DHCR order. A review of the subject vacancy lease provided by the owner supports the tenant's claim that the tenant was not properly advised of the pending MCI increase.

Accordingly, the Commissioner finds that the tenant of apartment [redacted] is exempt from the rent increase provided for in the Administrator's order until the expiration of the initial lease. If the tenant has been charged for said MCI rent increase during the vacancy lease term or in violation of the abovementioned renewal lease requirements, the tenant's remedy is to file a complaint of a rent overcharge with this agency.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be granted; that the Rent Administrator's order be modified by exempting apartment [redacted] from the subject rent increase until the expiration date of the initial lease; and that as so modified said Administrator's order be, and the same hereby is affirmed, and it is further

ORDERED, that the owner refund any excess rent which may have been collected from the tenants of apartment [redacted] during the term of term of the tenants' vacancy lease as a result of the Rent Administrator's order.

ISSUED: MAY 27 2022

Woody Pascal
Deputy Commissioner

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Right to Court Appeal

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There is no other method of appeal.

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: JS110007RT

[redacted]

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: HR110239OM

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely refiled an administrative appeal against an order issued on June 1, 2021, by the Rent Administrator concerning the housing accommodations known as 39-89 50th Street, Woodside, NY which granted the owner's application for a rent increase based on the installation of major capital improvements (MCIs), to wit: boiler/burner, façade, new roof and waste compactor.

The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioner's appeal does not have merit and should be denied.

The tenant's petition challenges the room count of his apartment [redacted] and alleges that the MCI order erroneously states that he did not submit the diagram of the apartment; that he submitted the diagram online on April 13, 2020, with information number 51386DC2 and response PIN 10504381. He attached a copy of the diagram with the petition. In a subsequent response dated 8/2/2021 the tenant states that the apartment has 1 room, but the MCI order states that it has 2 rooms; and that the apartment diagram which he had already submitted online during the proceeding below shows the correct room count.

The owner answered, opposed the petition, and submits the floor plan of the apartment [redacted] stating that the floor plan shows that the tenant's apartment [redacted] has 2 rooms as listed in the MCI application.

A review of the tenant's online response to the MCI application dated 4/13/2020 indicates that there was 51386DC2-3G.pdf attachment to the response which was inadvertently not printed and placed in the case file for consideration by the Rent Administrator. However, the Commissioner notes that any failure of due process which may have occurred because of the failure to consider the diagram below has been rectified upon appeal by virtue of the fact that the tenant has submitted the same diagram which is now considered in this appeal proceeding.

PAR DOCKET NO.: JS110007RT

A review of the apartment [redacted] diagram shows that the apartment contains more than the one room claimed by the tenant.

Pursuant to Policy Statement 93-2, a room for major capital improvement purposes is defined as follows:

1. A windowless kitchen containing at least 59 square feet or a kitchen of any size with window. In either case, a kitchen must be enclosed by at least three sides, excluding the sides that contain the entranceway.

2. An enclosed area with window containing at least 60 square feet.

3. An enclosed area without window containing at least 80 square feet.

The diagram, including the dimensions as indicated shows that the bedroom and the living are each an enclosed area with windows containing more than more 60 square feet space. Therefore, the diagram the tenant submitted does not support his claim that apartment [redacted] is one room.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order be affirmed.

ISSUED: JUN 2 2022

Woody Pascal
Deputy Commissioner

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There is no other method of appeal.

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JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: FR110003RO
BELAIR PARK 8825 LLC	
PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: DN110082OM

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on June 4, 2017 by the Rent Administrator concerning the housing accommodations known as 88-25 148th Street, Jamaica, NY 11435 which granted the owner's application for a rent increase based on the installation of major capital improvements, to wit: new oil tank, front door/vestibule, masonry work/entry, handicap ramp/steps and drainage system; and denied an increase for concrete work, fencing and landscaping and architect fees. The effective date of the rent increase was amended to 5/1/17 based on the 4/24/17 date the C violations were removed from the database.

The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioner's appeal does not have merit and should be denied.

