

# EXHIBIT A

# Streetview - North on Vernon Blvd



# Streetview - West on 45th Road



# Streetview - South on Vernon Blvd



# LIC WATERFRONT DESIGN GUIDELINES

The 'LIC Waterfront Design Guidelines' are a set of principles and strategies intended to foster an overall sense of place and ensure the creation of a cohesive character for this emerging section of LIC. Each building developed along this key portion of the Waterfront should aspire to reflect the 'industrial and creative character' of Long Island City's past and present, thereby, enabling the future establishment of a distinct waterfront district connecting Queensbridge Park to Anable Basin that complements surrounding portions of the neighborhood.

This document begins by outlining four design principles, and it then explains the existing mix of uses and building types that comprise the Neighborhood Context. Next, it gives an overview of the Industrial Character represented by images of notable LIC loft buildings which should inform the design of new waterfront development. It also addresses activating the Public Realm and notes how new open space near the shoreline should be embedded with flood resilient strategies critical for protecting future waterfront development and the upland neighborhood. It provides examples of Ground Level Vocabulary elements to spur a lively mix of materials, lighting and building components. Lastly, it outlines an inter-related building massing and programming approach to achieve a distinct, sturdy yet harmonious Architectural Form.



# OVERALL DESIGN PRINCIPLES

The guidelines establish standards for future developments that foster a robust mix of housing, retail, and productive manufacturing uses. They have been drawn up to address the site's unique potential to create live-work opportunities that support the growing innovation economy, complement adjoining developments and neighborhood patterns, and enhance the public's access to the waterfront, thereby fulfilling the following objectives:

1. Provide a continuous public esplanade and varied moments of open space to create a diverse series of experiences while accommodating active and passive recreational opportunities on the East River and Anable Basin. Connecting the sites from the basin to the Queensboro Bridge extends the public access to the East River waterfront from open spaces at Queens West and Hunter's Point South to Queensbridge Park.
2. Create a harmonious and appealing transition in building scale and form from upland neighborhoods to waterfront blocks. Locate low- and mid-rise buildings where a neighborhood context exists, and preserve existing architecture/resources where possible.
3. Create a dynamic and active public realm embedded with resilient outcomes. Ground floor mixed use development can accommodate flood protection elevations while fostering a vibrant public realm.
4. Create new developments with significant floor area for commercial and manufacturing uses such as light industrial production.



# NEIGHBORHOOD CONTEXT

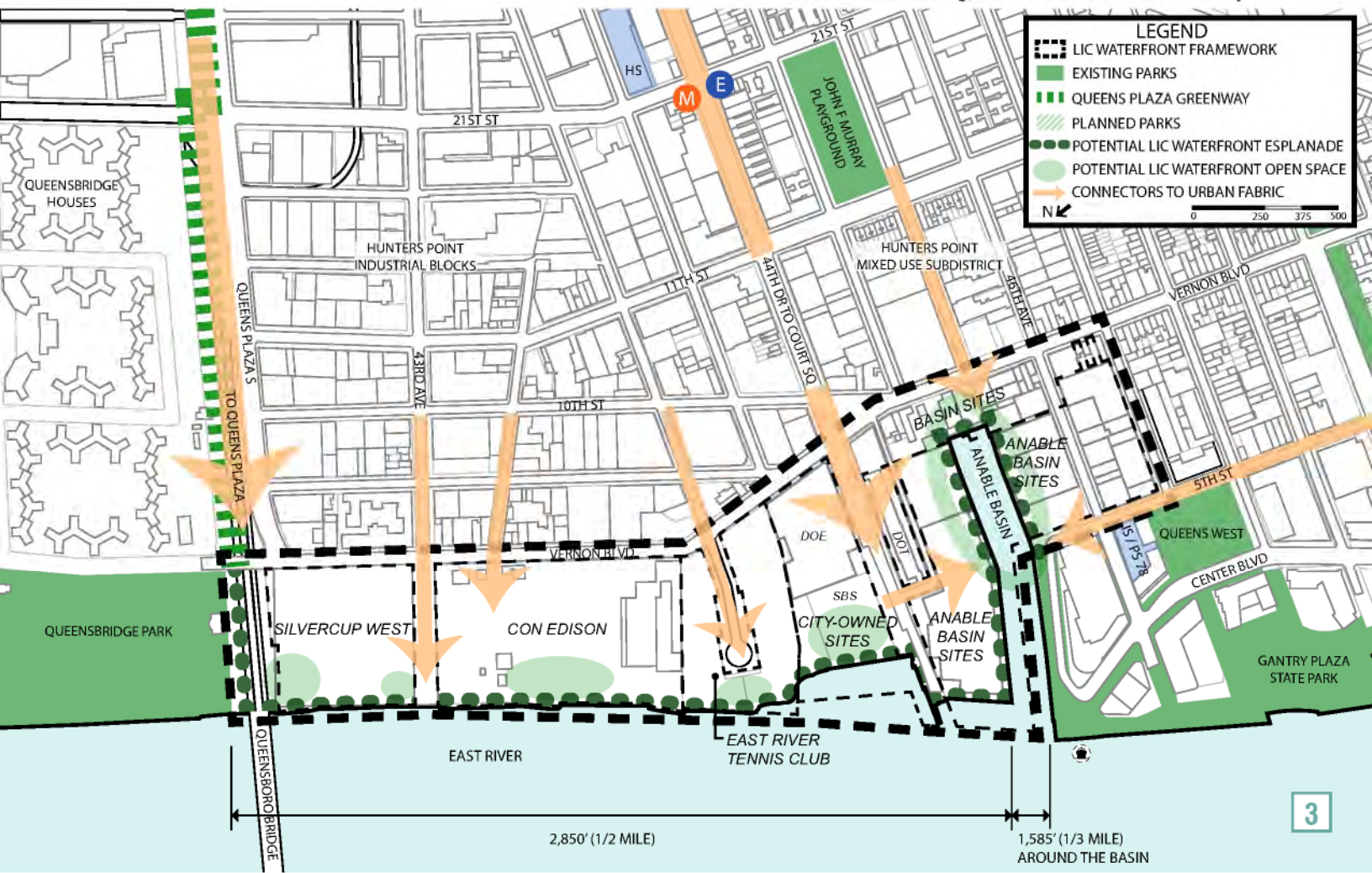
Development within this LIC Waterfront location has the important role of complementing the convergence of several divergent neighborhood areas. Directly to the east are the Hunter's Point Industrial Blocks lining Vernon Boulevard with lower-scale industrial buildings of one- and two-stories and growing in height and bulk to the east with larger loft buildings. South of 44th Drive is the Hunter's Point Mixed Use Subdistrict. Its appeal is largely based upon its juxtaposition of housing and business developments, with a combination of lower-scale buildings with medium-scale developments. High-rise apartment buildings with park spaces at Queens West and Hunter's Point South are located directly to the south. The current waterfront is composed of opportunity sites that can complete an emerging waterfront while supporting the light industry and arts the neighborhood has come to be known for. New mixed use developments with open space and a dynamic public realm can extend and complete the area's urban fabric.



View to northern LIC Waterfront at Queensboro Bridge



View to DOE building, Anable Basin, and LIC core beyond

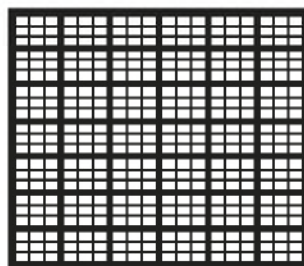


# INDUSTRIAL CHARACTER

Throughout the existing neighborhood, an industrial character is present in the simple designs of the facades of loft buildings once used for manufacturing. Many existing buildings are well-suited to house the demands of creative industries and innovative economies due to flexible layouts, therefore new building designs can take cues from these examples. A multi-scalar repetition expressed in window articulation, spacing, surface relief, and overall composition give the buildings an enduring sense that reflects the evolving uses. Large windows often composed of gridded glazing panels, high floor-to-floor clearances, open and configurable spaces, and freight elevators are among the characteristics to carry into new designs.



Existing industrial buildings in Long Island City



## Translating Industrial Character:

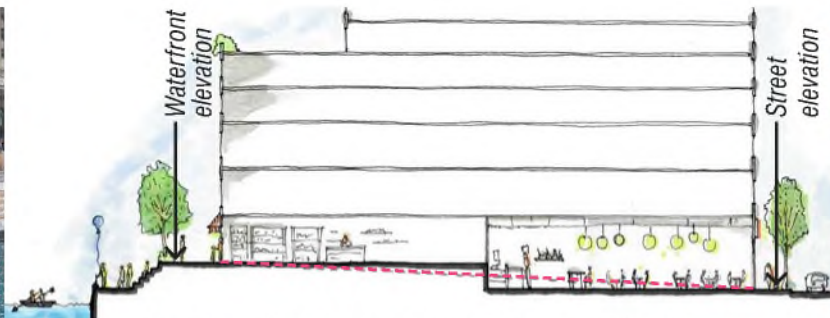
- Simple repetition
- Multiscalar geometries
- Exposed structure
- Industrial aesthetic
- Large, regular window openings

# DYNAMIC & ACTIVE PUBLIC REALM

Future development should embed resilient strategies into a new and unique urban fabric. Ground floor mixed use development can accommodate flood protection elevations while fostering a vibrant public realm and enabling waterfront public access. The creation of a new and varied waterfront open space can frame and activate a series of connected esplanade and park experiences with opportunities for residents, employees, and visitors alike.



*Engaging waterfront esplanade built to flood elevations*



*New developments can absorb the change in elevation and mitigate impact with permeable and active public realms*



*Active street frontage making 24-hr neighborhood*

*View upland from waterfront on 44<sup>th</sup> Drive with public open space*



# GROUND LEVEL VOCABULARY

Ground level spaces should be designed to be highly transparent, permeable, varied, and active to attract pedestrians and allow for lively spillover. A variety of formal strategies should be utilized to create a dynamic and unique public realm.

*Ground Level Transparency: required at 50% of ground floor; garage doors, variable openings, protected pedestrian experience, & spillover*



*Prominent Corners: articulation through height and form, transition of scale, points of entry, & definition*



*Canopies & Awnings: weather protection, spatial framing, extending interiors, & solar interplay*

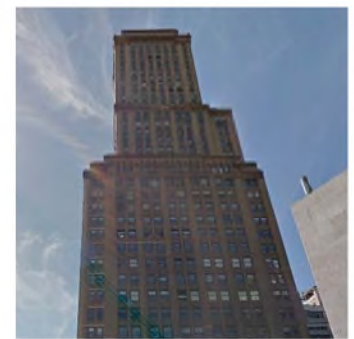
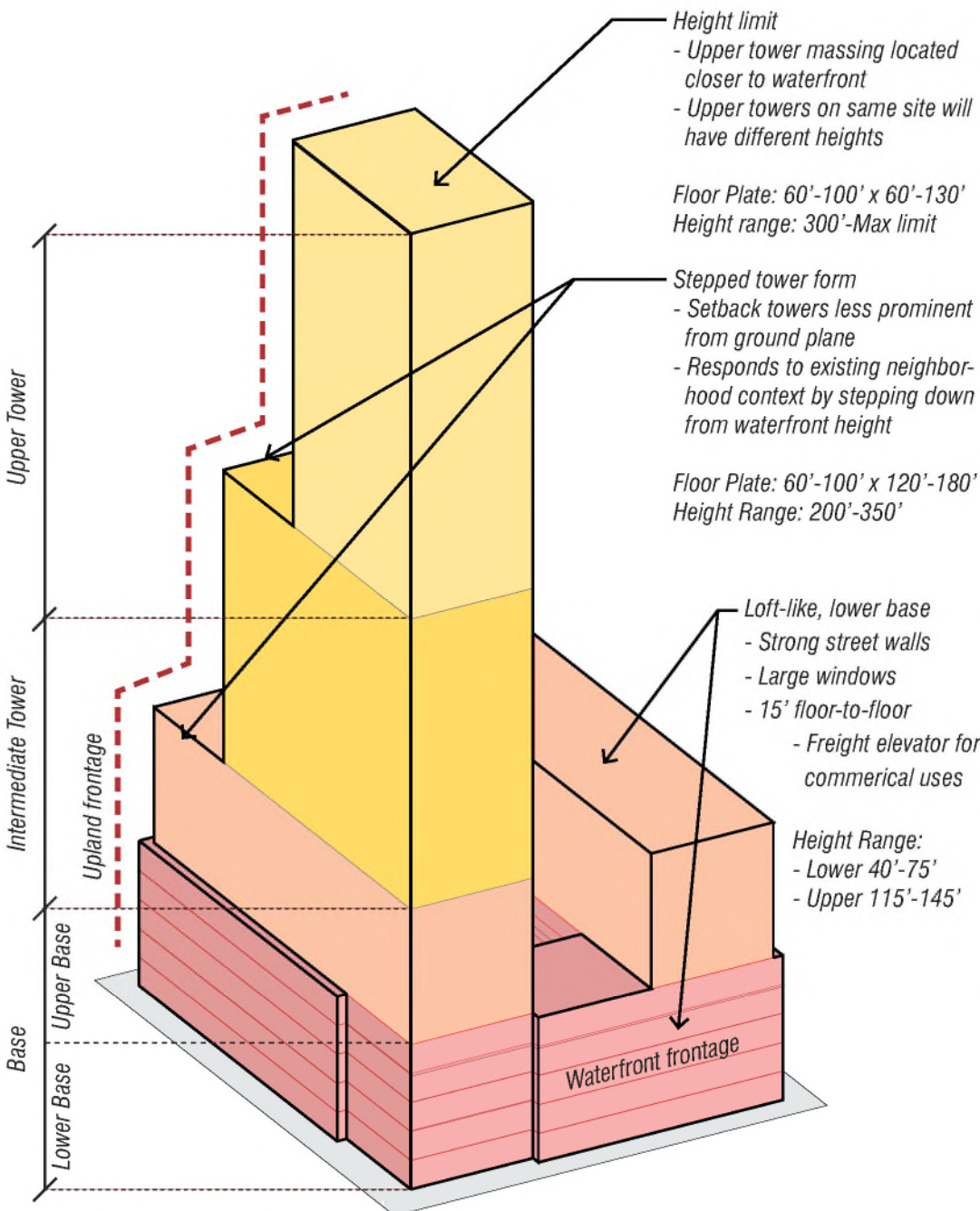


*Varied Streetscape: landscape, lighting, seating & furniture, surfacing, textures, art & murals*

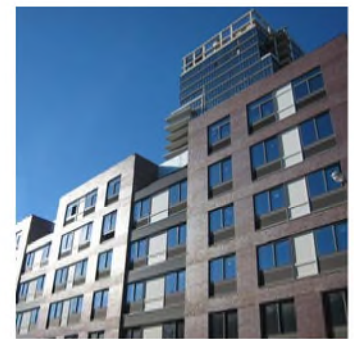


# ARCHITECTURAL FORM

The building forms should employ the technique of “packing the bulk” – distributing greater proportions of floor space and massing in approximately the lower 2/3 of the building form. This will reinforce the bulky nature of the base, necessitate the stepping of the intermediate tower, and prevent the upper tower form from becoming an unintegrated point tower. This approach is also compatible with the height limits of the towers which then step down to the lower existing neighborhood context.



Stepped tower



Tower setback on base



Loft-like commercial spaces



*View south on Vernon Blvd from under the Queensboro Bridge*



*Loft-like base oriented to upland with forms stepping to waterfront towers*



*Commercial bases support public realm activities on the street and waterfront*

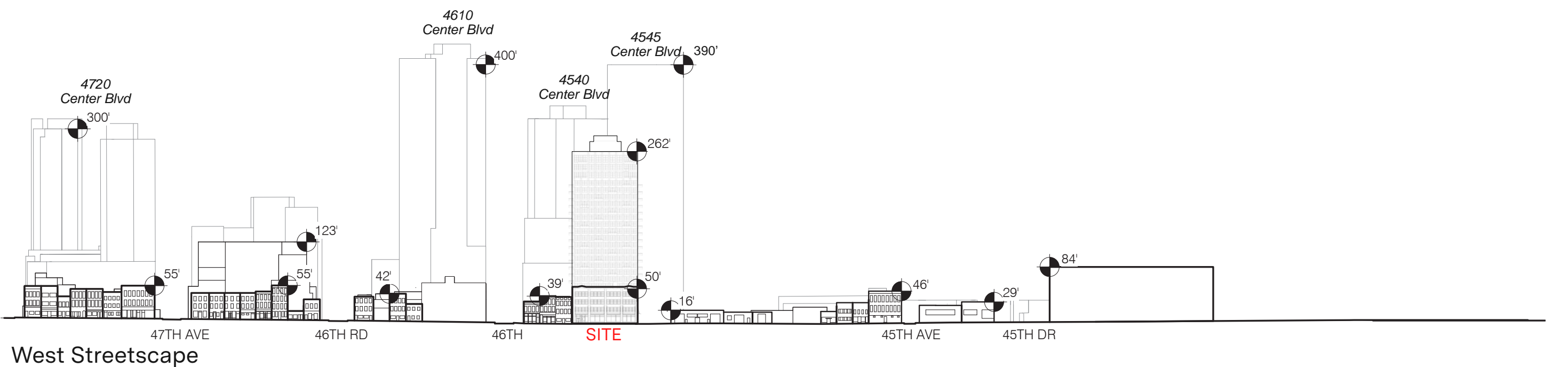
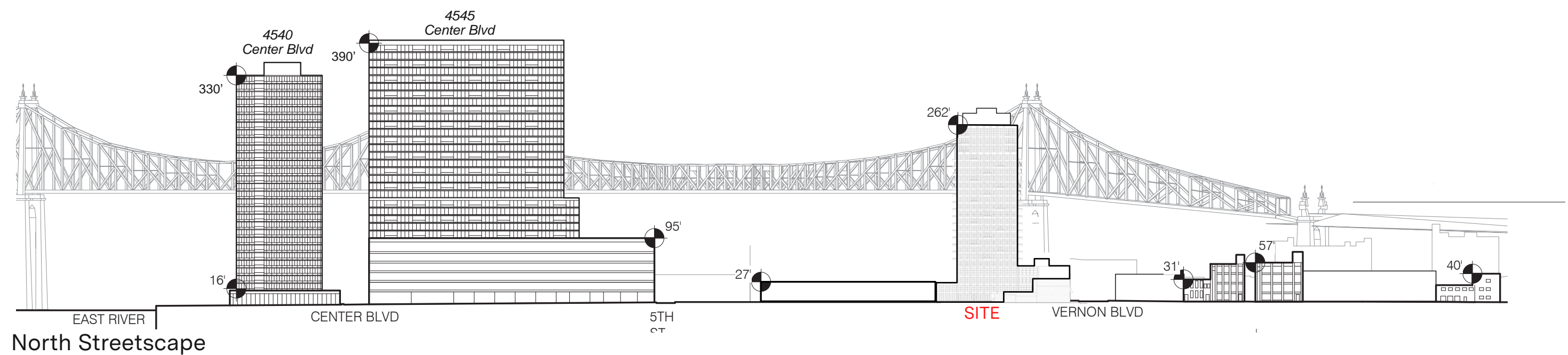
The new buildings of the LIC Waterfront should be varied in height, shape, and use:

- The segmentation of the building bulk may relate to its uses with the upland-oriented bases housing commercial and manufacturing uses such as light industrial production, innovation economies, or arts and cultural uses. Floor space for such uses should at least constitute from 0.5 to 1.5 of a site's floor area ratio with a preference for light manufacturing spaces.
- Intermediate towers can accommodate commercial or residential/amenity uses. Upper towers are well-suited to residential although purely commercial developments are encouraged.
- Developments integrating Arts and Cultural uses with creatively focused production programming should consider uses in the attached appendix.
- Buildings should be composed of materials and massing that suggest the sturdy character of industrial lofts along New York City's waterfront. The resilience and sustainability of the design of buildings can express the strength and durability of the typology while extending the life-cycle of the building.

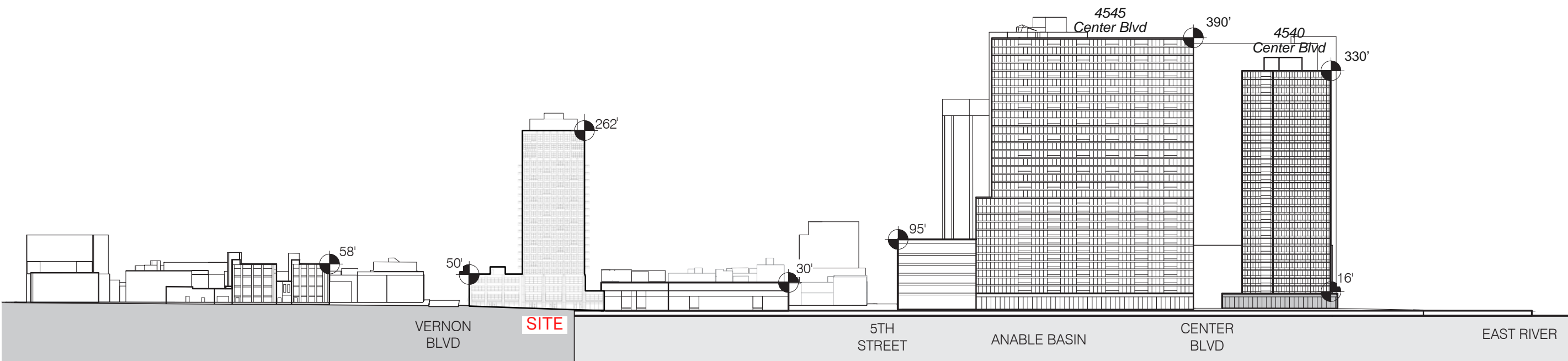
The new building forms should reinforce the existing neighborhood fabric, create better opportunities for physical and programmatic connectivity, and facilitate pedestrian access to the waterfront. This is further accomplished by stepping the form, creating a variety of spaces for uses, and breaking the massing for upland connections.