The owner's petition alleges, in substance, that the cost for the vestibule wall tiles and DOB fees qualify for MCI rent increase as necessary work performed contemporaneously in conjunction with and directly related to the MCI front door and vestibule doors installation, citing Docket nos. YF910073OM, CA230233RO, KJ610057RT and the related FC610145OM as precedents; that the concrete work qualifies as an MCI as the entire original area, including the sidewalk concrete, within the property line was resurfaced; that the record shows that the sidewalk is within the property line, and the owner requested a DHCR inspection which would have revealed that all work done was within the property line; that the landscaping qualifies for a rent increase as necessary work performed in conjunction with the MCI concrete installation citing in support, DHCR Orders Docket nos. QJ130065RT and LL110194RT; and that the subject MCI order should be modified to allow retroactive rent increase for the remaining 100 apartments and exempting the 7 apartments with C violations citing in support, Matter of 20 Fifth Avenue, LLC v DHCR:2013 NY Slip Op 05434, 2013 WL.3793503 (App. Div. 1 Dept.:7/23/13), DHCR Docket no. TC430095RT.

Regarding the claim for the vestibule walls tiling, the Commissioner notes that for work to qualify for an increase under Section 2522.4 (a) (2) (ii) of the Rent Stabilization Code, the work must be necessary and directly related to the completion of the qualifying MCI installation. The mere fact that the work was performed in conjunction with, and contemporaneously with a qualifying MCI installation is not sufficient if the work is not necessary and directly related to the completion of the qualifying MCI installation. A review of the record, including the contract for the MCI doors installation shows that the vestibule walls tiling is not directly related to completion of the qualifying MCI front and vestibule doors installation. The work contract shows that the tiling of the vestibule walls was not a direct result of the doors installation and was not necessary to completion of the doors installation. Therefore, the Commissioner finds that the tiling of the vestibule walls does not qualify as necessary work directly related to the completion of the MCI doors installation, and the rent increase was properly denied.

The cited DHCR Orders, Docket Nos. YF910073OM (AS910047RO), CA230233RO and KJ610057RT (FC610145OM) are distinguishable from the instant case. A review of the Orders reveals that an increase was granted in each of the Orders based on the evidence of record which established that the work performed was directly related and necessary to the completion of the qualifying MCI work. The record in this case does not support the owner's claim that the tiling of the vestibule walls was necessary and directly related to the completion of the qualifying MCI entrance and vestibule doors installation. The Commissioner notes that to the extent that any prior cases may appear to indicate that an increase is granted for every work performed in conjunction with an MCI, that conclusion is not correct. As stated above, to qualify for rent increase under Section 2522.4 (a) (ii), the claimed work must be necessary and directly related to the completion of the qualifying MCI installation.

The claim for DOB filing fees is without merit. The Commissioner notes that it has been a long-standing policy of the Division that filing fees for obtaining municipal permits are not an MCI-eligible expense.

The claim that the concrete work qualifies as an MCI is without merit. The Commissioner notes that it is the established position of the Division that whereas the resurfacing of the entire courtyard and walkways within the property line of the premises constitutes an MCI, the resurfacing of a sidewalk, as distinguished from the resurfacing of the entire courtyard and walkways within the property line of the premise, does not qualify as MCI, as such item is not required for the operation, preservation and maintenance of the structure and is not deemed depreciable under the Internal Revenue code (Accord: CK530022RO, S. J. R. 4178; JB210006RO S.J.R. 8070; SF130015RO). The claim that the replaced sidewalks are located within the property line of the subject premises is unsubstantiated. A review of the colored photographs of the concrete work submitted by the owner show that the replaced sidewalks are public sidewalks located outside the property line of the premises. As for the claim that a DHCR inspection which would have revealed that all work done were within the property line, the Commissioner notes that DHCR is not compelled to inspect installations prior to making a determination. Moreover, the photographs submitted by the owner clearly show that the sidewalks are outside the property line of the subject premises obviating the need for a DHCR inspection of the premises. As the resurfaced sidewalks are not within the property line of the premises, the new concrete installation, including the sidewalks resurfacing does not qualify as an MCI.