# EXHIBIT B

# Streetscape Elevations

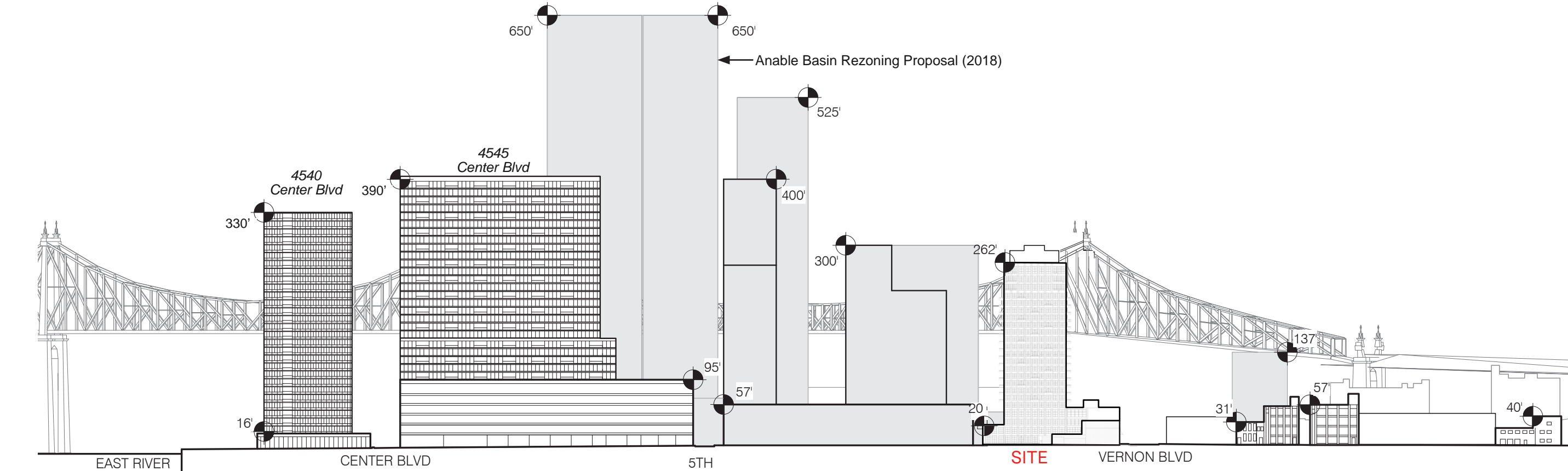


# Streetscape Elevation

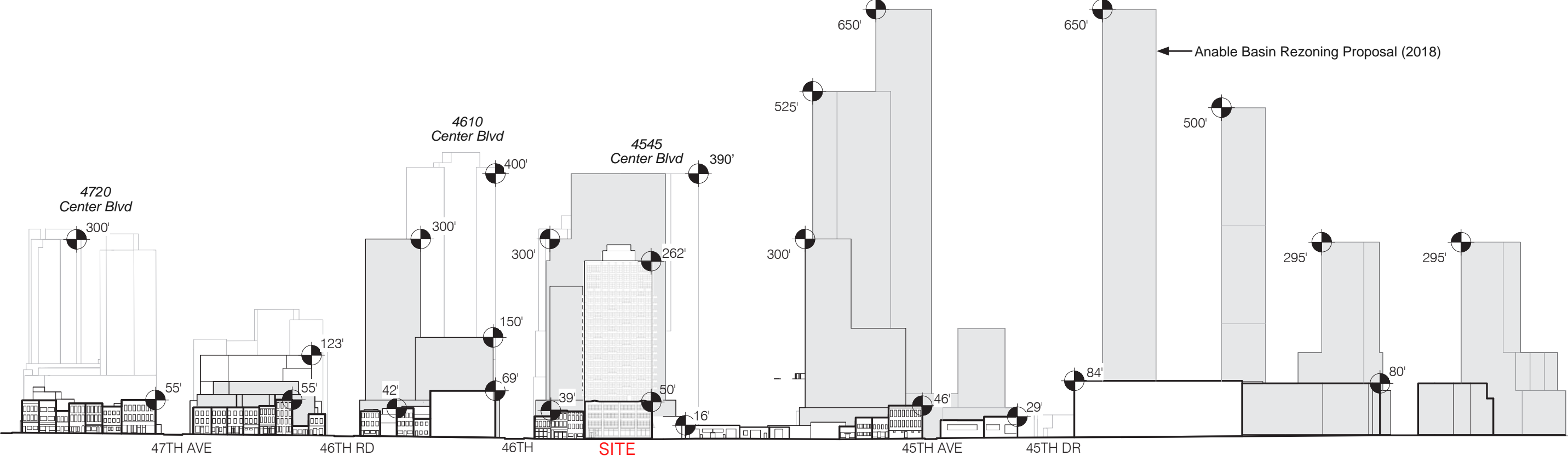


South Streetscape

# Streetscape with Anable Basin Rezoning Proposal (2018)

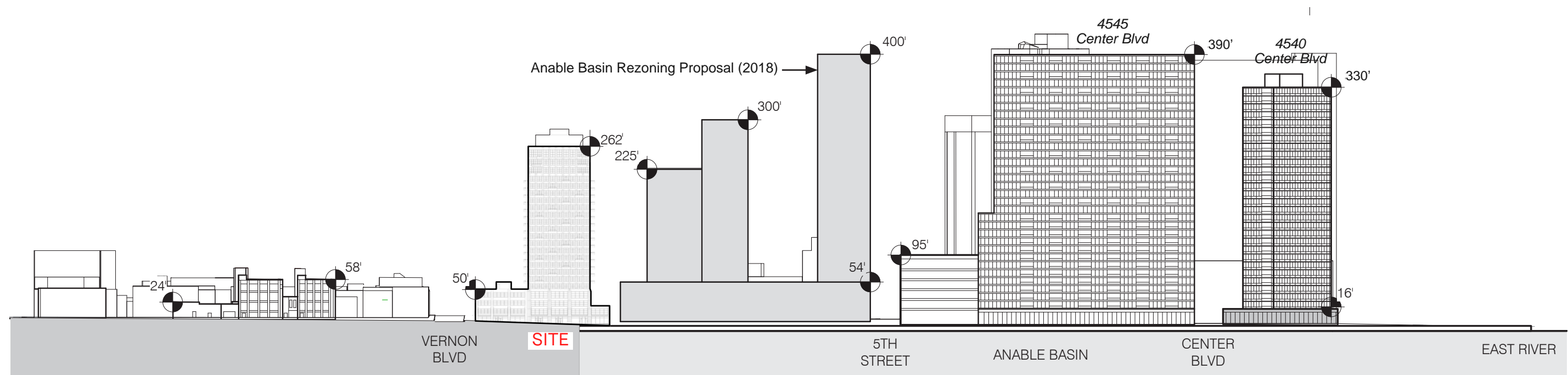


North Streetscape



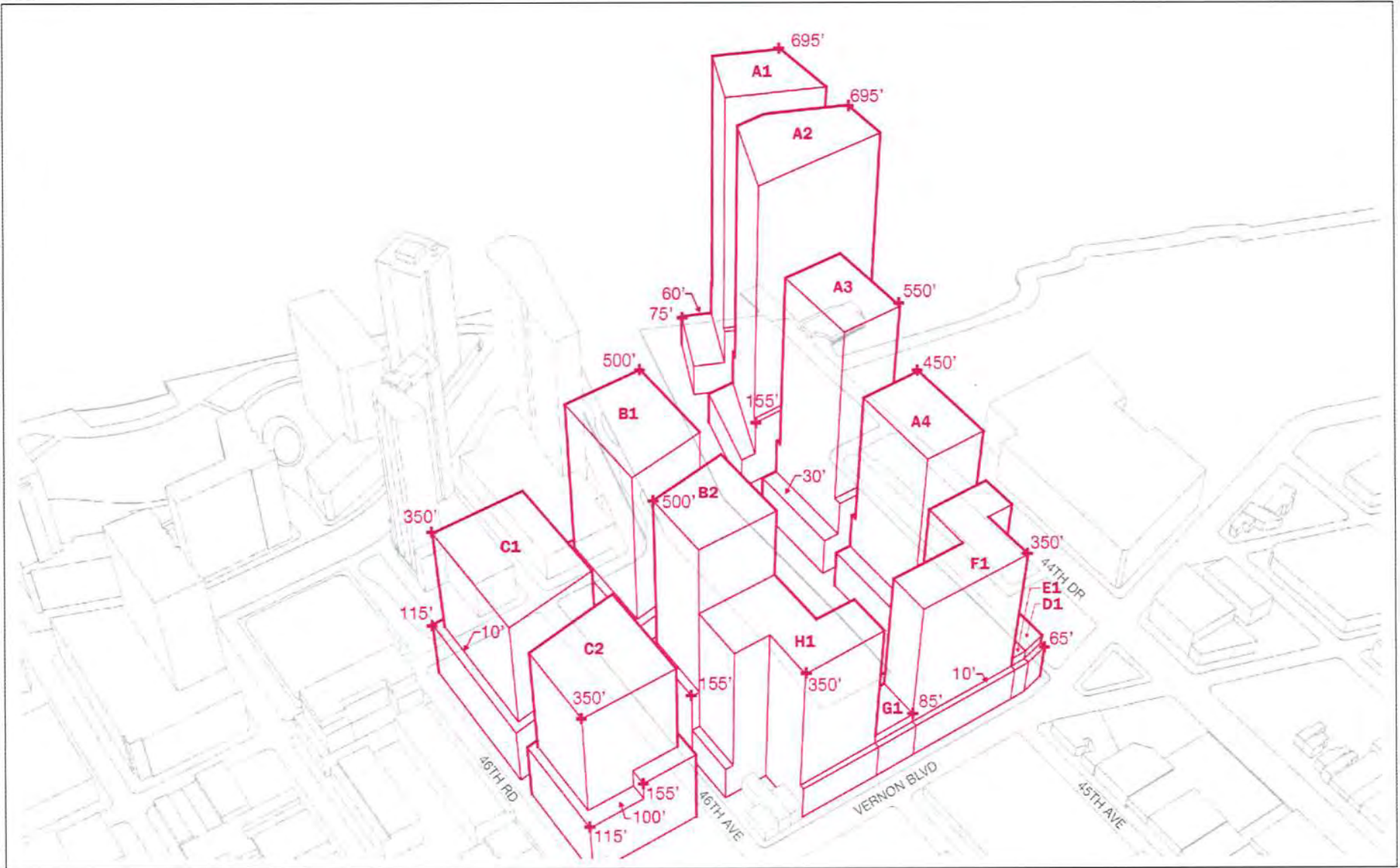
West Streetscape

# Streetscape with Anable Basin Rezoning Proposal (2018)



South Streetscape

# EXHIBIT C



*For Demonstrative Purposes Only*

# EXHIBIT D



We get it done

## A. BSA Finding Background:

1. The BSA, pursuant to Section 72-21 of the Zoning Resolution, requires 5 findings be met in order for a variance to be granted. The subject property has a quantifiable burden of historic contamination. The variances requested in the application allow the Proposed Development to overcome this hardship and enable the owner to realize a reasonable return.
2. Affordable housing is not a part of the five findings. The BSA is not an Agency tasked with creating affordable housing. If affordable housing is provided in our development without a government program, additional floor area would be required to ensure a reasonable financial return – which would not allow us to meet the fifth finding - i.e., that the variance is the minimum necessary to afford relief.

## B. Alternative Affordable Housing Programs

1. We considered other programs that might be available to create affordable housing. Most affordable housing projects other than MIH projects are undertaken by not-for-profit developers such as: Phipps Housing, Actor's Fund, etc. and/or with substantial public assistance.
2. Generally, for-profit developers that provide affordable housing in new construction are required to do so under the MIH program.
  - Feasibility of MIH is very sensitive to land costs and can't be developed without reduced land costs or substantial public assistance.
3. Article 11 or 420c development projects are created by either 100% not-for-profit entities or not-for-profit/for-profit partnerships. Generally, these programs are not appropriate for this project and do not create the additional value necessary to overcome the economic hardship created by the unique conditions of the site necessary for BSA approval of Zoning Variance Projects.
  - Article 11 creates HDFC Co-ops (Housing Development Fund Corporations are not-for-profit entities). HDFC coops are affordable cooperatives in New York City. They are city subsidized and sell below market (40% -50%) below market rate coops and condos

FINANCING • LOBBYING • REAL ESTATE • SOCIAL IMPACT • STRATEGY • SUSTAINABILITY

[CAPALINO.COM](http://CAPALINO.COM)

The Woolworth Building, 233 Broadway, Suite 710, New York, NY 10279 | [info@capalino.com](mailto:info@capalino.com) | 212.616.5810

- a. 420c requires a 501c3 partner holding at least a 51% interest and creates low-income housing.
  - Eligible projects must be owned or leased for at least 30 years by a corporation, LP, or LLC, of which at least 50% of the controlling interest is held by a tax exempt 501(c)(3) or (4) charitable organization whose purposes include low-income housing, or a wholly-owned subsidiary of such charitable organization;
  - To be eligible 420C projects need to be currently or formerly financed with federal low-income housing tax credits. Therefore, this project would not be eligible for 420C.

## C. Financial Analysis:

We have prepared a financial analysis summary of four development alternatives:

### 1. Proposed Development

The residential conversion of the Paragon Paint building and the new construction of a 23-story tower with 9,040 sq.ft. of retail on the ground floor and a residential lobby. The tower would be located to the west of and connected to the converted Paragon Paint building. There would be 226 apartments on floors two through twenty-three. There would be 49 studios, 88 one-bedrooms, 67 two-bedroom and 22-three-bedroom apartments. There would be 171,795 sq.ft. of rentable area. The total gross floor area would be 231,740 sq.ft. The total zoning floor area would be 212,994 sq.ft.

This alternative provides the development program as described above with 30%, or 68 apartments, designated as “Affordable Apartments”. Utilizing the Affordable NY Affordability Option C, the rent for the Affordable Apartments is established by the Affordable NY Program. Under the program 30% of units will be rented at 130% of the New York City established Area Median Income (“AMI”) rents.

The Affordable New York Program is also assumed to provide a tax abatement.

#### *Feasibility of Proposed Development:*

Using the capitalization of income method, as shown in the attached Schedule A, the capitalized value determined by the analysis for the Proposed Development is \$108,757,000.

In addition to the capitalized value of the net operating income, the Proposed Development, as a result of the provision of affordable housing, also will have added value of \$20,690,000 for the Affordable NY Tax Benefits. The calculation of the

Affordable NY Tax Program Benefit Value is identified in Schedule C: Affordable NY Tax Savings-Proposed Use. The total Project Value is the sum of the Capitalized Value of the Net Operating Income of \$108,757,000 and the Value of the Affordable NY Tax Benefits of \$20,690,000 plus the Brownfield Remediation Tax Credit (BRTC) value of \$7,172,000, the total value is \$136,619,000.

As shown in the attached Schedule A, the total development cost, including estimated property value, hard construction costs and soft costs, for the Proposed Development is estimated to be \$136,047,000. As shown in the attached Schedule A, the difference between the value of the capitalized net operating income of \$108,757,000 plus Affordable NY Tax Benefit of \$20,690,000 plus the potential BRTC Value of \$7,172,000 and the development cost of \$135,047,000 is \$572,000.

The Proposed Development contains slightly more value than the total development cost and therefore is feasible.

## **2. 70% Market Rate and 30 % Affordable with No-Tax Abatement**

This alternative provides the same development program as described above along with 30% or 68 apartments at affordable rates. The only difference is this alternative does not include the Affordable New York (421A) tax abatement.

### *Feasibility of 70/30 No Abatement Development:*

Using the capitalization of income method, as shown in the attached Schedule A, the capitalized value determined by the analysis for the Proposed Development is \$108,757,000.

The total Project Value is the sum of the Capitalized Value of the Net Operating Income of \$108,757,000 plus the BRTC value of \$7,172,000, the total value is \$115,929,000.

As shown in the attached Schedule A, the total development cost, including estimated property value, hard construction costs and soft costs, for the Proposed Development is estimated to be \$136,047,000. As shown in the attached Schedule A, the difference between the value of the capitalized net operating income of \$108,757,000 plus the potential BRTC Value of \$7,172,000 and the development cost of \$136,047,000 is (\$20,118,000).

The *70/30 No Abatement Development* contains significantly less value than development costs and is not feasible.

### 3. All Market Rate with No 421-a Tax Abatement

This alternative provides the same development program as described above except all the 226 apartments are market rate and 0 apartments, will be designated as “Affordable Apartments”. As a result, the alternative does not include the Affordable New York (421A) tax abatement.

#### *Feasibility of All Market Rate no Tax Abatement Development:*

Using the capitalization of income method, as shown in the attached Schedule A, the capitalized value determined by the analysis for the Proposed Development is \$123,540,000.

The total Project Value is the sum of the Capitalized Value of the Net Operating Income of \$123,540,000 plus the BRTC value of \$7,172,000, the total value is \$130,712,000.

As shown in the attached Schedule A, the total development cost, including estimated property value, hard construction costs and soft costs, for the Proposed Development is estimated to be \$136,047,000. As shown in the attached Schedule A, the difference between the value of the capitalized net operating income of \$123,540,000 plus the potential BRTC Value of \$7,172,000 and the development cost of \$136,047,000 is (\$5,335,000).

The *All Market Rate no Tax Abatement Development* contains significantly less value than development costs and is not feasible.

### 4. R6A Development

The R6A Development consist of the residential conversion of the Paragon Paint building and the new construction of two 7-story buildings with 20,990 sq.ft. of retail on the ground floor and a residential lobby. The 7-story buildings would be located to the west of the converted Paragon Paint building and would also front on 46<sup>th</sup> Avenue. There would be approximately 111 apartments on floors two through seven. There would be approximately 84,156 sq.ft. of rentable area. The total gross floor area would be 130,600 sq.ft. The total zoning floor area would be 115,838 sq.ft.

Of the total 111 apartments, 30%, or 33 apartments, will be designated as “Affordable Apartments”. Utilizing the Affordable NY Affordability Option C, the rent for the Affordable Apartments is established by the Affordable NY Program. Under the program 30% of units will be rented at 130% of the New York City established Area Median Income (“AMI”) rents.

The Affordable New York Program is also assumed to provide a tax abatement.

### *Feasibility of R6A Development:*

Using the capitalization of income method, as shown in the attached Schedule A, the capitalized value determined by the analysis for the Proposed Development is \$65,060,000.

In addition to the capitalized value of the net operating income, the Proposed Development, as a result of the provision of affordable housing, also will have added value of \$11,011,000 for the Affordable NY Tax Benefits. The calculation of the Affordable NY Tax Program Benefit Value is identified in Schedule C: Affordable NY Tax Savings-Proposed Use. The total Project Value is the sum of the Capitalized Value of the Net Operating Income of \$65,060,000 and the Value of the Affordable NY Tax Benefits of \$11,011,000 plus the BRTC value of \$5,298,000, the total value is \$81,369,000.

As shown in the attached Schedule A, the total development cost, including estimated property value, hard construction costs and soft costs, for the Proposed Development is estimated to be \$89,979,000. As shown in the attached Schedule A, the difference between the value of the capitalized net operating income of \$65,060,000 plus Affordable NY Tax Benefit of \$11,011,000 plus the potential BRTC Value of \$5,298,000 and the development cost of \$89,979,000 is (\$8,610,000).

The R6A Development contains significantly less value than development costs and is not feasible. Note that the construction costs and revenue for this scenario are preliminary. In addition, further remediation would be required if new construction were to occur fronting on 46<sup>th</sup> Avenue, as would be required in an R6A contextual envelope. These additional remediation costs have not been identified, as a landscaped courtyard (and not a new building) was proposed in this area in the Proposed Development. Therefore, the loss of \$8.6 million would likely be even greater because of additional required remediation.

## **D. Conclusion**

1. None of the alternatives provide for sufficient income to overcome the hardship created by the unique site conditions and would not meet the minimum variance finding.
2. BSA Findings don't require an affordable housing component.
3. Alternative affordable housing programs of 420C and Article XI are not appropriate.