Regarding the claim that the landscaping qualifies for a rent increase as necessary and directly related work performed in conjunction with the MCI concrete installation, the Commissioner finds that since the concrete work does not qualify as an MCI, the related landscaping also does not qualify for MCI rent increase. The cited Orders

PAR DOCKET NO.: FR110003RO

Docket Nos. QJ130065RT and LL110194RT are distinguishable and do not apply to the instant case. A review of the Orders show that the concrete work performed in each of the cases qualified as an MCI and the granting of rent increases for other necessary related work was warranted. The record in this case shows that the concrete work does not qualify as an MCI. Consequently, the claimed related landscaping also does not qualify for a rent increase.

The claim that the 7 apartments with the immediately hazardous C class violations should be exempted from the MCI rent increase to allow the owner to collect more retroactive rent increase from the remaining 100 apartments is rejected. Section 2522.4(a)(13) of the Rent Stabilization Code, as amended in 2014 which was in effect at the time the MCI order was issued prohibited granting an MCI rent increase before the correction of immediately hazardous C class violations existing at a building on the filing date of the MCI application. Upon correction of the C violations, the effective date of any rent increase shall not precede the date of the correction of the C violations. The temporary retroactive rent increase applied to the period between the effective date of the increase and the issuance date of the MCI order (collectible date) in this case is from 05/01/2017 to 06/01/2017. The record in this case shows that there were lead paint C class violations at the building as of the 2/25/2015 date the MCI application was filed and that the violations were removed from the HPD database on 4/24/17. Therefore, the Commissioner finds that the 05/01/2017 MCI rent increase effective date was properly based on the 4/24/17 date the C violations were removed, and that the temporary retroactive rent increase from 05/01/2017 to 06/01/2017 is correct.

The cited case, Matter of 20 Fifth Avenue, LLC v DHCR:2013 NY Slip Op 05434, 2013 WL.3793503 (App. Div. 1 Dept.:7/23/13), and DHCR Order Docket No. TC430095RT are distinguishable and not applicable to instant case. A review of the case and the order reveals that each of them involves a situation where the DHCR instead of denying the entire MCI rent increase based on the tenants' allegation of defective MCI installations, exempted the few apartments with defective problems directly related to the MCI installation. The instant case record is devoid of tenants' allegation of defective MCI installations thus, there is no basis to exempt the 7 apartments with the C class violations. Therefore, the Commissioner finds that the cited cases do not support the owner's claim.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order be affirmed.

ISSUED: JUN 3 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
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Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

Note: During the period of the current Covid-19 emergency, as a courtesy, if the Article 78 proceeding is commenced by efiling pursuant to the Court Rules service may be effectuated, as limited as follows, by forwarding the court's email indicating the assignment of the Index Number and the documents received by the court, i.e., Notice of Petition, Petition, and other efiled documents to DHCRLegalMail@nyshcr.org. Upon receipt of the complete filings, the receipt of such documents will be acknowledged by email. Only after such acknowledgement of receipt of such documents will the service by email be deemed good service on New York State Division of Housing and Community Renewal (DHCR). DHCR is not the agent for service for any other entity of the State of New York or any third party. In addition, the Attorney General must be served at 28 Liberty Street, 18th Floor, New York, NY 10005. Since Article 78 proceedings take place in the Supreme Court, it is advisable that you consult legal counsel.

There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
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JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	**ADMINISTRATIVE REVIEW DOCKET NO.: EN410043RT**
[redacted]	
PETITIONERS	**RENT ADMINISTATOR'S DOCKET NO.: AP410027OM**

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioners timely filed an administrative appeal against an order issued on January 22, 2016 by the Rent Administrator concerning the housing accommodations known as 245 East 40th Street, New York, NY, which granted the owner's application for a rent increase based on the installation of major capital improvements (MCIs), to wit: exterior restoration, new windows/balcony doors, and related consulting engineer fees.

The Commissioner having reviewed the petitioners' appeal and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioners' appeal does not have merit and should be denied.