ECONOMIC ANALYSIS  
45-40 VERNON BLVD.  
LONG ISLAND CITY, QUEENS, NY  
MAY 2, 2022

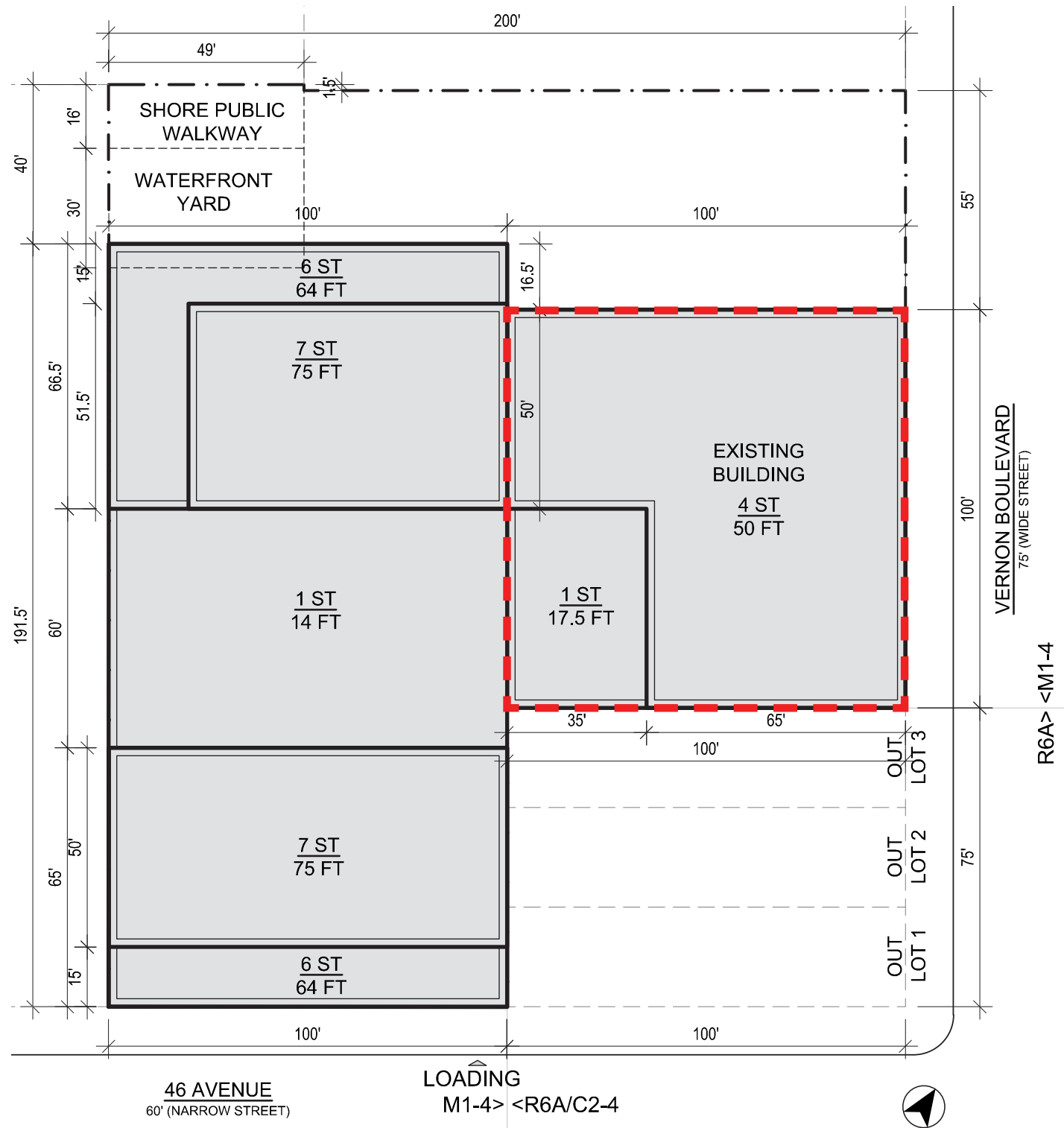
**SCHEDULE A : ANALYSIS SUMMARY - DEVELOPMENT ALTERNATIVES**

	<u>Proposed</u> <u>Development (BSA</u> <u>Report)</u>	<u>70/30 - No Tax</u> <u>Abatement</u>	<u>All Market Rate/No</u> <u>Abatement</u>	<u>R6A Zoning*</u>
BUILDING AREA (SQ.FT.)				
RESIDENTIAL - Rentable	171,795	171,795	171,795	84,156
RESIDENTIAL - GROSS	221,827	221,827	221,827	108,665
RETAIL	9,040	9,040	9,040	20,990
TOTAL AREA	231,740	230,867	230,867	129,655
CAPITAL INVESTMENT SUMMARY				
ACQUISITION COST	13,000,000	13,000,000	13,000,000	13,000,000
HOLDING & PREP. COSTS	13,265,000	13,265,000	13,265,000	13,265,000
ADDITIONAL REMEDIATION	4,698,000	4,698,000	4,698,000	4,698,000
BASE CONSTRUCTION COSTS	87,517,000	87,517,000	87,517,000	\$49,150,000
SOFT CONSTRUCTION COSTS	17,567,000	17,567,000	17,567,000	\$9,866,000
	\$136,047,000	\$136,047,000	\$136,047,000	\$89,979,000
INCOME AND EXPENSES				
RESIDENTIAL	10,227,000	10,227,000	\$11,119,000	\$5,010,000
RETAIL	542,000	542,000	542,000	\$1,258,000
GROSS INCOME	10,769,000	10,769,000	11,661,000	\$6,268,000
(less)VACANCY (@ 5% )	(\$565,000)	(565,000)	(\$610,000)	(\$627,000)
EFFECTIVE INCOME	10,204,000	10,204,000	\$11,051,000	5,641,000
(less)M&O EXPENSES	(\$2,549,000)	(2,549,000)	(\$2,549,000)	(\$1,249,000)
(less)WATER & SEWER	(\$79,000)	(79,000)	(\$79,000)	(\$39,000)
(less)R.E. TAXES	(\$2,067,000)	(2,067,000)	(\$2,246,000)	(\$1,100,000)
NET OPERATING INCOME	5,509,000	5,509,000	\$6,177,000	\$3,253,000
CAPITALIZED VALUE OF NOI @ Residential      Blended	\$108,757,000	108,757,000	\$123,540,000	\$65,060,000
FEASIBILITY ANALYSIS				
PROJECT VALUE @ CAP RATE =      Blended	\$108,757,000	108,757,000	\$123,540,000	\$65,060,000
421A VALUE	\$20,690,000	-	-	\$11,011,000
BROWNFIELD TAX CREDIT	\$7,172,000	7,172,000	\$7,172,000	\$5,298,000
PROJECT DEVELOPMENT COST (SCHEDULE B2)	\$136,047,000	136,047,000	\$136,047,000	\$89,979,000
PROJECT VALUE (less) PROJECT DEVELOPMENT COST	\$572,000	(\$20,118,000)	(\$5,335,000)	(\$8,610,000)

\*Construction costs and income for this scenario are preliminary. Additional remediation costs for construction of a building fronting on 46th Avenue are also not identified.

# R6A/C1-5 Alternate Massing

## SITE PLAN



## FLOOR AREA SUMMARY

	FLOOR AREA									
	TOTAL		RESIDENTIAL (UG 2)				COMMERCIAL (UG 6C)			
	GSF	ZFA	GSF	DEDUCTIONS		ZFA	GSF	DEDUCT		ZFA
				MECH/ ENERGY	OTHER			MEP	LOADING	
1	29,150	22,633	8,160	2,508	3,160	2,492	20,990	454	396	20,141
2	21,400	20,118	21,400	1,070	212	20,118				
3	21,400	20,118	21,400	1,070	212	20,118	-	-		-
4	21,400	20,118	21,400	1,070	212	20,118	-	-		-
5	13,150	12,281	13,150	658	212	12,281	-	-		-
6	13,150	12,281	13,150	658	212	12,281	-	-		-
7	8,950	8,291	8,950	448	212	8,291	-	-		-
ROOF	2,000	0	1,055	1,055	-	-	-	-		-
TOTAL	130,600	115,838	108,665	8,536	4,432	95,698	20,990	454	396	20,141
F.A.R	MAX	USED	MAX			USED	MAX			USED
	3.00	3.00	3.00			2.48	0.00			0.52

## RESIDENTIAL UNIT ESTIMATE

BASED ON BSA PROPOSED BUILDING (221,851 GSF X 85%) / 226 DU = 835 SF/DU

(108,665 GSF x 85%) / 835 SF/DU= **111 DWELLING UNITS ESTIMATED**

## NOTES

1. ESTIMATED ZONING FLOOR AREA IS EQUAL TO GROSS FLOOR AREA MINUS 5% FOR MECHANICAL EQUIPMENT AND EXTERIOR WALL THERMAL EFFICIENCY.
2. BUILDING HEIGHTS INCORPORATE A DESIGN FLOOD ELEVATION 4' ABOVE GRADE.
3. SCHEME ASSUMES EXISTING PARAGON PAINT BUILDING TO REMAIN & BE RENOVATED.
4. ESTIMATED QUALITY HOUSING DEDUCTIONS ASSUMED IN AREA CALCULATIONS.

# EXHIBIT E

**CEQR #17-BSA-016M**

APPLICANT – Kramer Levin Naftalis & Frankel LLP for Margaret Lee, Youngwoo & Associates LLC, owner.

SUBJECT – Application September 8, 2016 – Variance (§72-21) to allow the development of a commercial building contrary to ZR §22-10 (to allow commercial use (UG 5 & 6) within a R7-2 zoning district, ZR §33-122 (exceed the maximum permitted commercial floor area within a C8-3 zoning district, ZR §§33-432 & 33-442 (C8-3 sky exposure plane regulations) and ZR §36-683 (Location of the entry/exit of an accessory loading berth with a C8-3 zoning district). C8-3 & R7-2 zoning district.

PREMISES AFFECTED – 2420 Amsterdam Avenue, Block 2152, Lot(s) 77 & 83, Borough of Manhattan.

**COMMUNITY BOARD #12M**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montane...4

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 7, 2016, acting on DOB Application No. 121190763 reads in pertinent part:

1. ZR 22-10: Proposed Use Group 5 and 6 are not permitted as of right in an R7-2 District as per 22-10;
2. ZR 33-122: Proposed commercial floor area exceeds the maximum permitted floor area of 2.0 FAR in the C8-3 district as per ZR 33-122;
3. ZR 33-432 and 33-442: Proposed sky exposure plan [*sic*] does not comply with the requirements of ZR 33-432 and 33-442;
4. ZR 36-683: Proposed entrance and exit from the accessory loading berth does not provide the minimum distance of 30 feet from the residential district boundary as per ZR 36-683; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located partially within a C8-3 zoning district and partially within an R7-2 zoning district, the development of a commercial building that does not comply with zoning regulations relating to use, maximum commercial floor area, sky exposure plane and the location of the entry and exit of the accessory loading berth set forth in ZR §§ 22-10, 33-122, 33-432, 33-442 and 36-683; and

WHEREAS, a public hearing was held on this application on January 31, 2017, after due notice by publication in *The City Record*, with continued hearings on April 4, 2017, and June 6, 2017, and then to decision

on June 20, 2017; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 12, Manhattan, recommends approval of this application on condition that certain community enhancements be provided<sup>1</sup> and that the applicant report to the Community Board prior to, during and following the completion of environmental cleanup of the site; and

WHEREAS, the Board has received letters in support of the proposal from New York State Senator Marisol Alcantara, New York State Assemblywoman Carmen De La Rosa, United States Congressman Adriano Espaillat, the Northern Manhattan Arts Alliance and the Washington Heights Business Improvement District; and

WHEREAS, at hearing, the Board heard testimony in support of the proposal from a representative of New York City Councilmember Ydanis Rodriguez, who noted the high demand for commercial office space in the area and that the proposed development would be a great economic generator; and

WHEREAS, the Board additionally received a letter in opposition to the proposal alleging that the site does not suffer from any unique physical conditions that pose a hardship to its development as-of-right and is, thus, not eligible for a variance; and

WHEREAS, the subject site is located on the west side of Amsterdam Avenue, bound by West 181st Street to the north and West 180th Street to the south, partially within a C8-3 zoning district and partially within an R7-2 zoning district, in Manhattan; and

---

1 In a letter to Community Board 12, Manhattan, dated December 22, 2016, the applicant memorialized its commitment to provide the following community enhancements: public access to the hotel lobby and outdoor courtyard whenever those spaces are also open to patrons of the hotel and tenants of the office space; permanent dedication of five percent of the development's office space to community based organizations; community use of conference and lecture space in the development up to six times a year at no cost for 20 years; dedicated gallery space in the hotel lobby or other common areas of the building used to profile the work of local artists and residents and a curator on staff at the development to coordinate public exhibits up to four times a year; an agreement to work with New York City agencies, Community Board 12, Manhattan, and other local stakeholder to recruit and hire local residents for construction and permanent jobs associated with the development; and provision of employee tuition reimbursement and internships in hotel and food and beverage operations for local students enrolled in related programs.

**2016-4249-BZ**  
**CEQR #17-BSA-016M**

WHEREAS, the site has approximately 220 feet of frontage along Amsterdam Avenue, 150 feet of frontage along West 181st Street, 150 feet of frontage along West 180th Street, 32,925 square feet of lot area and is currently occupied by a vacant one-story building; and

WHEREAS, the Board has exercised jurisdiction over portions of the subject site since July 2, 1935, when, under BSA Cal. No. 556-26-BZ, the Board granted a variance at 2420-2436 Amsterdam Avenue, 513-515 West 180th Street and 502 West 181st Street to permit the construction and maintenance of a gasoline service station in a business district; and

WHEREAS, the Board subsequently approved plans, granted several extensions of terms, extensions of time and amendments and modified a decision of a Borough Superintendent regarding Fire Prevention Code compliance for the site under BSA Cal. Nos. 556-26-BZ, 8-78-BZ, 314-82-A and 243-03-BZ; and

WHEREAS, most recently, on March 9, 2004, under BSA Cal. No. 243-03-BZ, the Board granted an application pursuant to ZR § 11-412 to reestablish the then-lapsed variance permitting the operation of a gasoline service station with accessory uses and, further, the conversion of a portion of the existing building to an accessory convenience store for a term of ten (10) years, expiring October 17, 2008; and

WHEREAS, the applicant now proposes to develop the site with a commercial building having a total of 213,822 square feet of floor area and a floor area ratio ("FAR") of 6.5 contained within a series of building volumes, the tallest of which rises to 22-stories and a height of 280'-3" on the portion of the site fronting West 181st Street; and

WHEREAS, the development is proposed to include 85,855 square feet of floor area for a 212-room hotel located in a four-story portion of the development fronting West 180th Street and an 11-story portion fronting Amsterdam Avenue; 114,898 square feet of floor area of office space located in the portions of the development fronting West 181st Street; and 13,067 square feet of floor area of retail space located on the ground floor of level of the development fronting both Amsterdam Avenue and West 181st Street ; and

WHEREAS, the proposed development proposes commercial use within the southwestern portion of the site located within an R7-2 zoning district, contrary to ZR § 22-10; proposes more than the maximum 2.0 FAR (54,876 square feet of floor area) of commercial use on the portion of the site located with a C8-3 zoning district, contrary to ZR § 33-122; penetrates the sky exposure plane contrary to ZR §§ 33-432 and 33-443; and locates a loading berth approximately six feet from an R7-2 zoning district boundary, contrary to ZR § 36-683; and

WHEREAS, accordingly, the applicant seeks the herein relief requested herein; and

WHEREAS, the applicant states that, pursuant to ZR § 72-21(a), the history of development of the lot with automotive-related commercial uses, subsurface petroleum contamination on the site and its location within both a residential and a commercial zoning district are unique physical conditions that create a practical difficulty and unnecessary hardship in developing the site in conformance with the underlying district regulations; and

WHEREAS, a southwestern portion of the lot (5,487 square feet of lot area, or approximately 17 percent) is located within an R7-2 zoning district, where many commercial uses are prohibited, and the remaining (27,438 square feet of lot area, or approximately 83 percent) is located within a C8-3 zoning district, where residential uses are not permitted as-of-right; and

WHEREAS, however, the applicant submits that the site has been occupied by a gasoline service station and accessory uses since the 1930s, prior to the designation of a portion of the site within an R7-2 zoning district in 1961, and that the subject development proposes to continue the history of commercial use; and

WHEREAS, the applicant also represents that the site is contaminated with petroleum as a result of its development history, specifically that the New York State Department of Environmental Conservation ("NYSDEC") assigned Spill Number 07-12231 to the site in February 2008 in connection with a leak from an underground storage tank and issued a conditional closure report on October 11, 2013, requiring that appropriate remedial and vapor mitigation measures be taken in the event the site was redeveloped; and

WHEREAS, the applicant submits that the subject site is the only property within a 1,000-foot radius with a reported NYSDEC Spill; and

WHEREAS, soil groundwater and soil vapor sampling was conducted throughout the site in July 2016 and found that petroleum-impacted groundwater is located in two bedrock wells near the northwestern portion of the site; petroleum- and metals-impacted soil exist at depths between ten feet and 30 feet below grade in the northwestern portion of the site; and petroleum staining, semi-volatile organic compounds and metal concentrations can be found in the central portion of the site; and

WHEREAS, as a result of this subsurface contamination, the applicant represents that engineering and construction measures above and beyond those typically associated with site redevelopment are required at the subject site and, further, such measures are unique to the subject site due to its prior development; and

WHEREAS, the applicant additionally submits that shallow bedrock on the site, present at a depth

ranging from six feet below grade at the eastern portion of the site to 30 feet below grade at the northern portion of the site with approximately 50 percent of the site underlain with bedrock at a depth of less than 12 feet below grade, is unique and creates a practical difficulty in developing the site in conformance with the applicable zoning regulations, particularly the accessory off-street parking space regulations; and

WHEREAS, the applicant submits that in order to accommodate the 1 space per 1,000 square feet of floor area required for a commercial development on the site pursuant to ZR § 36-21, a cellar would have to be excavated to a depth of 18 feet through bedrock and that a need for such costly excavation is unique to the subject site; and

WHEREAS, in support of that contention, the applicant submitted a uniqueness study of all the 208 tax lots within 1,000 feet of the subject site (the “Study Area”) concluding that eight other lots within the Study Area (or four percent) are vacant or undeveloped, but all of these lots are located within an R7-2 zoning district and thus, unlike the subject site, are not likely to require the excavation of bedrock in order to accommodate parking required in connection with their development; and

WHEREAS, the uniqueness study analyzed the as-of-right development potential of the eight lots and concluded that three of the lots have lot area of less than 10,000 square feet and could, therefore, have their parking requirement waived for residential use pursuant to ZR § 25-242 and two of these lots are also located on the campus of Yeshiva University and would have no parking requirement if developed with a community facility associated with the university pursuant to ZR § 25-31; one of the lots is occupied by the Trans Manhattan Expressway and is unlikely to be developed at all; and the four remaining lots are contiguous, currently utilized in tandem for open parking, and if developed together with a residential use, could accommodate all of the required parking in a partial cellar only 12 feet deep; and

WHEREAS, the applicant additionally analyzed the underdeveloped tax lots—defined as being developed with an FAR of 2.0 or less—located within the Study Area, of which there are 54 (or 26 percent of all lots in the Study Area): 35 lots have Certificates of Occupancy indicating that the developments on these lots contain cellars and, thus, would not require additional excavation to accommodate any parking that may be required as part of their redevelopment; 15 lots are located within an R7-2 or R7-2(C1-4) zoning district with less than 10,000 square feet of lot area and, thus, any parking required for their redevelopment with residential uses could be waived pursuant to ZR § 25-242; two lots having more than 10,000 square feet of lot area are owned by Yeshiva University and the New York City Department of Education, suggesting that both would be redeveloped

with a community facility use for which there is no parking requirement and, thus, excavation for a cellar to accommodate required parking would be unnecessary; one lot is located within a C8-3 zoning district, but only contains 2,500 square feet of lot area and is surrounded by overbuilt commercial buildings with full lot coverage on the adjacent lots and, thus, unlikely to be redeveloped for commercial or community facility use; and one site is located in a C4-4 zoning district, contains 7,500 square feet of lot area and is currently occupied with a commercial development with a basement and thus could, arguably, accommodate any parking required as part of its redevelopment without additional excavation; and

WHEREAS, based on the above, the Board finds that the history of development of the site, the subsurface contamination and the split lot condition constitute unique physical conditions that create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, with regards to the (b) finding, the applicant submits that there is no reasonable possibility that a conforming development at the subject site will bring a reasonable return and, in support of that assertion, submitted a financial analysis of (1) an as-of-right development of a six-story residential building containing 18,860 square feet of floor area on the portion of the site located within an R7-2 zoning district and a series of building volumes, similar in massing to the proposed building, containing a 52,940 square feet of floor area dedicated to a 114-room hotel and 142,150 square feet of floor area dedicated to community facility use on the portion of the site located within a C8-3 zoning district with one 18-foot deep cellar across the entire site (the “AOR Scenario”); (2) the AOR Scenario with a partial 18-foot deep cellar setback 22 feet from Amsterdam Avenue requiring less bedrock excavation (the “AOR Alternative Scenario 1”); (3) the AOR Scenario with a 12-foot deep cellar and an 18-foot sub-cellar setback 22 feet and 36 feet, respectively, from Amsterdam Avenue, comparable to the two cellars in the subject proposal (the “AOR Alternative Scenario 2”); and (4) the subject proposal, demonstrating that only the subject proposal would provide a reasonable return; and

WHEREAS, the applicant states that the residential, hotel and community facility uses in the AOR Scenario would generate income insufficient to cover the premium construction costs associated with site remediation and costly bedrock excavation; the reduced cellar in AOR Alternative Scenario 1 would require the relocation of parking and support spaces from floor space in the cellar to floor area above grade, thereby reducing revenue; and that, similar to the AOR Scenario, the revenue realizable from as-of-right uses

will be insufficient to cover the premium costs associated with the excavation of two partial cellars in AOR Alternative Scenario 2; and

WHEREAS, the applicant represents that in 2014, the site entered the New York State Brownfield Cleanup Program and an agreement was made with NYSDEC to, at a minimum, clean up contaminated soil and historic fill having concentrations above the site specific soil clean up objectives, remediate any groundwater identified as contaminated and construct a soil vapor mitigation system during development; and that costs associated with these remediation efforts increase the premium costs of the proposal by between \$2.89 million and \$3.14 million, depending on the level of remediation achieved; and

WHEREAS, the Board notes that encouraging the remediation of environmental contamination to the highest level feasible is good public policy; and

WHEREAS, the site is eligible for Brownfield Redevelopment Tax Credits due to its participation in the Brownfield Cleanup Program, but the applicant submits that such tax credits may not be received by the taxpayer until several years after the cessation of the remediation activities for which the credits are claimed and, thus, are not available to fund project development; the applicant additionally informs the Board that, under certain circumstances, some tax credit amounts may be subject to recapture; accordingly, the income anticipated to be received from these tax credits, estimated at \$1.75 million, has not been included as income in the financial analyses for any of the scenarios; and

WHEREAS, the financial analysis concludes that the AOR Scenario would generate a project loss of approximately \$5.5 million; AOR Alternative Scenario 1 would generate a project loss of approximately \$7.2 million; AOR Alternative Scenario 2 would generate a project loss of approximately \$16.7 million; and the subject proposal would yield a return of approximately \$479,000; and

WHEREAS, upon review of the applicant's submissions, the Board finds, in accordance with ZR § 72-21(b), that, due to the site's unique physical conditions, there is no reasonable possibility that a development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant states that subject proposal will not substantially impair the appropriate use or development of adjacent property and not be detrimental to the public welfare, in accordance with ZR § 72-21(c); specifically, that the site is located at the intersection of two wide streets in an immediate area characterized by three- and four-story commercial buildings and a five-story residential building to the west, five- and eight-story mixed-use residential and

commercial buildings to the north, a three-story commercial building and a five-story residential building to the south and Highbridge Park and George Washington Bridge roadways to the east; and that the edges of the neighborhood are framed by taller buildings, including four 18-story residential buildings to the south of the site, five 12-story residential buildings to the west of the site, an 18-story community facility building to the northeast of the site, a 17-story community facility building located to the north of the site and three residential towers of between 20- and 22-stories located to the northwest of the site; and

WHEREAS, the applicant states that the massing of the building is informed by and explicitly synthesizes these various building masses in its design, which consists of a series of stacked volumes—a four-story base fronting Amsterdam Avenue, West 180th Street and West 181st Street, a seven-story mid-rise section atop this base fronting Amsterdam Avenue and West 181st Street, an one-story transitional volume and a tower that fronts on West 181st Street—that roughly match the brick residential buildings that characterize the neighborhood; further, the development's height along West 180th Street is consistent with the five-story residential buildings located on that block while the taller portion is located at the intersection of Amsterdam Avenue and West 181st Street, consistent with a tenet of urban planning that encourages higher scale development at the intersection of wide streets; and

WHEREAS, at hearing, the Board suggested that a reduction in the height of the proposed tower and a corresponding increase in its width and floorplates may be more consistent with neighborhood character; and

WHEREAS, the applicant submitted plans for such a modification, illustrating that such a proposal would not eliminate the waivers requested with regards to the sky exposure plane regulations and, further, would require an additional rear yard waiver; and