The tenant-petitioners, through an attorney, request a reversal of the MCI rent increase order and claim that the Rent Administrator ignored evidence of defects with the windows and exterior restoration work "which required denial of the application or at the minimum an inspection by the DHCR;" that the work was a piecemeal repair project; that the owner improperly calculated the commercial allocation; and that the owner failed to comply with relevant building code provisions. Regarding the costs associated with the project, the tenant-petitioners claim that the owner failed to substantiate the subject MCI costs and included costs of MCIs at other buildings; that the owner sought to recover the cost of items that are not MCIs; and that the owner failed to submit required invoices and to fully respond to DHCR's Request(s) for Additional Information.

The tenant-petitioners first contend that there were defects with the subject MCI installations which the Rent Administrator failed to take into consideration by failing to either deny the MCI application or perform a DHCR inspection of the alleged defects. Specifically, the tenants claim that the Administrator ignored tenant surveys submitted below reflecting complaints about the new window installations. The tenants also claim that the Rent Administrator ignored an architect's report provided by the [redacted] below which cited defects with the subject façade work, and that the owner failed to rebut these tenant submissions with sufficient evidence.

Administrative Review Docket No. EN410043RT

A review of the record shows that during the proceeding below, the [redacted] submitted a response to the owner's MCI application in November 2012 that included copies of multiple rent regulated tenant survey results (from Apts. [redacted]). The survey, prepared by the law firm representing the [redacted], related solely to the tenants' ability to open the new windows and the level of light and ventilation they provided. The November 2012 mailing also included the report of an architect hired by the tenants' which "found water leak conditions at apartments [redacted] and [redacted]." The Commissioner notes that of these six apartments, only five were subject to rent regulation at the time the MCI application was filed ([redacted]).

In August 2015, after being served with these tenant-complaints and a request from DHCR to address the abovementioned issues, the owner responded by stating that "the Service Director of the subject building . . . was in contact with all of the tenants listed on [DHCR's] Request and believes that those tenants will now state that there has been no leaking from the windows." The owner attached a signed statement from the Service Director wherein the employee claims that "in response to prior complaints about leaking from their newly installed windows, [I] reached out to the collective residents who filed the complaints regarding said leaks. In this process, all residents now maintain that there has been no leaking from the newly installed windows." The Rent Administrator provided the owner's response, including the Service Director's attached statement, to the tenants of Apts. [redacted] and [redacted] (i.e., all apartments where either the architect indicated leak conditions were present and/or where tenants responded to the abovementioned initial [redacted] survey regarding the conditions of the new windows).

The tenants replied to the owner and Service Director's statements in December 2015 by providing a second round of survey results. According to the attorney's letter summarizing this follow-up survey: "15 [of the 16 surveyed tenants] indicated that the windows are difficult to open and close. Eight of the 16 indicated that they had made complaints to the building manager about the windows. Ten tenants indicated that the amount of light coming into the apartments had been reduced [...]. Six tenants stated that they require the building handyman to come in to either unlock the locks on the top windows or to open the bottom windows. Six stated that the new windows are drafty."

The tenant-petitioners' claim that there were defects with the subject MCI installations which the Rent Administrator ignored is therefore unsupported by the record. Based on the evidence described above, the Rent Administrator's properly determined that the tenants' complaints were addressed prior to the issuance of the subject rent increase order. In addition, any claim that the new windows reduced the amount of natural light and air ventilation does not warrant vacating the Rent Administrator's order. However, as noted in the subject MCI order, the tenants may file decrease in service complaints with the Division if the facts so warrant.

As for the claim that an inspection of the installation should have been conducted below, the Commissioner notes that inspections are performed at the Rent Administrator's discretion. The Commissioner also notes that during the pendency of the proceeding below the Division also inspected Apt. [redacted] in April 2013 and found no leaks in the apartment. Said inspection was performed in response to a leak-related service complaint filed by the tenant of Apt. [redacted] in October 2012 (Docket No. AV410060S). A review of Division records shows that no other service complaints related to leaks or water infiltration have been filed at the subject premises.

The claims that the owner failed to properly substantiate all MCI costs and that expenses for work performed at other buildings were included in the claimed MCI costs are also without merit. A review of the record below shows that the owner submitted copies of all necessary documents to demonstrate compliance with the requirements to receive an MCI rent increase, including contracts, cost breakdowns, change orders, invoices substantiating payment, and cancelled checks. The Commissioner also notes that during the proceeding below, the Rent Administrator further requested several additional documents to fully substantiate all payments, including monthly billing invoices for rental of the scaffold and sidewalk bridge and "a full description of the work done for all change orders." The record also indicates that, contrary to the tenants' statement, expenses related to work performed at buildings other than the subject premises were deducted from the owner's claimed MCI cost and therefore were not part of the final MCI rent increase calculation. For example, Note 2 of the subject MCI Order indicates that costs related to a separate building—"101 West End wall panel"—were among the disallowed expenses.

Similarly, the Commissioner finds no merit in the claim that the owner "sought to recover the cost of items that are not MCIs." A review of the record shows that all ineligible items were properly deducted by the Rent Administrator, including but not limited to: parking garage repairs, partial plumbing costs, painting and coating costs, New York City Department of Buildings (DOB) filing fees, and costs related to a new canopy/awning.

The tenant-petitioners' claim that the owner failed to submit required invoices and to fully respond to Requests for Additional Information (RFAIs) is also without merit. On appeal, the tenants fail to specify what invoices and RFAIs were not provided or responded to. However, the record shows that the owner provided responses to all RFAI inquiries sent by the Rent Administrator during the proceeding below.

As for the claim that the exterior restoration was done in piecemeal manner, the Commissioner notes that to qualify as an MCI, an installation must be contemplated as a single unified project and completed within a reasonable time frame, given the nature of the work and the size of the building or complex. In the proceeding below, the tenants claimed that DOB records showed that several building façade permits were applied for between 2001 to 2010, including applications and permits for façade repair and scaffolding from 2001 to 2004 and for additional façade repair from 2007 to 2010. However, the contract that is the subject of this MCI concerns façade work done from 2007 to 2010. The supporting documentation submitted matches the exterior restoration work dates from 2007 to 2010. Any permits issued before 2007 and the costs associated with prior restoration work were not made a part of these MCIs. The claim that interruptions in work that occurred between 2007 and 2010 made the installation a piecemeal project is also without merit. In response to an inquiry from the Rent Administrator below, the owner explained in a May 17, 2013 letter to the Division that all brief gaps in work that occurred between September 2007 and July 2010 were related to cold weather periods which interrupted the outdoor work. The claim that the work was performed in a piecemeal manner is therefore without merit.

Regarding the tenant-petitioners' claim that the owner "improperly calculated the building's commercial allocation," the Commissioner notes that pursuant to Section 2522.4(a)(16) of the Rent Stabilization Code, where a building contains commercial rental space in addition to residential space, and DHCR determines that the commercial space benefits from an MCI, the Division apportions the approved costs of the MCI between commercial unit(s) and residential unit(s) based upon the relative square footage of each rental area. The Commissioner finds no error in the commercial space

calculation performed by the Rent Administrator below, which resulted in a finding that the commercial allocation for the subject premises was 22.34%, based on 387,761 square feet of total floor area contained in the subject premises and the size of the following commercial areas: the building's fitness center (664 sq. feet), commercial tenant space (24,561 sq. feet), laundry rooms and valet space (1,430 sq. feet) and the building's parking lot (59,984 sq. feet), for a total of 86,639 square feet of commercial space.

Finally, the claim that the owner failed to comply with relevant building code provisions is outside the scope of the instant proceeding. In the proceeding below, the petitioners claimed that the owner did not comply with DOB requirements and submitted forms to the DOB containing incorrect information, including a statement that the building had no rent regulated tenants. Any failure to follow DOB requirements should be brought to the attention of that agency and does not serve as a basis for the Rent Administrator's order to be revoked.

Pursuant to Section 26-511.1 (a)(8) of the Rent Stabilization Law and to Section 26-405.1 (a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the laws, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition is denied and the Rent Administrator's order is affirmed.

ISSUED: JUN 24 2022

Woody Pascal
Deputy Commissioner

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Office of Rent Administration
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Right to Court Appeal

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There is no other method of appeal.