WHEREAS, finally, the applicant suggests that the redevelopment of the subject site with the proposed, which includes ground floor retail and street trees, would constitute a substantial improvement over the existing conditions, which consist of a one-story building and a paved parking lot; and

WHEREAS, in light of the foregoing, the Board finds that the subject proposal will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant represents and the Board finds that the hardship claimed as grounds for the variance was not created by the owner or a predecessor in title in accordance with ZR § 72-21(d); and

WHEREAS, the applicant represents that the subject proposal is the minimum variance necessary to

afford relief and, in support of this contention, submitted the analysis of two lesser variance scenarios: (1) the subject proposal with 20,384 square feet of floor area dedicated to community facility use on the upper four floors of the office tower portion of the development (“LV1”) and (2) the subject proposal with 18,180 square feet of floor area on the lower floors of the office tower (“LV2”), both of which would reduce the degree of the waiver requested for commercial floor area, contrary to ZR § 33-122, and, in the case of LV1 alone, would comply with the sky exposure plane regulations and eliminate the need for a waiver of ZR §§ 33-432 and 33-442; and

WHEREAS, the financial analysis of LV1 and LV2 concluded that each scenario resulted in a project loss of approximately \$5.7 million and \$6.27 million, respectively, and are, thus, infeasible; and

WHEREAS, accordingly, the Board finds that the subject proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the project is classified as an Unlisted Action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Environmental Assessment Statement Short Form CEQR No. 17-BSA-016M, dated June 2, 2017; and

WHEREAS, the EAS documents that the project as proposed would not have significant impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by a report dated May 11, 2016, the New York City Landmarks Preservation Commission states that the subject site is of no architectural or archaeological significance; and

WHEREAS, by correspondence dated December 19, 2016, the New York City Department of Parks and Recreation states that it has no comments with regards to the shadow assessment and conclusions provided in connection with the subject proposal; and

WHEREAS, by correspondence dated January 26, 2017, the New York City Department of Environmental Protection (“DEP”) requests that the following conditions, relating to the subject site’s participation in the Brownfield Cleanup Program, be applied to the Board’s decision: Board approval is conditioned on the subject site’s participation in the Brownfield Cleanup Program; a letter of acceptance into the Brownfield Cleanup Program and an executed

Brownfield Cleanup Agreement are required for the issuance of any building permits associated with the proposed development; on certificate of occupancy shall be issued until a certificate of completion has been issued by NYSDEC; and failure to complete the remedy for cleanup approved by NYSDEC and receive a certificate of completion requires amendment to the grant of the variance and the submission of test results and a Remedial Action plan for review and approval by DEP; and

WHEREAS, by letter dated May 16, 2017, the New York City Department of Transportation (“DOT”) suggested minor signal timing modifications to traffic lights located at the intersection of West 181st Street and Amsterdam Avenue and the intersection of West 180th Street and Amsterdam Avenue in order to accommodate the vehicle trips generated by the proposed development; DOT additionally requested that the Board and/or the applicant inform DOT six months prior to the completion and occupancy of the proposed development; and

WHEREAS, with regards to noise, by letter dated June 1, 2017, DEP states that, as a result of the noise impact analysis, the following minimum composite OITC window/wall noise attenuation rating are required: building frontages on West 181st Street require rating of 33 dBA from the street level to an elevation of 80 feet and 30 dBA for elevation of 80 to 160 feet above ground level; the building frontage on Amsterdam Avenue require a rating of 31 dBA from the street level to an elevation of 100 feet and 28 dBA for an elevation of 100 to 200 feet above ground level; and the noise attenuation for commercial and office uses shall be 5 dBA lower; and

WHEREAS, DEP also required that an alternate means of ventilation be incorporated into the design and construction of the proposed development; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore, it is Resolved,* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site located partially within a C8-3 zoning district and partially within an R7-2 zoning district, the development of a commercial building that does not comply with zoning regulations relating to use, maximum commercial floor area, sky exposure plane and the

**2016-4249-BZ**

**CEQR #17-BSA-016M**

location of the entry and exit of the accessory loading berth set forth in ZR §§ 22-10, 33-122, 33-432, 33-442 and 36-683; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 5, 2017"-Thirty-Two (32) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of 213,822 square feet of commercial floor area (6.5 FAR), including 7,736 square feet of commercial floor area in the portion of the site located within an R7-2 zoning district; no setback from West 181st Street; and an entrance and exit from the accessory loading berth less than 30 feet from the residential district boundary;

THAT this approval is conditioned on the subject site's participation in the Brownfield Cleanup Program;

THAT no building permits associated with the subject development shall issue without submission of a letter of acceptance into the Brownfield Cleanup Program and an executed Brownfield Cleanup Agreement to DOB;

THAT no certificate of occupancy shall be issued until a certificate of completion has been issued by NYSDEC;

THAT failure to complete the remedy for cleanup approved by NYSDEC and receive a certificate of completion requires amendment to the grant of the variance and the submission of test results and a Remedial Action plan for review and approval by DEP;

THAT the applicant notify DOT six months prior to the completion and occupancy of the proposed development;

THAT building frontages on West 181st Street require rating of 33 dBA from the street level to an elevation of 80 feet and 30 dBA for elevation of 80 to 160 feet above ground level;

THAT the building frontage on Amsterdam Avenue require a rating of 31 dBA from the street level to an elevation of 100 feet and 28 dBA for an elevation of 100 to 200 feet above ground level;

THAT the noise attenuation for commercial and office uses shall be 5 dBA lower;

THAT an alternate means of ventilation be incorporated into the design and construction of the proposed development;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a certificate of occupancy shall be obtained within four (4) years;

**A true copy of resolution adopted by the Board of Standards and Appeals, June 20, 2017.**

**Printed in Bulletin Nos. 23-24, Vol. 102.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

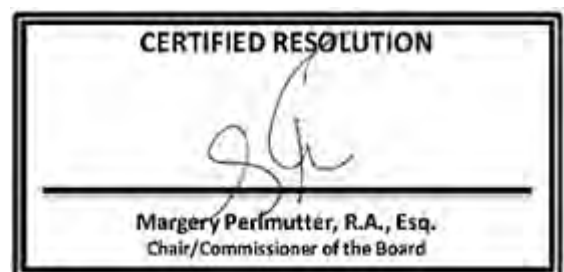
**Borough Com'r.**

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 20, 2017.



**2016-4165-BZ**

**CEQR #16-BSA-104R**

APPLICANT – Glen V. Cutrona, for Shore to Shore Foster, LLC, owner.

SUBJECT – Application April 6, 2016 – Variance (§72-21) to permit the construction of an eating and drinking establishment (UG 6) (*Tim Horton's*) with an accessory drive thru contrary to ZR §22-10. R3X (SRD) zoning district.

PREMISES AFFECTED – 5801 Amboy Road, Block 6896, Lot 53, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

**THE RESOLUTION** –

WHEREAS, the decision of the Deputy Borough Commissioner, dated April 5, 2016, acting on Department of Buildings (“DOB”) Application No. 520268987 reads in pertinent part:

ZR 22-10: Proposed use (eating and drinking establishment – Use Group 6) located in an R3X zone within the Special South Richmond Development District (SRD) is contrary to Section 22-10 of the NYC Zoning Resolution...; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located in an R3X zoning district, a Use Group (“UG”) 6 eating and drinking establishment with an accessory drive through contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on November 1, 2016, after due notice by publication in *The City Record*, with continued hearings on January 31, 2017, April 25, 2017, June 20, 2017, and August , and then to decision on August 22, 2017; and

WHEREAS, Commissioner Ottley-Brown, former Vice-Chair Hinkson and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 3, Staten Island, recommends approval on condition that the Amboy Road egress remain an “Exit Only” at all times; that the retail store and drive through hours be limited to 5:00 a.m. to midnight and that baking on the premises not be restricted and permitted when the establishment is closed; and

WHEREAS, Board staff was also in receipt of a phone call from New York City Councilmember Joseph C. Borelli, details of which were entered into the record for Board review and consideration, in support of this application, noting that he was satisfied that the applicant modified the proposal over the course of hearing; and

WHEREAS, the Board is also in receipt of seven letters in opposition to the subject application, citing concerns that the proposed use will increase traffic and

noise at an already congested intersection, that cars in the queue at the site will adversely affect traffic on the surrounding streets, that the use is not adequately buffered from surrounding residential uses with landscaping and that there is an express bus stop located at the site; and

WHEREAS, the subject site is located on the northwest corner of Amboy Road and Foster Road, within an R3X zoning district and the Special South Richmond Development District, on Staten Island; and

WHEREAS, the site has approximately 150 feet of frontage along Amboy Road, 110 feet of frontage along Foster Road, 16,322 square feet of lot area and is currently vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 17, 1941, when, under BSA Cal. No. 268-41-BZ, the Board granted a variance to permit the reconstruction and extension of an existing gasoline service station; and

WHEREAS, on June 23, 1942, under BSA Cal. No. 268-41-BZ, the Board amended the resolution to extend the time to obtain permits and complete work by one (1) year, expiring June 23, 1943, and adding to the previous resolution conditions relating to the future widening of Amboy Road and materials utilized at the site; and

WHEREAS, on July 20, 1943, and September 12, 1944, under BSA Cal. No. 268-41-BZ, the Board amended the resolution to further extend the time to obtain permits and complete work by one (1) year periods, the latest extension of time expiring September 12, 1945; and

WHEREAS, on October 28, 1969, under BSA Cal. No. 279-69-BZ, the Board permitted an extension of the gasoline service station use, pursuant to ZR § 11-412, to include minor auto repairs and the parking of cars awaiting service for a term of ten (10) years, expiring October 28, 1979; and

WHEREAS, on December 1, 1970, November 9, 1971, and December 12, 1972, under BSA Cal. No. 279-69-BZ, the Board granted one (1) year extensions of time to obtain permits and complete construction, the last of which expired on October 28, 1973; and

WHEREAS, on October 20, 1992, under BSA Cal. No. 911-89-BZ, the Board reestablished the expired variance permitting an automotive service station with accessory uses and legalized the enlargement of the service station building for a term of five (5) years, expiring October 20, 1997; and

WHEREAS, on March 13, 2001, under BSA Cal. No. 221-00-BZ, the Board granted a variance, pursuant to ZR § 72-21, permitting the continuation of the existing automotive service station and addition of accessory off-street parking for a term of ten (10) years, expiring March 13, 2011; and

WHEREAS, the applicant represents that the automotive service station was demolished in 2015; and

WHEREAS, the applicant originally proposed to construct a UG 6 eating and drinking establishment with a drive through window operating 24 hours a day, 7 days per week, with 2,448 square feet of floor area, 16

accessory parking spaces, queuing for 10 cars, a menu board/annunciator system facing an adjoining residence, ingress from curb cuts located on Foster Road and Amboy Road, sole egress from the curb cut on Amboy Road by right turn only, and 4 foot wide planting strips along both the northern and western lots lines; and

WHEREAS, in the course of hearing, the applicant revised the proposal and now seeks to construct a UG 6 eating and drinking establishment with a drive through window operating 5:00 a.m. to midnight, 7 days a week with 2,200 square feet of floor area, 13 accessory parking spaces, queuing for 7 cars, a menu board/annunciator at the rear of the proposed building, sole ingress from Foster Road, egress from both Foster Road and Amboy Road by right turns only, a 10 foot wide planting strip along the northern lot line, adjacent to the residential neighbor, and a 4 foot wide planting strip along the western lot line; and

WHEREAS, pursuant to ZR § 22-10, UG 6 uses are not permitted within R3X zoning districts and, thus, the applicant seeks the subject relief; and

WHEREAS, the applicant states that, pursuant to ZR § 72-21(a), the presence of contamination at the site due to its historical use is a unique physical conditions that create a practical difficulty and unnecessary hardship in developing the site in conformance with the underlying district regulations; and

WHEREAS, specifically, the applicant submits that the historic use of the site as an automotive service station for more than 80 years resulted in contaminated soil and groundwater as well as soil vapor at the site requiring extensive remediation including removal of underground storage tanks, removal of heavily contaminated free product, extraction of soil vapor under buildings and sheet piling and capping of the site with asphalt to contain remaining contamination and prevent its spreading to surrounding properties; and

WHEREAS, the site is a voluntary participant in the Brownfield Cleanup Program (“BCP”) administered by the New York State Department of Environmental Conservation (“DEC”) and, by letter dated July 18, 2016, DEC approved the submitted Remedial Action Work Plan and issued a Decision Document, pursuant to which the environmental remediation is required to be implemented; and

WHEREAS, in light of the foregoing, the Board finds that the contamination present at the site as a result of its historic and legal use as an automotive service station is a unique physical condition that creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, with regards to the (b) finding, the applicant submits that there is no reasonable possibility that a conforming development at the subject site will bring a reasonable return and, in support of that contention, submitted a financial analysis of (1) two

detached two-family residential buildings with approximately 3,450 gross square feet and 4,465 gross square feet and on-site parking; (2) two detached two-family residential buildings with approximately 3,450 gross square feet and 6,394 gross square feet and on-site parking; (3) a detached two-story mixed-use community facility and residential building with two residential units; and (4) the subject proposal; and

WHEREAS, the applicant additionally analyzed a lesser variance—a detached two-story mixed-use community facility and residential building partially located within the street widening lines that would, thus, require a waiver of GCL § 35; and

WHEREAS, the financial analyses submitted with the application conclude that only the subject proposal would generate a reasonable return, approximately 5.6 percent; and

WHEREAS, at hearing, the Board acknowledged that the shape of the site, presence of widening lines for both Foster Road and Amboy Road—at a width of approximately 6 feet parallel to Foster Road and varying widths parallel to Amboy Road of up to 19 feet—and the location of a New York State-regulated wetland on the lot to the west and directly adjacent to the subject site, though not unique to the subject property for the purposes of satisfying the finding of ZR § 72-21(a), limit the portion of the site that may be developed as-of-right; and

WHEREAS, at hearing, the applicant stated that, despite the location of portions of the subject site within street widening lines, no waiver of General City Law (“GCL”) § 35 was required for the subject proposal; thus, such relief was neither considered nor granted by the Board; and

WHEREAS, upon review of the applicant’s submissions, the Board finds, in accordance with ZR § 72-21(b), that, due to the site’s unique physical conditions, there is no reasonable possibility that a development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant submits that the subject proposal will not substantially impair the appropriate use or development of adjacent properties and not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, specifically, the applicant represents that the proposed UG 6 use is a less aggressive use than the automotive service station that previously occupied the site and had most recently fallen into disrepair; that the UG 6 use is consistent with the commercial uses that predominate the stretch of Amboy Road located near the site; and that the proposal includes environmental remediation of the site as well as landscaping, including a ten-foot wide landscaped buffer between the site and its residential neighbor to the west, which will be beneficial to the surrounding area; and

WHEREAS, additionally, the applicant submitted an operational plan in response to inquiries as to how the site would operate with large drive through orders or in cases

**2016-4165-BZ**

**CEQR #16-BSA-104R**

when the seven reservoir spaces proposed at the site are insufficient for the number of cars on-site; and

WHEREAS, the Board adopts this operational plan as a condition of its grant and finds that the subject proposal will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant represents and the Board finds that the hardship claimed as grounds for the variance was not created by the owner or a predecessor in title in accordance with ZR § 72-21(d); and

WHEREAS, the applicant submits that the subject proposal is the minimum variance necessary to afford relief because it is the only scenario that provides a reasonable return; and

WHEREAS, the applicant further submits that the drive through component of the proposal is necessary for the proposal to recognize a reasonable return because rents for UG 6 eating and drinking establishments without a drive through are substantially lower (by approximately \$15/square foot of floor area) than rents for such establishments with a drive through and the premium rents made possible by the addition of a drive through are required to overcome the expense of environmental remediation at the site; and

WHEREAS, in response to the Board's consideration of a term on a grant of the requested variance, the applicant represents that the subject proposal has a payback period of approximately 18 years, a long period for a project of this type, and, thus, a term of less than 20 years would reduce the amount of rent the proposed use could demand and, as a consequence, make the subject proposal financially unfeasible; and

WHEREAS, accordingly, the Board finds that the subject proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 16BSA104R, dated January 26, 2017; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood

Character; or Construction; and

WHEREAS, by letter dated August 22, 2017, the New York City Department of Transportation ("DOT") states that the proposed use is expected to generate 106, 73 and 59 new trips during the weekday AM, midday and PM peak hours, respectively, and that the occurrence of deliveries between midnight and 5:00 a.m., when the establishment is closed, will ensure that the deliveries do not conflict with on-site circulation or parking; and

WHEREAS, DOT further states that the applicant has agreed to monitor the queue of the drive through and, in the case that the drive through queue exceeds seven cars, the applicant will coordinate with DOT to develop measures to ensure that the queue can be accommodated on-site and will not spill onto surrounding streets; and

WHEREAS, DOT concludes that the subject proposal will not have significant adverse traffic impacts and requests that, prior to opening, the applicant coordinate with DOT to ensure that appropriate signage and markings are installed on-site and on-street according to DOT standards and requirements, the design and installation of which will be at the applicant's expense; and

WHEREAS, by letters dated July 13, 2015, July 21, 2015, July 8, 2016, and July 18, 2016, DEC approved the BCP site Interim Remedial Measure ("IRM") Work Plan, Remedial Investigation Work Plan, Remedial Investigation Report ("RIR"), and Remedial Action Work Plan ("RAWP"), respectively; and

WHEREAS, in its letter dated July 8, 2016, DEC states that, on May 5, 2016, DEC, in conjunction with the New York State Department of Health determined that the site does not represent a significant threat to public health and/or the environment; and

WHEREAS, by letter dated June 7, 2016, DEC states that NYSDEC Permit No. 2-6405-00046/00005 previously issued for the site and set to expire on December 31, 2021, was modified to reflect the relocation of a planting area proposed at the site and that strict compliance with permit conditions is required including, among other things, the submittal of a "Notice of Intent to Commence Work" at least five days prior to the start of the permitted activity and submittal of a "Notice of Completion of Work" within ten days of the completion of work; and

WHEREAS, by email dated March 10, 2017, the Waterfront Open Space Division of the New York City Department of City Planning ("DCP"), which reviewed the proposal for consistency with the policies and intent of the New York City Waterfront Revitalization Program ("WRP") on behalf of the New York City Coastal Commission under WRP #16-080, states that, based on the information submitted, it finds that the proposed action will not substantially hinder the achievement of any WRP policy; and

**2016-4165-BZ**  
**CEQR #16-BSA-104R**

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore, it is Resolved,* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site located within an R3X zoning district, Use Group 6 eating and drinking establishment with a drive through, contrary to ZR § 22-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received August 14, 2017"-Ten (10) sheets; and *on further condition:*

THAT site shall be remediated pursuant to the Brownfield Cleanup Program administered by the New York State Department of Environmental Conservation ("DEC"), specifically in accordance with the June 2016 Decision Document issued by DEC, prior to the issuance of permits for the building;

THAT failure to satisfactorily complete the Brownfield Cleanup Program shall require amendment to this variance;

THAT shrubs shall be planted along with perimeter of the site to provide a dense buffer, as illustrated on the Board-approved plans, and such shrubs shall be maintained and replaced as necessary;

THAT a snow fence demarcation zone shall be installed beneath gravel on the site;

THAT the annunciator sound level of the menu board shall be permanently limited to prevent sound levels experienced at the lot lines the subject lot shares with residential uses does not exceed 40 dBA;

THAT prior to opening, the applicant and/or operator of the use shall coordinate with the New York City Department of Transportation ("DOT") to ensure that appropriate signage and markings are installed on-site and on-street according to DOT standards and requirements, the design and installation of which shall be at the applicant and/or operator's expense;

THAT the site shall operate pursuant to the following operational plan, submitted into the record by the applicant and herein adopted by the Board:

**A true copy of resolution adopted by the Board of Standards and Appeals, August 22, 2017.**

**Printed in Bulletin No. 35, Vol. 102.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

Management will monitor the drive-through queuing to ensure that the vehicles do not exceed seven cars. During times of peak operation of the drive-thru, internal staff with prioritize fulfilling drive-thru order to minimize service times and therefore, drive-thru queueing. In the event that more than seven cars are in the drive-through lane a representative from the establishment will direct the cars to park and place their order from the store until such time as the drive-thru queue is alleviated. For the infrequent larger, time consuming, drive-thru orders, the patron will be directed to pull forward and park and the order will be brought to them in order to allow the remaining drive-thru queue to be processed without delay.";

THAT in the case that the drive through queue exceeds seven cars, the applicant and/or operator of the use shall coordinate with DOT to develop measures to ensure that the queue can be accommodated on-site and will not spill onto surrounding streets;

THAT the Amboy Road curb cut shall remain exit only at all times;

THAT the retail store and drive through hours shall be limited to 5:00 a.m. to midnight excluding baking time, which may occur outside those hours;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a certificate of occupancy shall be obtained within four (4) years;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 22, 2017.



**258-14-BZ**

**CEQR #15-BSA-088K**

APPLICANT – Sheldon Lobel, P.C., for Henry Atlantic Partners LLC, owner.

SUBJECT – Application October 16, 2014 – Variance (§72-21) to permit the construction of a 4-story mixed-use building of an existing with commercial use on the first floor in a (R6) zoning district located in Cobble Hill Historic District.

PREMISES AFFECTED – 112 Atlantic Avenue, southeast corner of the intersection formed by Atlantic Avenue and Henry Street, Block 285, Lot 6, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez .....4  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 9, 2014, acting on DOB Application No. 320626505, reads, in pertinent part:

ZR 22-12: The proposed commercial use is not permitted in the residence district; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R6 zoning district, within a Limited Height District, within the Cobble Hill Historic District, commercial use on the first floor of a proposed four-story, mixed-use building, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on April 21, 2015, after due notice by publication in the *City Record*, with continued hearings on June 23, 2015 and September 1, 2015, and then to decision on September 18, 2015; and

WHEREAS, Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the southeast corner of the intersection at Atlantic Avenue and Henry Street, within an R6 zoning district, within a Limited Height District, within the Cobble Hill Historic District; and

WHEREAS, the site has 97 feet of frontage along Atlantic Avenue and 80 feet of frontage along Henry Street, and approximately 7,785 sq. ft. in lot area; and

WHEREAS, the site is occupied by a one-story Use Group (“UG”) 16 gasoline service station and repair shop (a use which is permitted pursuant to a pre-1961 variance), which contains approximately 1,590 sq. ft. of floor area, a pump island, an auto repair shop with three service bays, and four petroleum storage tanks; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 22, 1960 when, under BSA Cal. No. 741-59-BZ, the Board granted a variance to permit the construction and maintenance of a gasoline service station, lubricatorium, minor auto repairs, car wash,

office, sales and storage and parking of motor vehicles for a term of 15 years; and

WHEREAS, the grant under BSA Cal. No. 741-59-BZ was amended, and the term was extended at various times; and

WHEREAS, On February 8, 2000, under BSA Cal. No. 195-99-BZ, the Board granted an application under ZR § 11-411 to re-establish the expired variance granted under BSA Cal. No. 741-59-BZ, and on January 12, 2010, extended the term of the variance granted under BSA Cal. No. 195-99-BZ for a period of ten years, to expire on November 10, 2019; and

WHEREAS, the applicant proposes to demolish the existing service station and repair shop and construct a four-story, mixed-use building, with approximately 6,000 sq. ft. of ground floor retail floor area with 2,100 sq. ft. of accessory floor space in the cellar, and approximately 16,500 sq. ft. of residential floor area; and

WHEREAS, because the proposed retail space is not permitted in the subject R6 zoning district, the applicant seeks a use variance; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) environmental contamination resulting from the longstanding operation of a gasoline service station and automotive repair shop which results in excessive premium construction costs; (2) the absence of the commercial overlay which characterizes frontage along the major avenue on which the site is located, which puts the property at a relative disadvantage to other properties in the surrounding area; and (3) the site’s dramatically underbuilt status, which puts it at a disadvantage relative to the other overbuilt and non-complying buildings in its immediate vicinity; and

WHEREAS, as to the environmental contamination at the site, the applicant states that its consultants undertook soil borings which revealed extensive gasoline related constituents in the vicinity of the trench drain at the western edge of the site, and notes that its consultants were unable to take borings east of this point because of additional subsurface storage tanks likely to have further contaminated the site; and

WHEREAS, the applicant states that in addition to elevated levels of VOCs and solvents, all of which must be removed from the site but which are likely attributed to the character of the fill present on the site, lead was identified in the soil at the site at significantly elevated levels sufficient to constitute a hazardous waste, which is not characteristic of typical fill; and

WHEREAS, the applicant states that in addition to the lead-based hazardous waste at the site, excessive levels of Tetrachloroethene, or “Perc,” were identified as the site; and

WHEREAS, the applicant notes that Atlantic Avenue is, in the area surrounding the site, benefitted by a commercial overlay, but that the site is located on one of two blocks on the south side of the street which is not

**258-14-BZ**  
**CEQR #15-BSA-088K**

within such commercial overlay and, therefore, the site is uniquely burdened, relative to the surrounding area, in that the ground floor retail which characterizes the neighborhood is not permitted as-of-right; and

WHEREAS, the applicant argues that the prohibition on a retail use at the site amidst blocks of frontage characterized by such use on the ground floor, contributes to the site's economic hardship, as the site is located within a neighborhood that is commercial in nature, but unable to benefit from commercial rent; and

WHEREAS, lastly, the applicant argues that the site is dramatically underbuilt, with an FAR of .2, and is the second most underbuilt property within 600 feet of the site (the first being an accessory parking garage adjacent to a larger property which is in common ownership with the underbuilt garage); and

WHEREAS, the applicant submits that the fact that the site is dramatically underbuilt, relatively disadvantaged in that it was excluded from the commercial overlay which characterizes Atlantic Avenue, and severely contaminated, in the aggregate, constitute a hardship; and

WHEREAS, the Board agrees that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, the applicant provided a financial analysis for (1) a four-story plus cellar residential building with the maximum allowable residential zoning floor area and 10 cellar-level parking spaces with an automated parking system (the "As-of-Right Residential Plan"); (2) a five-story plus cellar mixed-use building with a two-story community facility (ambulatory diagnostic care) base and three upper residential floors (the "As-of-Right Community Facility Plan") and (3) the proposal; and

WHEREAS, the applicant represents that only the proposal would provide a reasonable return; and

WHEREAS, specifically, the applicant argues that with respect to the As-of-Right Residential Plan, the parking income along with potential residential condominium sales is not sufficient to produce an economically viable project because ground floor residential use is an anomaly along the Atlantic Avenue frontage and it presents a discounted valuation when located on the first floor of the busy commercial thoroughfare; and

WHEREAS, the applicant further argues that such discounted residential ground floor exacerbates the economic harm caused by the site's environmental conditions, making a reasonable return unrealistic; and

WHEREAS, the applicant also argues that the As-of-Right Community Facility Plan is inappropriate in this location; and

WHEREAS, specifically, the applicant represents that: (1) the former locally-oriented medical facility known as Long Island College Hospital recently closed, dramatically reducing demand for nearby spin-off medical space; (2) given the Long Island College Hospital closure there is a lower absorption rate for newly constructed medical facilities in the neighborhood; (3) rents for community facility are much lower than retail rents and therefore do not sustain the proposed new construction; (4) designing two floors of community facility space within the proposed building, which is subject to a 50-foot height limit, reduces ceiling heights throughout the residential portion of the building, thereby significantly reducing the economic return from the sale of the residential units therein; (5) the two-floor community facility use creates the need for dual and separate cores, creating space and cost inefficiencies; and (6) if the community facility tenant at the site used it as an urgent care facility, such use would have a significant detrimental impact on the value of the residential units on the upper floors of the proposed building; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the site is located on the southeast corner lot of Atlantic Avenue and Henry Street, an area with a historic character defined by brownstone buildings and its mixed-use character; the lack of curb cuts along Atlantic Avenue makes it a pedestrian-friendly neighborhood and the proliferation of ground-floor retail and eating and drinking establishments greatly enhance the neighborhood's appeal; and

WHEREAS, the applicant also notes that the existing gasoline service station and repair shop is out of character with the neighborhood and that its location on a corner lot makes it a danger to pedestrians in that approximately 75% of the site's sidewalk frontage – all corner – is interrupted by three curb cuts;

WHEREAS, the applicant also argues that replacing the legal non-conforming gasoline service station with a residential and commercial mixed-use building would bring the site into greater compliance with the applicable zoning regulations; and

WHEREAS, on December 16, 2014, the New York City Landmarks Preservation Commission (the "LPC") issued Certificate of Appropriateness No. 16-6016 (expires December 16, 2020) for the proposed building; and

WHEREAS, the Certificate of Appropriateness states that:

**258-14-BZ**  
**CEQR #15-BSA-088K**

[w]ith regard to this proposal, the Commission found that the existing gas station is not a building for which the Cobble Hill Historic District was designated and its demolition will not diminish the special architectural or historic character of the historic district; that the facades of the proposed new building will maintain the street wall and are in keeping with the scale of buildings found in this district and on this block; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the proposal represents the minimum variance needed to allow for a reasonable and productive use of the site, and notes that no changes to the bulk of the building are proposed; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 15-BSA-088K, dated February 16, 2015; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials; and

**A true copy of resolution adopted by the Board of Standards and Appeals, September 18, 2015.**

**Printed in Bulletin No. 39, Vol. 100.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

WHEREAS, DEP reviewed and accepted the June 2015 Remedial Action Plan and Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project;

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type I Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an R6 zoning district, within a Limited Height District, within the Cobble Hill Historic District, commercial use on the first floor of a proposed four-story, mixed-use building with accessory floor space in the cellar, contrary to ZR § 22-00, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 30, 2015"- twelve (12) sheets; and *on further condition*:

THAT substantial construction will be completed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT all construction shall be in conformance with the LPC Certificate of Appropriateness No. 16-0016, dated December 16, 2014;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided DOB with DEP's approval of the Remedial Closure Report;

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 18, 2015.



**125-14-BZ**

**CEQR #14-BSA-169M**

APPLICANT – Goldman Harris LLC, for 350 East Houston LLC c/o BLDG Management Inc., owner.

SUBJECT – Application June 5, 2014 – Variance (§72-21) to facilitate the construction of a ten-story mixed-use forty -six (46) residential dwelling units and retail on the ground floor and cellar. R8A zoning district.

PREMISES AFFECTED –11 Avenue C, between East 2nd Street & East Houston Street, Block 384, Lot 33, Borough of Manhattan.

**COMMUNITY BOARD #3M**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 7, 2014, acting on DOB Application No. 121185092, reads in pertinent part:

1. Proposed Use Group 6 is not permitted as-of-right in an R8A district, per ZR 22-10;
2. Proposed lot coverage (corner lot and through lot portion) exceeds the maximum permitted, and is therefore contrary to ZR 23-145; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R8A zoning district, the construction of a ten-story mixed residential and commercial building that does not comply with the zoning requirements for use and lot coverage, contrary to ZR §§ 22-10 and 23-145; and

WHEREAS, a public hearing was held on this application on November 25, 2014, after due notice by publication in the *City Record*, with a continued hearing on January 6, 2015, and then to decision on January 30, 2015; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Manhattan, and Councilmember Rosie Mendez recommend disapproval of this application and identify the following primary concerns with the proposal: (1) it lacks affordable housing units; (2) it includes a Use Group 6 use on the ground floor, which is undesirable and incompatible with the neighborhood; (3) it is not the minimum variance necessary; (4) it will result in the removal of a gasoline station, which is an important community resource; and (5) it does not include a community facility, which would be an important community resource; and

WHEREAS, certain members of the surrounding community, including the East Village Community

Coalition, submitted testimony in opposition to the application (the “Opposition”), citing many of Community Board 3 and Councilmember Mendez’s concerns, as well as the following additional concerns: (1) the toxic condition of the site; and (2) the height of the proposed building and its incompatibility with the low-rise character of the Lower East Side and East Village; and

WHEREAS, the subject site is a trapezoidal corner lot located entirely within an R8A zoning district within an Inclusionary Housing Designated Area; its shape is formed by the intersection of East Second Street, Avenue C, and East Houston Street; and

WHEREAS, the site has 122.22 feet of frontage along East Second Street, 40.36 feet of frontage along Avenue C, 123.28 feet of frontage along East Houston Street, and 5,874.3 sq. ft. of lot area; and

WHEREAS, the applicant represents that the site has been operated as a gasoline service station (Use Group 16) since at least 1960, when, under BSA Cal. No. 381-60-BZ, the Board authorized such operation for a term of 20 years; the 1960 grant was amended and extended at various times and reinstated in 2000 under BSA Cal. No. 130-99-BZ and in 2008 under BSA Cal. No. 55-08-BZ; the 2008 grant was for a term of ten years, to expire on July 1, 2018; and

WHEREAS, the applicant proposes to construct a ten-story mixed residential (Use Group 2) and commercial (Use Group 6) building with 42,293 sq. ft. of floor area (7.20 FAR) (37,743 sq. ft. of residential floor area (6.43 FAR) and 4,550 sq. ft. of commercial floor area (0.77 FAR)), 100 percent lot coverage, 46 dwelling units, and a building height of 105 feet; the applicant notes that the proposed 7.20 FAR reflects an increase that will be achieved through the purchase of bonus development rights through a qualified generating site pursuant to the Inclusionary Housing Program set forth in ZR § 23-90; and

WHEREAS, in order to construct the building as proposed, the applicant seeks the following waivers: (1) use (commercial uses are not permitted in the subject R8A district, per ZR § 22-10); and (2) lot coverage (a maximum lot coverage of 78 percent is permitted, per ZR § 23-145); and

WHEREAS, the applicant states that, in accordance with ZR § 72-21(a), the following are unique physical conditions which create practical difficulties and unnecessary hardships in developing the site in compliance with applicable regulations: (1) the irregular shape of the site; and (2) the site’s subsurface contamination; and

WHEREAS, the applicant states that the site has an irregular trapezoidal shape owing to its location at the intersection of three streets; as a result, the depth of the site (measured north to south) varies from approximately 56 feet at its western boundary to approximately 40 feet at its eastern boundary; thus, the site at all points is

**125-14-BZ**

**CEQR #14-BSA-169M**

unusually shallow; in addition, the site is wide (measured east to west) relative to depth, with a lot width of approximately 122 feet; and

WHEREAS, the applicant contends that the site shape is unique and submitted a study of nearby sites, which supports this contention; and

WHEREAS, the applicant also asserts that the site's irregular shape creates a practical difficulty complying with the lot coverage requirements of the subject R8A district, in that if the site is limited to 78-percent lot coverage, the building is limited to a depth of 40 to 43 feet, which results in awkward, inefficient floorplates, which, in turn, creates undersized apartments with acute angles and unusable spaces; and

WHEREAS, further, the applicant states that, above 85 feet, the required setbacks of ten feet at the East Houston Street façade and 15 feet at both the Avenue C and East Second Street façades, result in a building depth of 25 feet and apartments that are unmarketably long and narrow; and

WHEREAS, thus, the applicant asserts that a building with complying lot coverage yields apartments that are well below the market standard; and

WHEREAS, the applicant also contends that the site's irregular shape in combination with the prevailing soil conditions in the surrounding area—a tendency towards soil liquefaction up to 50 feet below the ground, which impairs the soil's bearing capacity—results in premium construction costs that are unique to the site; and

WHEREAS, in particular, the applicant's geotechnical consultant represents that due to the site's shallowness, substantial width, and substandard soil conditions, construction of a foundation will require grade and tie beams between the pile caps for structural stability; in addition, end bearing piles are required to extend through the liquefiable zone down to bedrock, which the consultant estimates to be at a depth of 90 to 100 feet; the applicant notes that such piles are more costly than typical piles; and

WHEREAS, the applicant states that in addition to its potential for liquefaction, the soil is highly-contaminated due to the site's more than 50 years of use as a gasoline service station, including a petroleum spill (New York State Department of Environmental Conservation ("DEC") Spill No. 90-01894), which is subject to a DEC Consent Order and a Remedial Action Plan; and

WHEREAS, the applicant attributes \$865,371 in premium construction costs due to the contaminated soil and estimates the total premium construction costs due to the unique characteristics of the site (irregular shape and contaminated soil) to be \$2,922,917; and

WHEREAS, the applicant asserts that there is a direct nexus between the unique shape of the site and the

requested lot coverage waiver, in that allowing full lot coverage alleviates the burden inherent in the site's trapezoidal shape; likewise, the proposed commercial use at the first story (with accessory storage in the cellar) will provide a higher return on investment than would conforming uses in the same space, and as such, will help defray the premium construction costs of developing a contaminated site; and

WHEREAS, based upon the above, the Board finds that the site's irregular shape and soil contamination create unnecessary hardships and practical difficulties in developing the site in compliance and conformance with the applicable zoning regulations; and

WHEREAS, the applicant contends that, per ZR § 72-21(b), there is no reasonable possibility of development of the site in compliance and conformance with the Zoning Resolution; and

WHEREAS, the applicant represents, as noted above, that the site's unique conditions create \$2,922,917 in premium construction costs; and

WHEREAS, the applicant considered the following four scenarios: (1) an as-of-right residential development with ten stories, 37,296 sq. ft. of floor area (6.35 FAR), and 53 dwelling units; (2) to further illustrate the hardships inherent in the site, an as-of-right development on a typical, rectangular site with 12 stories, 41,760 sq. ft. of floor area (7.20 FAR), and 51 dwelling units; (3) a lesser-variance scenario including only a waiver for lot coverage with ten stories, 41,826 sq. ft. of floor area (7.12 FAR), and 51 dwelling units; and (4) the proposal; and

WHEREAS, at hearing, the Board directed the applicant to: (1) align the land sales and development rights sales in time; (2) provide additional retail rent comparables; and (3) justify the capitalization rate used; and

WHEREAS, in response, the applicant provided an amended economic analysis, which supports its assertion that only the proposal would realize a reasonable rate of return on investment; and

WHEREAS, based upon its review of the applicant's economic analysis, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in compliance and conformance with applicable zoning requirements would provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by medium- and high-density residential buildings, with active ground floor commercial uses along Avenue C, heavy

**125-14-BZ**

**CEQR #14-BSA-169M**

automobile traffic along East Houston Street; in addition, there are nearby parks (East River Park, El Jardin Del Paraiso Park, and Hamilton Fish Park) and playgrounds (Nathan Straus Playground and Baruch Playground) within walking distance of the site; and

WHEREAS, as to adjacent uses, the applicant states, as noted above, that the site is trapezoidal and bounded on three sides by streets, and on its west side by a multiple dwelling; and

WHEREAS, turning to bulk, the applicant states that, in addition to complying with the height and setback requirements of the subject R8A district, the proposed ten-story building is contextual with the built character and profile of buildings in the immediate vicinity; in support of this statement, the applicant provided a height study, which reflects that of the 19 buildings within 1,000 feet of the site with eight or more stories, 12 buildings have ten or more stories; and

WHEREAS, further, the applicant notes that the proposed lot coverage waiver allows the building to maintain an uninterrupted street wall, rather than the jagged setbacks that would be required for a complying building; and

WHEREAS, at hearing, the Board directed the applicant to revise its application to reflect the location of nearby parks and to indicate the effect, if any, of shadows upon such parks; and

WHEREAS, in response, the applicant provided an amended Environmental Assessment Statement (“EAS”), reflecting the requested shadow analysis; and

WHEREAS, as to the concerns articulated by Councilmember Mendez, the Opposition, and the Community Board, the Board observes that although the proposed building itself will not include affordable apartments, the building is being constructed via the purchase of bonus development rights through a qualified generating site pursuant to the Inclusionary Housing Program – as such, the site is contributing to the creation of affordable housing in New York City; and

WHEREAS, as to the proposed commercial use at the ground floor, the applicant contends and the Board agrees that commercial use is well-established at the site, in that a gasoline station (Use Group 16) has been operating on it for nearly six consecutive decades; thus, the Board finds that the proposed Use Group 6 commercial use reflects a significant reduction in the intensity of the non-residential use, particularly with respect to automobile traffic; and

WHEREAS, as to the lack of community facility use at the site, the Board observes that nothing in the Zoning Resolution mandates the inclusion of a community facility use at this site; further, the Board accepts the applicant’s economic analysis, which reflects that a commercial use is necessary to achieve a reasonable return; and

WHEREAS, as to the proposed height of the building, the Board notes that it complies with the subject R8A district regulations; and

WHEREAS, the Board reviewed the remaining concerns of the Opposition and found them without merit; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is due to the peculiarities of the site; and

WHEREAS, the Board also finds that this proposal is the minimum necessary to afford the owner relief, in accordance with ZR § 72-21(e); and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final EAS CEQR No. 14-BSA-169M, dated January 8, 2015; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the site is subject to “E” designations for noise (E-216) under CEQR number 07DCP078M and hazardous materials (E-359) under CEQR number 14BSA169M; and

WHEREAS, the “E” designation requires an environmental review by the New York City Office of Environmental Remediation (“OER”), which must be satisfied before DOB will issue building permits for the property; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in

**125-14-BZ****CEQR #14-BSA-169M**

accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site within an R8A zoning district, the construction of a ten-story mixed residential and commercial building that does not comply with the zoning requirements for use and lot coverage, contrary to ZR §§ 22-10 and 23-145; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 30, 2015"—thirteen (13) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum of ten stories, a maximum floor area of 42,293 sq. ft. of floor area (7.20 FAR) (37,743 sq. ft. of residential floor area (6.43 FAR) and 4,550 sq. ft. of commercial floor area (0.77 FAR)), 100 percent lot coverage, 46 dwelling units, and a maximum building height of 105 feet, as reflected on the BSA-approved plans;

THAT an E designation (E-359) is placed on the subject site to ensure proper hazardous materials remediation;

THAT prior to the issuance by DOB of permits that involve any soil disturbance, the applicant shall receive approvals from OER for the hazardous materials remediation plan and construction-related health and safety plan;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by January 30, 2019;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 30, 2015.

**A true copy of resolution adopted by the Board of Standards and Appeals, January 30, 2015.**

**Printed in Bulletin Nos. 5-6, Vol. 100.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**



**319-13-BZ**

**CEQR #14-BSA-081M**

APPLICANT – Herrick, Feinstein LLP, for Harlem Park Acquisition, LLC, owner.

SUBJECT – Application December 17, 2013 – Variance (§72-21) to waive the minimum parking requirements (§25-23) to permit the construction of a new, 682 unit, 32-story mixed used building. 123 parking spaces are proposed. C4-7 zoning district.

PREMISES AFFECTED – 1800 Park Avenue, Park Avenue, East 124th street, East 125 Street, Block 1749, Lot 33 (air rights 24), Borough of Manhattan.

**COMMUNITY BOARD #11M**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings, dated December 12, 2013, acting on Department of Buildings Application No. 121237303, reads in pertinent part:

    ZR 25-23 – Required number of parking spaces not provided for number of dwelling units (UG 2) proposed; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C4-7 zoning district, within the Special 125th Street District, the construction of a 32-story mixed residential and commercial building that does not comply with the zoning requirements for parking, contrary to ZR § 25-23; and

WHEREAS, a public hearing was held on this application on April 29, 2014, after due notice by publication in the *City Record*, with a continued hearing on May 20, 2014, and then to decision on June 10, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Manhattan, recommends approval of this application; and

WHEREAS, Congressman Charles B. Rangel and Assemblyman Robert J. Rodriguez provided testimony in support of the application; and

WHEREAS, the subject site occupies the eastern portion of the block bounded by East 124th Street, Madison Avenue, East 125th Street, and Park Avenue; and

WHEREAS, the site comprises Tax Lots 24 and 33, has 315 feet of frontage along East 125th Street, 215 feet of frontage along East 124th Street, approximately 202 feet of frontage along Park Avenue, and 53,486 sq. ft. of

lot area; and

WHEREAS, Lot 24 is occupied by a five-story building with 46,098 sq. ft. of floor area (0.86 FAR) utilized by the New York College of Podiatric Medicine; Lot 33 is vacant; the applicant represents that the owner of Lot 24 has transferred its 162,798 sq. ft. of unused floor area to Lot 33; and

WHEREAS, the applicant proposes to construct on Lot 33 a 32-story mixed residential and commercial building with 595,734 sq. ft. of floor area (11.14 FAR), 55,722 sq. ft. of commercial floor area, 682 dwelling units, and 123 accessory parking spaces; and

WHEREAS, the applicant states that pursuant to ZR § 25-23, one parking space is required for 40 percent of the 682 new dwelling units; thus, 273 parking spaces are required; and

WHEREAS, the applicant seeks a variance to provide only 123 accessory parking spaces; and

WHEREAS, the applicant states that, in accordance with ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the presence of the Metro North railway viaduct and station; (2) the proximity of the Second Avenue subway line; and (3) subsurface conditions, including a deep bedrock elevation, the presence of groundwater, which will require substantial dewatering prior to construction of the foundation, and significant contamination, and; and

WHEREAS, the applicant states that the nearby presence of the Metro North railway viaduct and station uniquely impacts the site and will result in premium construction costs; and

WHEREAS, in particular, the applicant states that the site is bounded by the elevated Metro North railway viaduct and station, which extends from East 124th Street to East 126th Street, and that, in the area adjacent to the site, the viaduct and station are supported by a steel platform on steel bents spaced every 65 feet, which are supported by five columns, which are in turn supported by eight-feet-long by eight-feet-wide pier foundations, five of which are located within the sidewalk along East 125th Street approximately ten feet from the site's eastern property line; and

WHEREAS, the applicant notes that, according to the engineering consultant's report (the "Langan Report"), the pier foundation for the station extends approximately 14.5 feet to 18.5 feet below sidewalk grade and is supported on uncontrolled fill material; accordingly, the applicant asserts that development of the site requires special excavation procedures and a specialized foundation system in order to protect the Metro North structures, at significant cost; and

WHEREAS, the applicant contends that its proximity to the Metro North station and its support columns is unique, in that only four blocks along Park Avenue from East 123rd Street to East 126th Street, have

**319-13-BZ**  
**CEQR #14-BSA-081M**

a similar condition; and

WHEREAS, the applicant states that the proximity of the Second Avenue subway line will include the construction of an underground station under East 125th Street extending from Third Avenue to mid-block between Park Avenue and Madison Avenue and that such proposed station creates unique hardships in the development of the site; and

WHEREAS, specifically, the applicant states that future station and subway tunnels will be directly adjacent to the site's northern property line; as such, it is expected that the New York City Transit Authority will require certain easements, including a permanent easement for the space below the cellar of any new building at the site (for the installation of rock anchors to support the subway station) and a temporary easement at the cellar and ground level during the construction period of the station; and

WHEREAS, in addition, the applicant states that, based on the Langan Report, the Transit Authority will likely require transfer of all foundation loads beyond the theoretical influence line; further, per the Langan Report, the applicant must employ a specialized foundation installation procedure involving the drilling of a permanent steel casing to the top of rock, coring a hole in the rock, advancing casing to the influence line, and then drilling a rock socket below the influence line, in order to prevent any shedding of gravity loads to the rock adjacent to the tunnels; accordingly, the applicant states that protecting the Second Avenue subway line will significantly increase its construction costs; and

WHEREAS, in addition, the applicant notes that pile driving is not permitted within 50 feet of the structural boundary of either the Metro North station or the Second Avenue subway tunnel; as such, an alternative, more expensive foundation system must be employed; and

WHEREAS, further, the applicant asserts that even if adjacency to a subway line is not a unique site condition in the surrounding neighborhood, adjacency to both a subway line *and* an elevated train station is unique; and

WHEREAS, as to the subsurface conditions, the applicant states that, based on the Langan Report, the bedrock at the site ranges from 59 feet to 110 feet below grade, which is 80 percent deeper than the bedrock at surrounding sites; as such, in addition to being more technically complex due to the presence of subway tunnels and above-ground structures, the foundation must be deeper than typical foundations; and

WHEREAS, in addition, the applicant states that the Langan Report identified groundwater at depths ranging from 10 feet to 15 feet below grade; thus, dewatering prior to the construction of the foundation will be required; and

WHEREAS, as to contamination, the applicant states that the New York State Department of Environmental Conservation has classified the site as a Brownfields Cleanup Site due to the presence of elevated concentrations of metals, polynuclear aromatic hydrocarbons, polycyclic chlorinated biphenyls, and lead at concentrations that make it hazardous waste; additionally, a level of petroleum has been identified atop the water table; as such, the applicant represents that approximately 35,000 tons of soil will need to be excavated from the site and properly disposed of, and a vapor barrier must be constructed beneath the foundation to prevent the migration of contaminants; and

WHEREAS, the applicant represents that the total cost premium resulting from the site's unique physical conditions are \$16,627,727 and that such cost involves the construction of only one below-grade level; and

WHEREAS, accordingly, the applicant states that the construction of one or more sub-cellars to accommodate parking is not feasible due to the site's unique physical conditions; and

WHEREAS, likewise, the applicant asserts that it is not feasible to locate parking within above-grade portions of the building because doing so would require elimination of valuable retail space, which is necessary to offset the premium construction costs noted above; and

WHEREAS, to support this assertion, the applicant analyzed a complying building with 32 stories, 595,734 sq. ft. of floor area (11.14 FAR), one retail story (21,912 sq. ft. of commercial floor area), 682 dwelling units and 304 parking spaces ("Scenario A"); thus, the Scenario A building is similar to the proposal all respects except the number of parking spaces and the amount of retail space; and

WHEREAS, thus, the applicant contends that there is a direct nexus between the physical hardships of the site and the requested parking waiver; and

WHEREAS, based upon the above, the Board finds that the site's adjacency to the Metro North railway viaduct and station and the Second Avenue subway line and the site's many subsurface conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, in support of this assertion, the applicant submitted a feasibility study that analyzed Scenario A and the proposal; and

WHEREAS, in addition, in response to the Board's comments, the applicant examined two other alternative scenarios with larger dwelling units: (1) a complying development with 32 stories, 595,734 sq. ft. of floor area (11.14 FAR), two retail stories, 307 dwelling units, and 123 parking spaces; and (2) a complying development

**319-13-BZ**

**CEQR #14-BSA-081M**

with only 30 stories, 360,790 sq. ft. of floor area (6.75 FAR), two retail stories, 307 dwelling units, and 123 parking spaces; and

WHEREAS, the applicant concluded that only the proposal would realize a reasonable rate of return; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the site's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by its diversity; the area has low-, medium-, and high-density residential and community facility buildings, with ground floor retail uses along both East 125th Street and Park Avenue; and

WHEREAS, the applicant states that the intersection of Park Avenue and East 125th Street is a vibrant commercial intersection, which is well-served by public transit and heavily trafficked by pedestrians and automobiles alike; and

WHEREAS, as to adjacent uses, the applicant states, as noted above, that the site shares occupies the same zoning lot with as the New York College of Podiatric Medicine, which will be located directly west of the proposed building; the only other building adjacent to the site is a four-story multiple dwelling with ground floor retail; directly north of the site across East 125th Street is the historic Corn Exchange building, which is slated for redevelopment; directly east of the site is, as mentioned above, the elevated structure for the Metro North train; directly south of the site is a parking lot; and

WHEREAS, turning to bulk, the applicant represents that, with the exception of parking, the proposal complies in all respects with the bulk regulations applicable in the subject C4-7 zoning district; and

WHEREAS, as to parking, the applicant states that the site is well-served by several subway and bus lines, and the Metro North station and that number of parking spaces required for the development under ZR § 25-23 are unnecessary; and

WHEREAS, at hearing, the Board directed the applicant to provide additional information regarding car ownership rates in the proposed building, off-street parking utilization, and parking supply; and

WHEREAS, in response, the applicant provided a study, which concluded: (1) based on census data and the

location of the site, the building's 682 dwelling units will contribute a parking demand of 118 vehicles (which the applicant notes is less than the 123 parking spaces proposed); (2) 40 percent of the households expected to occupy the proposed building are likely to utilize street parking rather than paying for a parking space within the building; and (3) on- and off-street parking supply within ¼ mile of the site is more than adequate to accommodate the parking demand generated by the proposed building; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is due to the proximity of the Second Avenue subway, the Metro North station, and the subsurface conditions on the site; and

WHEREAS, the Board also finds that this proposal is the minimum necessary to afford the owner relief, in accordance with ZR § 72-21(e); and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14-BSA-081M, dated March 26, 2014; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, (E) designation No. E-201 regarding noise and air quality was placed on the subject property in conjunction with the rezoning of the property in April 30, 1008, under ULURP No. 080099ZMM; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration,

**319-13-BZ**

**CEQR #14-BSA-081M**

with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site within C4-7 zoning district, within the Special 125th Street District, the construction of a 32-story mixed residential and commercial building that does not comply with the zoning requirements for parking, contrary to ZR § 25-23; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 6, 2014"— thirty (30) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum floor area of 595,734 sq. ft. (11.14 FAR), a maximum of 682 dwelling units, and a minimum of 123 accessory parking spaces, as reflected on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT substantial construction shall be completed in accordance with ZR § 72-23;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 10, 2014.

**A true copy of resolution adopted by the Board of Standards and Appeals, June 10, 2014.**

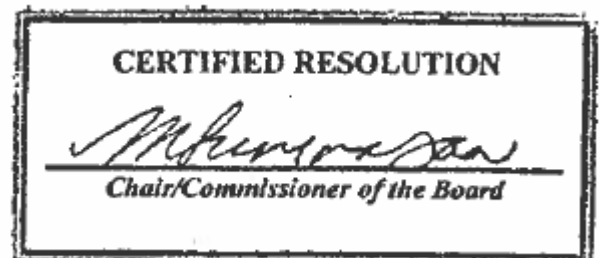
**Printed in Bulletin Nos. 22-24, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**



**254-13-BZ**

**CEQR #14-BSA-032K**

APPLICANT – Law Office of Marvin B. Mitzner, for Moshe Packman, owner.

SUBJECT – Application August 30, 2013 – Variance (§72-21) to permit a residential development, contrary to floor area (§23-141(a)), dwelling units (§23-22), lot coverage (§23-141(a)), front yard (§23-45(a)), side yard (§23-462(a)), and building height (§23-631(b)) regulations. R3-2 zoning district.

PREMISES AFFECTED – 2881 Nostrand Avenue, east side of Nostrand Avenue between Avenue P and Marine Parkway, Block 7691, Lot 91, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT –**

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.....4  
Negative:.....0

**THE RESOLUTION –**

WHEREAS, the decision of the Department of Buildings (“DOB”), dated August 14, 2013 acting on DOB Application No. 320590099, reads in pertinent part:

Proposed floor area exceed[s] maximum permitted for bldg.

Proposed 26 dwelling units exceed[s] maximum permitted for zoning lot

Proposed bldg. exceed[s] maximum aggregate street width of 125’

Proposed bldg. is within required front yard and is prohibited

Proposed bldg. is built within one of two required side yards and is prohibited

Proposed bldg. exceed[s] maximum height permitted; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R3-2 zoning district, the construction of a four-story residential building that does not comply with the zoning regulations for floor area, maximum number of dwelling units, front yards, lot coverage and height, contrary to ZR §§ 23-141, 23-22, 23-45, and 23-631; and

WHEREAS, a public hearing was held on this application on February 11, 2014, after due notice by publication in the *City Record*, with continued hearings on June 10, 2014, July 15, 2014, September 23, 2014, November 18, 2014 and December 16, 2014, and then to decision on March 31, 2015; and

WHEREAS, Vice Chair Hinkson and Commissioners Montanez and Ottley-Brown performed an inspection of the site and premises, as well as the surrounding area and neighborhood; and

WHEREAS, Community Board 18, Brooklyn, recommends disapproval of the application; and

WHEREAS, the subject site is an irregularly

shaped through lot with approximately 160 feet of frontage along Nostrand Avenue, and approximately four feet of frontage along Marine Parkway, between Avenue P, to the south, and the convergence of Nostrand Avenue and Marine Parkway, to the north, within an R3-2 zoning district; and

WHEREAS, the site has approximately 12,796 sq. ft. of lot area and is currently improved with a one-story automobile service station; and

WHEREAS, initially, the applicant proposed to construct a new 26-unit residential building containing a total of 31,201.5 sq. ft. of floor area (2.4 FAR), comprised of four stories and a penthouse; and

WHEREAS, in response to the Board’s concerns, the proposal was modified such that the applicant withdrew its application for a waiver related to street width pursuant to ZR §23-463 and side yards pursuant to ZR §23-631(b) and reduced the lot coverage of the building by 40 percent in order to accommodate the required parking on the surface of the lot; and

WHEREAS, thus, the applicant now proposes to construct a four-story building with a height of forty feet (the maximum height permitted is 21’-0”) consisting of 21,827 sq. ft. of floor area (1.71 FAR) (the maximum permitted FAR is 0.5), lot coverage of 56 percent (a maximum lot coverage of 35 percent is permitted), no front yard (a front yard of 15’-0” is required) containing 19 dwelling units (the maximum number permitted is seven dwelling units); and

WHEREAS, accordingly, the applicant seeks a variance to permit the proposed FAR for the building, the proposed number of dwelling units within the building, the proposed lot coverage of the building, the proposed height of the building, and the proposed non-complying front yard; and

WHEREAS, the applicant states that, in accordance with ZR § 72-21(a), the unique physical condition that creates practical difficulties and unnecessary hardships in developing the site in compliance with applicable regulations relate to the significant environmental contamination at the site attributable to previous automotive related uses thereof, and the cost of remediating such contamination which result in premium construction costs; and

WHEREAS, the applicant asserts that the site, which was used as a car wash facility for approximately 65 years, was subject to regular discharge of hazardous and toxic materials, and provided a Remedial Corrective Action Report prepared by Tri-State Drilling Technologies Inc., together with the applicant’s Environmental Assessment Statement which establish that volatile and semi-volatile organic compounds and heavy metals were present in the soil of the site, as were petroleum products and debris associated with the aforesaid automotive use; and

WHEREAS, the applicant states that the site must be substantially excavated and soil must be removed from

**254-13-BZ**

**CEQR #14-BSA-032K**

the site in both the as-of-right and proposed development scenarios; and

WHEREAS, specifically, the applicant states that an as-of-right multiple dwelling would require excavation and remediation of the soil under the existing building in an area of 5,741.5 sq. ft., to a depth of at least nine feet, as well as remediation under such a building to a depth of at least 12 feet, at an estimated cost of \$1,244,610; and

WHEREAS, the applicant further states that an as-of-right one and two-family home development would require excavation and remediation of the soil under the existing building in an area of 5,741.5 sq. ft., to a depth of at least nine feet, as well as remediation under such buildings to a depth of at least two feet, at an estimated cost of \$669,102; and

WHEREAS, thus, the applicant contends that there are physical conditions that create practical difficulties in constructing a building in compliance with applicable bulk regulations; and

WHEREAS, the applicant also contends that such physical conditions are unique in that they are owing to the historic use of the site for a car wash and automobile repair facility, rather than widespread neighborhood contamination; and

WHEREAS, the applicant notes that the proposed development plan requires excavation and remediation of the soil under the proposed building at a cost of \$1,441,105; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical condition creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable bulk regulations; and

WHEREAS, to satisfy ZR § 72-21(b), the applicant assessed the financial feasibility of both an as-of-right development multiple dwelling and also three as-of-right two-story buildings with one one-story building, both with the support of a financial analysis; and

WHEREAS, the applicant states that an as-of-right multiple dwelling would be comprised of a seven unit building consisting of 6,275 sq. ft. of floor area and containing seven dwelling units with an average size of 711 square feet, and that such as-of-right development would result in an annualized loss of \$2,005,000, and is therefore not feasible; and

WHEREAS, the applicant states that an as-of-right development consisting of three two-story buildings and one one-story building would consist of 6,265 sq. ft. of floor area and would contain, in total, seven dwelling units with an average size of 864 square feet, and that such as-of-right development would result in an annualized loss of \$226,000, and is therefore not feasible; and

WHEREAS, the applicant states that the proposed

development consisting of a single four-story building with 19 units would yield an annualized return of 1.4 percent on the total investment; and

WHEREAS, the Board inquired as to the methodology employed by the applicant in calculating the costs of the remediation necessary at the site; and

WHEREAS, the applicant clarified its methodology in evaluating the remediation costs associated with multiple scenarios, including the proposed development and the as-of-right development scenarios, which methodology includes an examination of costs including transportation and disposal costs, contractor costs, the costs of installing a vapor barrier, and the costs incurred in hiring environmental consultants, all of which are determined by the size of the project and the total volume of soil to be remediated; and

WHEREAS, based upon its review of the record, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed use will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the surrounding area consists of a mix of single-story commercial buildings, two- and three-story residential buildings and a number of four-story apartment buildings; and

WHEREAS, the applicant provided the Board with a streetscape identifying the FAR and heights of buildings in the surrounding area, which shows that buildings in the surrounding area range in height from 11 feet to 61 feet, and noted that a number of sites exceed the allowable FAR for the zoning district; and

WHEREAS, at the hearing, the Board directed the applicant to lower the initially proposed height of the building and provide parking on the surface of the site; and

WHEREAS, in response to the Board's directive, the applicant reduced the height of the proposed building, the number of proposed units within the building and provided the required parking on the surface of the lot; and

WHEREAS, thus, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, likewise, the Board finds, per ZR § 72-21(d), that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of

**254-13-BZ**

**CEQR #14-BSA-032K**

the unique physical characteristics of the site, specifically the site's history of permitted industrial use as an automobile repair shop and car wash; and

WHEREAS, finally, the applicant asserts and the Board agrees that the current proposal is the minimum necessary to offset the hardship associated with the uniqueness of the site and to afford the owner relief, in accordance with ZR § 72-21(e); as noted above, the scope and number of waivers initially sought by the applicant were reduced in response to the Board's concerns; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Sections 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14-BSA-032K, dated August 1, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required

findings under ZR § 72-21 and grants a variance, to permit the construction of a four-story residential building that does not comply with the zoning regulations for floor area, maximum number of dwelling units, front yards, lot coverage, and height, contrary to ZR §§ 23-141, 23-22, 23-45, and 23-631, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "March 23, 2015" – six (6) sheets; and *on further condition*:

THAT the bulk parameters of the building will be as follows: four stories with a height of 40'-0" consisting of 21,827 sq. ft. of floor area (1.71 FAR) and containing 19 apartments, with no front yard, side yards of 20'-0" and 15'-0", a 30'-0" rear yard, lot coverage of 56 percent and 19 parking spaces;

THAT interior partitions shall be as reviewed and approved by DOB;

THAT the applicant shall comply in all respects with the February 2015 Remedial Action Report (RAP) and Construction Health and Safety Plan (CHASP) prepared in conjunction with the proposed development and shall provide a Professional Engineer-certified Remedial Closure Report to DEP upon the completion of the project, which report shall indicate that all remedial requirements as set forth in the RAP and CHASP have been properly implemented and shall include "CEQR # 14BSA032K" as a reference to DEP; and

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT substantial construction will be completed in accordance with ZR § 72-23;

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 31, 2015.

**A true copy of resolution adopted by the Board of Standards and Appeals, March 31, 2015.**

**Printed in Bulletin No. 15, Vol. 100.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**



**192-13-BZ**

**CEQR #13-BSA-163M**

APPLICANT – Jesse Masyr, Esq., Fox Rothschild, LLP, for AP-ISC Leroy, LLC, Authorized Representative, owner.

SUBJECT – Application July 2, 2013 – Variance (§72-21) to permit the construction of a residential building with accessory parking, contrary to use regulations (§42-10). M1-5 zoning district.

PREMISES AFFECTED – 354/361 West Street aka 156/162 Leroy Street and 75 Clarkson Street, West street between Clarkson and Leroy Streets, Block 601, Lot 1, 4, 5, 8, 10, Borough of Manhattan.

**COMMUNITY BOARD #2M**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, decision of the Manhattan Borough Commissioner, dated June 10, 2013, acting on Department of Buildings Application No. 121330611, reads:

Proposed Residential UG 2 is not permitted in M1-5 District; contrary to ZR 42-10; and

WHEREAS, to permit, within an M1-5 zoning district, the construction of a 12-story mixed residential/commercial building with ground floor retail use and 12 accessory parking spaces, which is contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on November 26, 2013, after due notice by publication in the *City Record*, with continued hearings on January 14, 2014 and February 4, 2014, and then to decision on March 11, 2014; and

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

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the Greenwich Village Society for Historic Preservation and the Greenwich Village Community Task Force provided testimony in opposition to the application, primarily citing concerns about the establishment of a unique hardship; and

WHEREAS, the site is located on the east side of West Street between Clarkson Street and Leroy Street, within an M1-5 zoning district; and

WHEREAS, the site has 200 feet of frontage on West Street, 176 feet of frontage on Leroy Street, 106 feet of frontage on Clarkson Street, and a lot area of approximately 28,362 sq. ft.; and

WHEREAS, the site is occupied with five buildings ranging in height from one to three stories, with commercial and industrial use including a 24-hour cabaret lounge, an automobile repair service, a vacant diner, a construction materials sales and hardware center, a vacant automobile laundry and oil change facility with outdoor parking spaces, and a shipping and receiving office; and

WHEREAS, the applicant states that all buildings on the zoning lot will be demolished in anticipation of construction; and

WHEREAS, the applicant proposes to construct a 12-story building with 141,815 sq. ft. of floor area (5.0 FAR), 77 residential units (UG 2) (4.97 FAR), ground floor retail (UG 6) (0.03 FAR), and 12 accessory parking spaces in the cellar; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in complying with applicable zoning district regulations: (1) the history of use and development of the site; (2) poor subsurface conditions including deep bedrock, soft soils, and shallow ground water; and (3) the location within a flood zone; and

WHEREAS, as to the history of development of the site and the existing conditions, the applicant states that the site is at the end of a series of mixed and residential uses and is the last low density underdeveloped site located along West Street within the M1-5 zoning district not developed with residential or mixed use buildings; and

WHEREAS, the applicant notes that the existing buildings, which are occupied by a mix of uses, do not conform to the current Building Code and can be classified as obsolete; and

WHEREAS, the applicant states that an 1879 map reflects that a coal yard and iron works were formerly located on the zoning lot and, later, a motor freight station, smelting and iron works, an automotive repair shop, machine shops, and building materials establishments; and

WHEREAS, as to the soil conditions, the applicant notes that the historic industrial use of the site has resulted in the contamination of the soils that will require extensive clean-up and increased construction costs; and

WHEREAS, the applicant states that during Super Storm Sandy, the site experienced significant flooding and waste oil and petroleum contaminated oil were required to be removed pursuant to the jurisdiction of the New York State Department of Environmental Conservation; and

WHEREAS, the applicant states that the site also contains multiple recognized environmental conditions (“RECs”) as described in the Phase I Environmental Assessment; and

WHEREAS, accordingly, the applicant represents that there are significant premium costs associated with

WHEREAS, as to the subsurface conditions, the applicant notes that the site is at the western edge of the original Manhattan shoreline, which (1) comprises urban fill that is considered unsuitable for load-bearing materials; and (2) has bedrock and subsoil conditions that require a deeper and more extensive pile foundation system; and

WHEREAS, the applicant states that the western portion of the block is located outboard of the historic shoreline (not part of the original outline of Manhattan) on reclaimed land, with the original Manhattan shoreline located at the northeast corner of the site; and

WHEREAS, the applicant asserts that if the site were two blocks north, it would be entirely inboard of the historic shoreline and not subject to the same hardship; and

WHEREAS, the applicant represents that the poor subsurface conditions at the site, including loose soil, shallow groundwater level, and the location within the 100-year flood plain lead to premium construction costs; and

WHEREAS, the applicant states that the urban fill is found about ten to 18 feet below the existing grade and comprises brown and gray coarse to fine sand with varying amounts of silt and gravel; and

WHEREAS, the applicant states that below the fill is an approximately 6'-0" layer of high plasticity clay at depths between 10.5 and 16.5 feet; and

WHEREAS, the applicant states that bedrock was encountered between 90 and 94 feet below grade and groundwater was measured at a depth of 11.5 to 18 feet below grade and about three to five feet below mean sea level; and

WHEREAS, in support of these assertions, the applicant submitted an engineering report that details the subsurface conditions and distinguishes it from nearby sites; and

WHEREAS, the applicant states that the soil and subsurface conditions require a deep pile foundation system and, due to the proximity of nearby buildings, deep piles must be drilled into caissons; and

WHEREAS, the applicant states that the high water table requires the utilization of dewatering and waterproofing measures for a development to resist the effects of hydrostatic pressure; and

WHEREAS, the applicant states that the location primarily within Flood Zone A requires higher base planes, limited uses below grade, and extra waterproofing; and

WHEREAS, the applicant also notes that regulatory changes in response to the flooding caused by Super Storm Sandy create new development obligations and requirements that impact development within the newly-adopted FEMA flood zones; and

WHEREAS, the applicant notes that the new flood zone regulations require that a building be raised to the base flood elevation of the new FEMA flood zone maps; and

WHEREAS, for the subject site, the elevation requires the ground floor to be raised five to six feet above the existing grade; and

WHEREAS, as to the uniqueness of the noted conditions, the applicant submitted a technical memorandum prepared by the project engineer, which analyzed seven sites along West Street from Leroy Street (the northern street bordering the subject site) to West 12<sup>th</sup> Street; and

WHEREAS, the applicant notes that the sites are primarily not in the same zoning district as the subject site, but they are located on West Street and have been recently developed with residential uses; and

WHEREAS, the applicant states that of the seven sites, bedrock was encountered at depths of 80 to 100 feet, comparable to the site, with the exception of 400 West 12<sup>th</sup> Street ("Superior Ink") where the bedrock extended on part of the site to approximately 140 feet below grade; and

WHEREAS, however, the applicant notes that three sites are located inboard of the historic shoreline (150 and 165 Charles Street and 176 Perry Street); two sites are located outboard of the historic shoreline (423 West Street and 400 West 12<sup>th</sup> Street); one is located at the edge (173 Perry Street) and one is split (Morton Square); and

WHEREAS, the applicant states that the three sites that are inboard of the historic shoreline have soil conditions composed of urban fill, underlain by glacial deposits underlain by bedrock; and

WHEREAS, the applicant states that the sites inboard of the historic shoreline lack the presence of organic river deposits and have been (or are currently being) developed with shallow mat foundations; and

WHEREAS, the applicant states that the four sites located outboard, on the edge, or split by the historic shoreline have soil composition similar to the other sites but with the presence of organic river deposits; and

WHEREAS, the applicant represents that the outboard sites have all been developed with deep pile foundations due to the unsuitability of the soil composition primarily due to the presence of organic river deposits; and

WHEREAS, the applicant notes that Morton Square, divided by the historic shoreline and the only site analyzed located within the M1-5 zoning district is also encumbered by the PATH tunnel within Morton Street, which puts additional constraints on the kind of foundation system required with the addition of required drilled piles to protect the integrity of the cast iron encased tunnel; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when

**192-13-BZ**

**CEQR #13-BSA-163M**

considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will realize a reasonable return; and

WHEREAS, the applicant provided an initial feasibility study analyzing two scenarios: (1) an as-of-right hotel building; and (2) the proposed mixed use residential/commercial building with 5.0 FAR; and

WHEREAS, the applicant's financial analysis reflected that only the initial proposal would realize a reasonable rate of return; and

WHEREAS, the Board directed the applicant to also analyze (1) a lesser variance alternative with 4.0 FAR and (2) an as-of-right office alternative; and

WHEREAS, the applicant's analysis concluded that neither supplemental alternative would realize an acceptable rate of return; and

WHEREAS, the revised financial analysis reflects that only the current proposal provides the applicant with a reasonable rate of return; and

WHEREAS, based upon its review of the applicant's financial analysis, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that use in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(b); and

WHEREAS, the applicant notes that the site is bordered by three streets: West Street, a major arterial highway; Leroy Street, a west-moving narrow local street; and Clarkson Street, an east-moving narrow local street providing one of the few signalized left turn exits off of the southbound West Street; and

WHEREAS, the applicant notes that opposite the site across West Street is the Hudson River Park and Pier 40, which includes a mix of offices, recreational fields, and parking; and

WHEREAS, the applicant notes that north of the site is Morton Square, a mixed-use primarily residential building occupying the entire block; and

WHEREAS, the applicant asserts that Morton Square defines the beginning of a residential and mixed-use corridor extending along West Street north to the Meatpacking District at Little West 12<sup>th</sup> Street; and

WHEREAS, the applicant notes that within the M1-5 zoning district is a Special Mixed Use District – MX6, which pairs a residential R7X zoning district with the

underlying M1-5 zoning district for a portion of the two blocks northeast of the site; this area includes apartment buildings and commercial art galleries; and

WHEREAS, the applicant states that adjacent to the site to the east is an at-grade parking facility on Leroy Street and wrapping around Clarkson Street to Washington Street is a Federal Express parking facility; and

WHEREAS, the applicant states that in the immediate vicinity are a mix of uses including (1) south of the site across Clarkson Street, the St. John's Terminal building, a four-block long terminal and warehouse building; and (2) a UPS trucking and shipping terminal; and

WHEREAS, the applicant notes that the M1-5 district extends along West Street one block south, but that block is fully occupied by the St. John's Terminal Building; and

WHEREAS, the applicant states that south and east of the site is the newly-adopted mixed-use Special Hudson Square District, where infill residential use is permitted within the manufacturing area; and

WHEREAS, accordingly, the applicant asserts that the proposed residential use, with 77 units, an accessory parking garage at the cellar level, and retail use on a portion of the first floor is compatible with the nearby uses within the far West Village on West Street; and

WHEREAS, the applicant asserts that the current condition of the zoning lot lacks cohesiveness and is not reflective of the context of the surrounding area; and

WHEREAS, as to the building form, the applicant notes that the proposed 12-story building will have a height of approximately 155 feet with a curvilinear façade, occupying the full West Street block front and extending down Leroy Street and Clarkson Street; and

WHEREAS, the applicant states that the design with its undulating wall without a setback is intended to help activate the street level of the building and engage with the sidewalk; and

WHEREAS, the applicant notes that the proposed 5.0 FAR is consistent with the bulk regulations in the M1-5 zoning district and the nearby MX6 district; and

WHEREAS, the applicant states that the buildings in the area range in height from one-, two-, and three-story buildings between Christopher Street and Charles street to the Westbeth with a height of 185 feet; and

WHEREAS, the applicant notes that Morton Square on the other side of Leroy Street has 14 stories and a height of 155 feet; and

WHEREAS, the applicant notes that the as-of-right hotel building could have a height of 233 feet; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of 77 dwelling units is compatible with the neighborhood character; and

WHEREAS, the Board notes that there are no bulk regulations for a residential building in an M1-5 zoning

**192-13-BZ**

**CEQR #13-BSA-163M**

district, but that the proposed FAR of 5.0 and all other bulk parameters are consistent with zoning district regulations; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title but is rather due to the inherent conditions of the site; and

WHEREAS, the applicant represents that the proposed use and bulk, which is consistent with the bulk for a conforming use, reflect the minimum waivers necessary to compensate for the additional construction costs associated with the uniqueness of the site; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief, as set forth in ZR 72-21(e); and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA163M, dated June 27, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Assessment has reviewed the project for potential hazardous materials and noise impacts; and

WHEREAS, DEP recommends that an (E) Designation for hazardous materials be placed on the subject property, with the understanding that the New York City Office of Environmental Remediation may

request additional data collection; and

WHEREAS, DEP recommends that the (E) Designation also encompass noise to ensure tracking and enforcement of the noise attenuation requirements; and

WHEREAS, the Board has obtained (E) Designation number E-332 from the Department of City Planning; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-5 zoning district, the construction of a 12-story mixed residential/commercial building with ground floor retail use and 12 accessory parking spaces, which is contrary to ZR § 42-10; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 10, 2014"—Thirteen (13) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum of 12 stories; 77 residential units; a total floor area of 141,815 sq. ft. (5.0 FAR); a maximum height of 155 feet; and a maximum of 12 accessory parking spaces;

THAT the development of the site is subject to the conditions of (E) Designation E-332;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT substantial construction will be completed pursuant to ZR § 72-23;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 11, 2014.

**A true copy of resolution adopted by the Board of Standards and Appeals, March 11, 2014.**

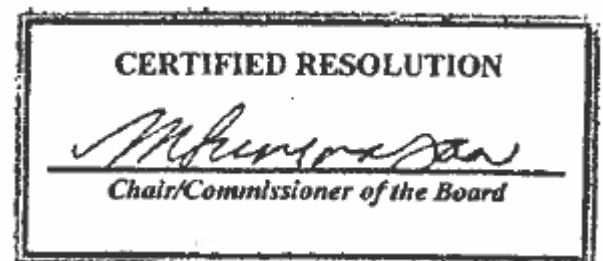
**Printed in Bulletin No. 11, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**



**162-13-BZ**

**CEQR #13-BSA-145M**

APPLICANT – Margery Perlmutter/Bryan Cave LLP, for Sullivan Condo LLC/Triangle Parcel LLP, owner.  
SUBJECT – Application May 28, 2013 – Variance (§72-21) to permit the construction of a residential and commercial building with 31 dwelling units, ground floor retail, and 11 parking spaces, contrary to use regulations (§42-00). M1-5B zoning district.

PREMISES AFFECTED – 120-140 Avenue of the Americas aka 72-80 Sullivan street, 100’ south of Spring street, Block 490, Lot 27, 35, Borough of Manhattan.

**COMMUNITY BOARD #2M**

**ACTION OF THE BOARD** – Application granted on condition.

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....4  
Negative:.....0  
Absent: Vice Chair Collins.....1  
THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated April 3, 2013, acting on Department of Buildings Application No. 121329589, reads, in pertinent part:

1. ZR 42-10 – Proposed UG 2 is not permitted; contrary to ZR 42-10
2. ZR 42-14 (D)(2)(b) – Proposed UG 6 is not permitted below the floor level of the second story; contrary to ZR 42-14 (D)(2)(b)
3. ZR 13-12(a) – Proposed number of accessory parking spaces for UG 2 exceeds the maximum permitted; contrary to ZR 13-12(a); and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-5B zoning district, a 16-story residential building, with 33 dwelling units, commercial use on the first floor and cellar level, and ten accessory parking spaces, which is contrary to ZR §§ 42-10, 42-14 (D)(2)(b), and 13-12(a); and

WHEREAS, a public hearing was held on this application on September 24, 2013 after due notice by publication in the *City Record*, with continued hearings on October 22, 2013 and November 19, 2013, and then to decision on December 10, 2013; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of the use variance but recommends a reduction for the FAR to 3.44 and a reduction of the building height; and

WHEREAS, the Greenwich Village Society for

Historic Preservation provided testimony in opposition to the proposed building citing concerns about the potential incompatibility with the surrounding area and that the proposal does not reflect the minimum variance; and

WHEREAS, certain members of the community provided oral and written testimony in support of the application; and

WHEREAS, certain members of the community provided oral and written testimony in opposition to the application, primarily citing concerns with the proposed building’s bulk; and

WHEREAS, the subject triangular site is located at the intersection of Avenue of the Americas and Sullivan Street with 356.74 feet of frontage on Avenue of the Americas and 343.38 feet of frontage on Sullivan Street; and

WHEREAS, Lot 27 is currently vacant, but was formerly occupied by a gasoline service station and Lot 35 is occupied by a car wash that ceased operations in April 2013; and

WHEREAS, the applicant initially proposed an 18-story building, which included a three-story base with a 15-story tower adjacent to four attached four-story townhouses and rose to a total height of 223 feet; and

WHEREAS, at the Board’s direction and in response to the community’s concern about the building’s scale, the applicant now proposes a 16-story building, which includes an extended four- and five-story base with a 14-story tower adjacent to the four attached four-story townhouses for a total of 33 residential units; the proposed building will have a total floor area of 81,565 sq. ft. with a resulting 5.0 FAR, of which 1,802 sq. ft. will be commercial on the first floor (0.11 FAR) (Use Group 6) and 79,763 sq. ft. (4.89 FAR) will be residential (Use Group 2); the proposal has a height of 204.75 feet to the top of the parapet; and

WHEREAS, the four townhouses will occupy the northern portion of the site, with frontage on Sullivan Street, and the 16-story portion will occupy the southern tip of the site and will include commercial use on the ground floor and cellar level of the base and 10 parking spaces accessory to the residential use; and

WHEREAS, the applicant seeks relief in the form of use variances pursuant to ZR § 72-21 to permit: (1) residential use in the building, which is contrary to ZR §§ 42-10; (2) commercial use on the first floor and cellar level, contrary to ZR § 42-14 (D)(2)(b); and (3) 10 accessory residential parking spaces, contrary to ZR § 13-12(a), which allows a maximum of six accessory off street parking spaces for residential developments; and

WHEREAS, accordingly, the owner now seeks a variance from the Board, which would permit the construction of the proposed building; and

WHEREAS, the applicant states that the following are unique physical conditions which create an

**162-13-BZ****CEQR #13-BSA-145M**

unnecessary hardship in developing the site in conformance with applicable regulations: (1) the size and shape of the site; (2) sloping topography; (3) the proximity of the Eighth Avenue subway along the Avenue of the Americas' frontage; and (4) environmental conditions associated with the historic use of the site as a car wash and gasoline service station; and

WHEREAS, as to the site's size and shape, the applicant states that it is a long narrow triangle, with its sides measuring 356.73 feet along Avenue of the Americas, 343.38 feet along Sullivan Street, and 94.97 feet across the base of the triangle along the northern portion of the site parallel with Spring Street; and

WHEREAS, the applicant represents that due to the unusual configuration and the narrowness of the triangle, the buildable portion of the site begins approximately 78 feet north of the apex where the site's east-west dimension is 21 feet; and

WHEREAS, the applicant states that the site's triangular-shaped block is one of a few sites created in the 1920s by the development of the IND subway line and the extension of the Avenue of the Americas, which sliced its way from the intersection of Carmine Street and Minetta Lane south to Canal Street; the development resulted in truncated blocks and buildings and a series of irregular rectangular and trapezoidal blocks; and

WHEREAS, the applicant represents that the changes to the area in the 1920s led to many buildings being demolished and others sheared in half; and

WHEREAS, the applicant asserts that new buildings replaced some of those that had been demolished to make way for the Avenue (ADT Building at Spring Street on the west side of the Avenue (1929); 100 Avenue of the Americas at Watts Street, on the east side of the Avenue (1930); Union Building at Grand on the west side of the Avenue (1991); and the James Hotel at Grand Street on the east side of the Avenue (2010)), but many sites remained vacant, or were occupied by small, temporary structures, or underbuilt commercial buildings; and

WHEREAS, accordingly, the applicant notes that the historic under use of the site is attributed to the effect of the subway line and Avenue construction; and

WHEREAS, the applicant notes that, due to the size and shape, where the site can be developed, the utility of the interior spaces is limited by the narrowness of the site, where a building would not reach a width of 50 feet until it is approximately 110 feet north of the triangle's apex, or back one third into the length of the site; and

WHEREAS, accordingly, the applicant asserts that the site's shape results in inefficient interior layouts; and

WHEREAS, to support its assertion, the applicant

submitted drawings for an as-of-right hotel building that would have to sit all the way to the top of the site along the northern boundary in order to accommodate feasible floor plates for hotel use, utilizing a 53-foot deep floor plate with a double-loaded hotel room corridor; and

WHEREAS, the applicant notes that height and setback regulations require at the sixth floor a 15-ft. setback from Avenue of the Americas and a 20-ft. setback from Sullivan Street; for the tower portion of the hotel, the regulations mandate further reduction in the floor plates above the 11th floor, with required setbacks of 10 feet from the Avenue and 15 feet from Sullivan Street, and aggregate tower area maximums of 1,875 sq. ft. within 50 feet of Sullivan Street and 1,600 sq. ft. within 40 feet of the Avenue pursuant to ZR § 43-45; and

WHEREAS, the applicant states that above the fifth floor, the floor plates would become long narrow trapezoids of only 4,765 sq. ft. that are ill-suited to the standard double-loaded corridor hotel floor and accommodate only eight rooms per floor, while at the tower portion of the building from the 11th to 18th floors, the floor plates reduce to only 2,787 sq. ft., permitting only three hotel rooms per floor; and

WHEREAS, as to the topography, the applicant notes that the site slopes steeply downward both from west to east and from north to south, with a difference in elevation from the Avenue of the Americas down to Sullivan Street of nearly five feet and along the Avenue of the Americas of nearly eight feet from the northern lot line of Lot 27 to the southern apex of Lot 35; and

WHEREAS, the applicant notes that the as-of-right drawings reflect that the west to east slope presents difficulties in accessing the shallow interior spaces, requiring a split-level design, which requires that the commercial space is entered at grade from Sixth Avenue at the northernmost portion of the site, but up a flight of six to eight steps midway down the Avenue and at the apex facing the plaza where the difference between sidewalk level and the interior space is between three and five feet; and

WHEREAS, further, the applicant states that the hotel entry vestibule and core would be at grade with Sullivan Street, but six feet lower than the commercial space on the other side of the wall that defines the vestibule and core; and

WHEREAS, the applicant asserts that the grade differential, resulting in the need for an elevated entry plaza on the Avenue side of the site and splitting the ground floor into multiple levels, compounds the problems owing to the narrow, irregular shape and size of the site, affecting not only the functionality of the ground floor but also greatly increasing development costs; and

WHEREAS, as to the proximity of the subway, the applicant represents that construction activity in close proximity to a subway line (typically, within a 50-

**162-13-BZ**

**CEQR #13-BSA-145M**

ft. “zone of influence”) requires a permit from the Metropolitan Transportation Authority (MTA), a condition of which is engineering review and approval by the MTA, adherence to strict vibration limits and continuous monitoring of any construction-related vibrations; certain standard construction methods such as pile driving, which are vibration inducing, and tiebacks, are not permitted and, thus lead to increased construction costs; and

WHEREAS, as to the uniqueness of the constraints imposed by the subway, the applicant performed an analysis which reflects that there are 15 properties in the M1-5 zoning district located along the Avenue of the Americas and Houston Street that are within the “zone of influence” of the subway, including the subject property; and

WHEREAS, further, the analysis reflects that the building line of the subject site is 20 to 21 feet from the subway tunnel and 14 to 15 feet from a subway vent and that the subject property’s frontage along Avenue of the Americas is 195.6 feet and 161.6 feet for a total of 357.2 feet; and

WHEREAS, the applicant notes that of the sites identified as being within the zone of influence of the subway tunnel, the building lines of five sites are closer than 20 feet to the subway tunnel, and the building lines of two sites are closer than 14 feet to a subway vent; of the 15 sites, including the subject property, only the subject site (357.2 feet) and three others have frontage in excess of 150 feet, while no property, other than the subject property, has frontage greater than 201 feet; and

WHEREAS, the applicant concludes that given that the subject site is the only one in the study group with a building line located 20 feet from the subway tunnel and 14 feet from the subway vent with frontage that exceeds significantly the frontages of other sites in the study area, the subject site is uniquely burdened; and

WHEREAS, the applicant represents that there are premium costs of approximately \$4,603,000 associated with the construction on the subject site due to its shape, topography, and proximity to the subway; and

WHEREAS, as to the environmental conditions, the applicant notes that the southern, Lot 35 portion of the site was occupied by a car wash from 1979 until April 2013 and the car wash building is still on the site but will be demolished for the proposed building; the northern, Lot 27 portion of the site was occupied by a gasoline service station from August 1985 to December 2006, which was demolished in 2009 and this portion of the site is currently vacant; and

WHEREAS, the applicant states that in October 1992, during construction on the adjacent Eighth Avenue subway tunnel, the New York City Transit

Authority (“NYCTA”) observed petroleum impacts and a spill was reported to the New York State Department of Environmental Conservation (“NYSDEC”); and

WHEREAS, the applicant notes that a spill number (92-07631) was assigned to Lot 27 by NYSDEC and the spill remains open; and

WHEREAS, the applicant states that since 1992, environmental investigations and remedial measures (e.g., tank removal, mass excavation, product recovery systems, and chemical oxidant injections) have been completed both on and off Lot 27, and that the most recent remedial plan for Lot 27 is the February 2012 Revised Supplemental Remedial Action Plan (“RSRAP”), which was approved by the NYSDEC and any subsequent development on Lot 27 must comply with the requirements made in the RSRAP; and

WHEREAS, the applicant states that in addition to compliance with the NYSDEC RSRAP, development of the site requires compliance with the New York City Department of Environmental Protection (“NYCDEP”) Remedial Action Work Plan (“RAWP”), which requires development of the site that includes additional soil excavation in excess of what would be required to accommodate a single cellar, installation of a monitoring and remediation well system, a sub-slab depressurization system and engineering controls; and

WHEREAS, the applicant represents that pursuant to the RSRAP, excavation must extend to approximately 23 feet below the average existing site grade (approximately 18.5 to 16.5 feet excavated to approximately elevation -4.5 feet), which amounts to an over-excavation beyond that required for foundation construction and one cellar level; and

WHEREAS, the applicant’s expert submitted that based on boring reports, natural soils with adequate bearing capacity for a mat foundation were encountered at the desired cellar slab level at elevations +4.4 to -3.6; however, due to the requirement to remove contaminated soils, excavation must extend to depths that are between one and nine feet below the bearing level of the foundations and then must be backfilled using one to nine feet of imported structural fill; and

WHEREAS, the applicant represents that the over-excavation generates additional costs and complications relating to dewatering, soil disposal, support of excavation, backfilling, oversight, and general site work; and

WHEREAS, the applicant states that the RSRAP requires installation of a vapor barrier to mitigate the potential migration of contaminants into the proposed buildings and compliance with the NYCDEP RAWP requires installation of a submembrane depressurization system; and

WHEREAS, the applicant represents that additional measures also include monitoring, injection, an extraction well, piping, and an access vault; and

WHEREAS, the applicant represents that the costs

**162-13-BZ**

**CEQR #13-BSA-145M**

associated with environmental remediation of the below grade contamination will add \$2,445,750 to construction; and

WHEREAS, the applicant asserts that its use waivers and for four additional accessory parking spaces are necessary to compensate for the premium construction costs; and

WHEREAS, the Board views the configuration of the site, the topography, the presence of the subway, and the environmental conditions as legitimate unique physical conditions, in the aggregate and are relatively unique within the area; and

WHEREAS, based upon the above, the Board finds that the site conditions create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing: (1) an as-of-right conforming hotel scenario, (2) an as-of-right conforming hotel scenario on a site unencumbered by the site's unique physical conditions, and (3) the initially-proposed 18-story 5.0 FAR building; and

WHEREAS, the applicant determined that the theoretical as-of-right hotel on a standard site would be marginally feasible, but only the initially-proposed building would realize a truly reasonable rate of return; and

WHEREAS, at the Board's direction, the applicant analyzed three additional development scenarios with residential development: (1) a 3.44 FAR lesser variance; (2) a 5.0 FAR building with a higher, five-story base structure surmounted by an 11-story tower; and (3) a 4.6 FAR building with a 13-story tower; and

WHEREAS, the applicant concluded that only the 5.0 FAR extended base scenario realized a reasonable rate of return due in large part to the loss of the most valuable high floor units in the other scenarios; and

WHEREAS, based upon its review of the subsequent submissions, the Board has determined that because of the site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the immediate area surrounding the site contains significant residential use and ground floor Use Group 6 use; and

WHEREAS, specifically, the applicant cites to the immediate north of the site where there are two six- and seven-story, mixed-used residential and retail buildings,

a six-story retail building with joint living-work quarters for artists and a six-story retail and office building, all with frontage on Spring Street (202 through 208 Spring Street); to the east, directly across Sullivan Street from the site are three- to five-story residential rowhouses and tenements; and

WHEREAS, the applicant notes that an R7-2 zoning district with a C1-5 overlay is located immediately north of the site, to the northeast is an R7-2 zoning district and to the southeast is the M1-5B in which the site itself is also located; and

WHEREAS, the applicant states that due to the manner in which the Avenue of the Americas was laid out in the 1920s to facilitate the Avenue's southerly extension, the portion of the Avenue of the Americas to the west of the site is more than 180 feet wide and is one of the widest sections along the entirety of the Avenue's length; and

WHEREAS, the applicant asserts that the Avenue of the Americas extends north and south along the diagonal, cutting through Tribeca, SoHo and Greenwich Village, and defining transitions in scale between the lower-rise portions on small lots of SoHo to the east of the site and the higher-rise portions on larger lots to the north and south of the site along the Avenue of the Americas and across the Avenue to the west at Hudson Square; and

WHEREAS, the applicant asserts that the site is at the crossroads of two neighborhoods and two scales, with three- to seven-story low rise to the immediate east of the site, buildings with heights ranging from 180 to 277 feet to the immediate south of the site on the east side of the Avenue of the Americas and 170 feet to 246 feet (with the Trump SoHo tower at 510 feet) on the west side of the Avenue; and

WHEREAS, as to bulk, the applicant notes that R7-2 districts permit a maximum of 4.0 FAR for residential use within 100 feet of a wide street and 6.5 FAR for community facility uses; M1-5 districts, which prohibit residential use as-of-right, permit a maximum of 5.0 FAR for commercial uses and up to 6.5 FAR for community facility uses; and the M1-6 in the Special Hudson Square District permits up to 10.0 FAR for commercial, community facility and residential use, with an additional 2.0 FAR for projects employing Inclusionary Housing bonuses; and

WHEREAS, accordingly, the applicant asserts that its proposed 5.0 FAR is compatible with the surrounding area; and

WHEREAS, additionally, the applicant notes that it has designed the site with four single-family residential townhouses fronting on and entered from Sullivan Street at the northern portion of the triangular site and extend 100 feet south along Sullivan Street and that the revised proposal with the extended base provides a transition from the four-story townhouses to the 14-story tower at the south of the site at a height of

**162-13-BZ**  
**CEQR #13-BSA-145M**

204.75 feet to the parapet; and

WHEREAS, the applicant asserts that the location of the tower at the southern portion of the block, pulls the tallest portion of the building onto the Avenue of the Americas and away from the context of Sullivan Street; and

WHEREAS, the applicant asserts that the configuration of the building speaks directly to the development history of the area and the block with the townhouses and three-story base building, located along the northern portion of the site, responding to the low scale of Sullivan Street's 19<sup>th</sup> Century conditions, and the larger residential tower to the southern portion of the site reflecting development trends occurring to the immediate south and across the Avenue to the west of the site; and

WHEREAS, the applicant states that the proposed building, with its brick rowhouses and three-story brick base building located adjacent to the brick tower with large window openings, and which rises to its full height without setback, reflects the formal and textural conditions found in the area; and

WHEREAS, the applicant submitted renderings to support its point that the proposed building is compatible with the surrounding area; specifically, the applicant asserts that from many vantage points, the tower cannot be seen from within SoHo and that when it is visible between buildings or along streets within SoHo, it appears to be located outside of the SoHo neighborhood; and

WHEREAS, the applicant notes that on approaching the site from the west side of the Avenue, the low scale townhouses at the north of the site permit a view from SoHo Square through to the lower scale portions of SoHo (which would have been blocked by a bulkier as-of-right building), while the tower at the southern portion of the site picks up the high-rise street wall created by 100 Avenue of the Americas (204 feet) and the James Hotel (277 feet) at Grand Street; and

WHEREAS, the applicant notes that the revised height of 204.75 feet to the top of the parapet matches the 204.55 feet to the top of the parapet of 100 Avenue of the Americas, which is directly to the south of the site on the east side of the Avenue; and

WHEREAS, the applicant notes that there are six projects expected to be built by 2016 within the area of the site, including several large-scale residential developments; and

WHEREAS, as to the accessory parking for the proposed residential use, accessory parking for a hotel is permitted as-of-right in the district at a rate of 15 percent of the hotel rooms to a maximum of 150 spaces; accordingly, the as-of-right hotel with 130 rooms, could have up to 19 parking spaces; and

WHEREAS, consequently, the applicant asserts

that the proposed number of accessory parking spaces for the residences—which initially was 11 but through the hearing process was reduced to ten—exceeds that permitted by ZR § 13-12(a) by only four spaces; thus, the accessory parking would have no impact on the use of adjoining properties, the public welfare or the character of the neighborhood, particularly in light of the prior uses of the site as gasoline service station and car wash; and

WHEREAS, additionally, the applicant asserts that the entrance to the accessory parking is through an existing curb cut at the Avenue of the Americas frontage; and

WHEREAS, the applicant notes that the entrance to the Use Group 6 space is at the corner of the site, off of the Sullivan Street frontage, where Sullivan Street and the Avenue of the Americas frontage; and

WHEREAS, the Board agrees that the area is best characterized as mixed-use, and that the proposed residential use and commercial space is compatible with the character of the community; and

WHEREAS, as to the nature of the hardship, as noted above, the unique configuration of the site is due to the construction of the IND subway line and the widening of the Avenue of the Americas in the 1920s and was not created by the owner; and

WHEREAS, at hearing, the Board inquired about the history of the site's environmental contamination and if there was documentation to establish that once the gasoline spill problems were identified, they were addressed appropriately and not permitted to worsen due to inaction; and

WHEREAS, in response, the applicant submitted a report documenting the prior owner's remediation efforts between 1992 and 2004; based upon this analysis, the applicant's consultant concludes that ExxonMobil, who operated a gasoline filling station on the site until 2006, took appropriate action, since spill discovery, to effectively stop, control and remediate the spill and, thus, they assert that the hardship claimed with respect to required remediation at the site was not created by the owner or a predecessor in title; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as to the minimum variance, as noted, the Board directed the applicant to analyze additional development scenarios from the original 18-story proposal, including buildings with 3.44 FAR and 4.6 FAR and a 5.0 FAR with an extended base and 16 stories; and

WHEREAS, the applicant revisited its analysis and concluded that the extended base alternative, but none of the reduced FAR scenarios, realized a reasonable rate of return due to the reduction of the number of the more valuable units; and

WHEREAS, in addition, the applicant reduced the

**162-13-BZ**

**CEQR #13-BSA-145M**

proposed number of parking spaces accessory to residences from 11 to ten; and

WHEREAS, the Board has reviewed the revised feasibility analysis and agrees that the 5.0 FAR scenario with the extended base represents the degree of relief necessary to overcome the site's inherent hardship while resulting in a building that is compatible with the surrounding context; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 13BSA145M, dated December 6, 2013 and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Landmarks Preservation Commission's ("LPC") requested that a Construction Protection Plan be prepared to address any potential proposed site construction effects and/or or impacts on the LPC, State and National Register-listed houses located at 83 Sullivan Street and 85 Sullivan Street; and

WHEREAS, NYCDEP's Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials impacts; and

WHEREAS, NYCDEP reviewed and accepted the May 2013 Remedial Action Plan and Construction Health and Safety Plan for the subject site's lots 27 and 35; and

WHEREAS, NYCDEP also indicated that the proposed sub-slab depressurization system ("SSDS") discussed in the RAP should have the capability of being converted to an active SSDS, if warranted based on future conditions and should be incorporated into the design plan of the proposed construction project; and

WHEREAS, NYCDEP requested that a Remedial Closure Report be submitted to NYCDEP for

review and approval upon completion of the proposed project; and

WHEREAS, the remediation on the subject site's Lot 27 should comply with the requirements of the RSRAP; the remediation required under Consent Order No. D2-0030-02-07SWO and Spill No. 9207631 should continue in accordance with the NYSDEC requirements; and

WHEREAS, a copy of the NYSDEC-approved Remedial Closure Report should also be submitted with Remedial Closure Report submitted to NYCDEP for review and approval; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-5B zoning district, a 16-story residential building, with 33 dwelling units, commercial use on the first floor and cellar, and 10 accessory parking spaces, which is contrary to ZR §§ 42-10, 42-14 (D)(2)(b), and 13-12(a), *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 10, 2013" –(24) sheets; and *on further condition*:

THAT the bulk parameters of the proposed building shall be as follows: a total floor area of 81,565 sq. ft., (5.0 FAR) (including 79,763 sq. ft. of residential floor area (4.89 FAR) and 1,802 sq. ft. of commercial floor area (0.11 FAR)); 16 stories; a 203'-0" building height (204.75 feet at the top of the parapet), a maximum of 33 residential units, and a maximum of 10 accessory residential parking spaces, as illustrated on the BSA-approved plans;

THAT DOB will not issue a permit until the Landmarks Preservation Commission has reviewed and approved the Construction Protection Plan;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided it with NYCDEP's approval of the Remedial Closure Report;

THAT the sound attenuation measures in the proposed building will be maintained as reflected on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

**162-13-BZ**

**CEQR #13-BSA-145M**

THAT construction will proceed in accordance with ZR § 72-23;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 10, 2013.

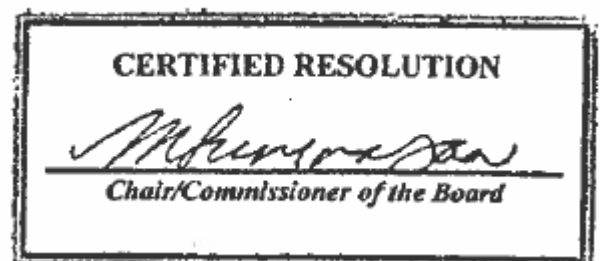
**A true copy of resolution adopted by the Board of Standards and Appeals, December 10, 2013.  
Printed in Bulletin Nos. 49-50, Vol. 98.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**



**299-12-BZ**

**CEQR #13-BSA-048M**

APPLICANT – Goldman Harris LLC, for 544 Hudson Street, owner.

SUBJECT – Application October 18, 2012 – Variance (§72-21) to permit the construction of a 12-story commercial building, contrary to floor area (§43-12), height and setback (§43-43), and rear yard (§43-311/312) regulations. M1-5 zoning district.

PREMISES AFFECTED – 40-56 Tenth Avenue, east side of Tenth Avenue between West 13th and West 14th Streets, Block 646, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #2M**

ACTION OF THE BOARD – Application granted on condition.

**THE VOTE TO GRANT –**

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez .....1

**THE RESOLUTION –**

WHEREAS, the decision of the Department of Buildings, dated September 26, 2012, acting on Department of Buildings Application No. 120801052, reads in pertinent part:

    ZR 43-311, ZR 42-312 – 20'-0" rear yard is required for interior portion of lot beyond 100'-0" of front line.

    ZR 43-43 – Proposed front wall exceeds 85'-0", applicable sky exposure plane for both wide and narrow streets violated; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-5 zoning district, the construction of a ten-story commercial building which does not comply with the zoning requirements for rear yard, height and setback, and sky exposure plane regulations contrary to ZR §§ 43-12, 43-311, 43-312, and 43-43; and

WHEREAS, a public hearing was held on this application on September 17, 2013, after due notice by publication in the *City Record*, with continued hearings on November 26, 2013, January 14, 2014, February 11, 2014, and April 8, 2014, and then to decision on May 13, 2014; and

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

WHEREAS, the applicant initially proposed to construct a 12-story commercial building with a total floor area of 157,280 sq. ft. (6.68 FAR); and

WHEREAS, at hearing, the Board directed the applicant to reduce the requested relief and bulk of the building; and

WHEREAS, in response, the applicant revised the proposal to reflect a floor area of 145,483 sq. ft. (6.18

FAR); and

WHEREAS, at hearing, the Board directed the applicant to further reduce the request for relief so as to reflect the minimum variance; and

WHEREAS, the current proposal reflects a ten-story commercial building with a total floor area of 117,705 sq. ft. (5.0 FAR), a height of 175 feet to the roof of the tenth floor and 199 feet to the top of the mechanicals, a Use Group 6 retail and restaurant use on the cellar, first and second floors, and Use Group 6 office use in the remainder of the building; and

WHEREAS, the proposed building will have the following non-complying parameters: a wall height of 185 feet with no setbacks above 85 feet to a total height of 199 feet after a 10'-0" setback (the minimum required setbacks are 20'-0" along West 13<sup>th</sup> Street and 15'-0" along West 14<sup>th</sup> Street and Tenth Avenue); intrusions into the sky exposure plane at West 13<sup>th</sup> Street, West 14<sup>th</sup> Street, and Tenth Avenue, and no rear yard (a rear yard with a minimum depth of 20'-0" is required in the 53'-0"-wide portion of the site along the West 13<sup>th</sup> Street frontage and the second-floor terrace is 4'-6" above the 23'-0" permitted obstruction threshold in the rear yard); and

WHEREAS, Community Board 2, Manhattan, reviewed the applicant's original proposal and recommended a disapproval based specifically on an objection to an FAR waiver and to the remaining waivers unless the variance limits any eating and drinking establishment on the site to a maximum size of 3,000 sq. ft.; and

WHEREAS, State Senator Brad Hoylman and former City Council Speaker Christine Quinn provided testimony in opposition to the entire application; and

WHEREAS, the Greenwich Village Society for Historic Preservation provided testimony in opposition to the initial application, citing concerns about an increase in floor area but did not object to the other waivers; and

WHEREAS, the Greenwich Village Community Task Force testified in opposition to the FAR waiver in the original proposal and in support of the other aspects of this application; and

WHEREAS, the Standard Hotel provided testimony in opposition to the application; and

WHEREAS, a representative of the adjacent owner to the east (450 West 14<sup>th</sup> Street/the High Line Building) (the "High Line Building") provided testimony in opposition to the proposal, citing concerns about whether or not the site conditions were unique; that a complying building could realize a reasonable rate of return; that the proposed building is not compatible with the area context; and that the requested variance does not reflect the minimum necessary; and

WHEREAS, the site is an L-shaped lot with frontage on Tenth Avenue, West 13<sup>th</sup> Street and West 14<sup>th</sup> Street, in an M1-5 zoning district; and

WHEREAS, the site is currently occupied by two

**299-12-BZ**

**CEQR #13-BSA-048M**

three-story buildings formerly used for meat processing that are proposed to be demolished; and

WHEREAS, the site has 206 feet of frontage on the east side of Tenth Avenue, 153 feet of frontage on the north side of West 13<sup>th</sup> Street, 75 feet of frontage on the south side of West 14<sup>th</sup> Street, and a lot area of 23,541 sq. ft.; and

WHEREAS, the High Line, an elevated former railroad trestle, with a height of 25 feet, extends diagonally across the eastern part of the site, including the entire eastern lot line, such that the site has an irregular shape, as discussed below; and

WHEREAS, the City owns the High Line and has converted it into a publicly accessible open space; and

WHEREAS, the applicant states that it is adjacent to the Gansevoort Historic District, but not within it and that it is located within the New York State and National Register of Historic Places Gansevoort Historic District; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the presence of the High Line, which cuts diagonally across the site, reduces the developable lot area, and contributes to the irregular-shape of the developable portion of the site; and (2) the subsurface conditions including poor soil and contamination; and

WHEREAS, as to the presence of the High Line and the site's irregular shape, the applicant notes that the High Line crosses diagonally over the eastern edge of the site, overlapping approximately ten percent of its area; and

WHEREAS, the applicant notes that no foundation work may take place in the area occupied by the High Line; and

WHEREAS, additionally, the applicant asserts that the physical constraints imposed by the High Line require the building to be narrower and taller than would otherwise be necessary on an unencumbered lot of its size; and

WHEREAS, the applicant asserts that the irregular shape with three separate street frontages and 50 percent of its interior lot line border traversed by the High Line contribute to premium construction costs and site inefficiencies; and

WHEREAS, further, the applicant notes that the northern half of the site beyond the centerline of the block is only 75 feet deep, the shallowest site on the block; and

WHEREAS, the applicant states that the shallow depth and the setback requirements result in small floor plates above the initial setback for an as of right building; and

WHEREAS, the applicant provided a floor plate

study which reflects that the functional floor plate area is reduced to widths of 21 feet and 17 feet above the initial setback; and

WHEREAS, the applicant compares this to an as-of-right building on a site without the High Line and office use floor plates could reach approximately 22,000 sq. ft. compared to 12,878 sq. ft. for the proposed; and

WHEREAS, as to the uniqueness of the condition, the applicant asserts that large portions of the Special West Chelsea District north of West 16<sup>th</sup> Street were rezoned from M1-5 to commercial districts in which residential use is permitted at base FARs ranging from 5.0 to 7.5, up to 6.0 to 10.0, with bonuses; and

WHEREAS, the applicant notes that many West Chelsea District sites are also permitted to transfer unusable floor area to other sites; and

WHEREAS, the applicant asserts that the site is the last undeveloped parcel surrounding the Washington Grasslands section of the High Line, which stretches from West 12<sup>th</sup> Street to West 13<sup>th</sup> Street; and

WHEREAS, the applicant states that every other site is either completely covered by the High Line or not a soft site; and

WHEREAS, the applicant states that the waivers are required to offset premium costs associated with construction on the irregularly-shaped site traversed by the High Line and to allow for a more efficient building design that provides for the building mass to be pulled away from the High Line and towards Tenth Avenue; and

WHEREAS, several of the High Line's support columns extend to grade within the boundaries of the subject site, such that any use below it is limited; and

WHEREAS, the applicant states that due to the physical constraints posed by the High Line, a resultant as-of-right building would provide an inefficient building envelope, requiring an irregularly-shaped footprint; and

WHEREAS, further, the High Line limits the applicant's ability to position the building on the site, thus the applicant is unable to distribute the bulk within a complying envelope that has both reasonably-sized and uniform floor plates, due to the presence of the High Line across ten percent of the site; and

WHEREAS, the applicant states that compliance with the rear yard regulations would not only result in irregular and less marketable floor plates, but would also leave a small, isolated yard area at the northeast corner of the subject site that would be difficult to use and maintain; and

WHEREAS, the applicant further states that much of the subject rear yard is already encumbered by the High Line, and that because the proposed building will not span the High Line, light and air will be provided to occupants of the building and neighboring buildings; and

WHEREAS, the applicant represents that even with the bulk waivers, the building is taller and narrower than a building on a site not traversed by the High Line due to the reduced developable portion of the site; and

**299-12-BZ**  
**CEQR #13-BSA-048M**

WHEREAS, the applicant represents that larger floor plates are required to achieve greater efficiency, as the small size of the as-of-right floor plates make it difficult to amortize construction costs; and

WHEREAS, as to the subsurface soil conditions, the applicant states that the site is burdened by contamination and poor soil conditions which require additional excavation, foundation, and underpinning measures; and

WHEREAS, specifically, the applicant states that its Phase I Report reflects that a gas station north of the site across West 14<sup>th</sup> Street has had a gasoline spill, with gasoline-related contaminants remaining in the soil and groundwater at significant concentration; and

WHEREAS, the applicant states that due to high water table conditions at the site and the need for dewatering during excavation and construction, contaminated water will be drawn up through the subsurface and will require costly treatment; and

WHEREAS, the applicant states that the groundwater contamination associated with the gasoline spill will require a vapor barrier and a sub-slab depressurization system as part of the foundation design; and

WHEREAS, the applicant represents that there are at least two unregistered underground storage tanks (USTs) located under the Tenth Avenue sidewalk, which must be decommissioned and removed; and

WHEREAS, the applicant states that New York State Department of Environmental Conservation assigned a spill number related to the USTs and the Phase II reflects that approximately 200 tons of soil must be excavated from the site; and

WHEREAS, additionally, the applicant states that the existing buildings contain refrigerant piping lining the walls and other potential hazardous materials that require special handling and disposal; and

WHEREAS, the applicant states that the site is burdened by poor soil conditions that require additional excavation, foundation, and underpinning measures; and

WHEREAS, specifically, the applicant submitted a report from its engineering consultant stating that soil borings indicate that sand is located on the site in the area and is likely liquefiable; and

WHEREAS, accordingly, the applicant states that the piles will likely need to extend through this liquefiable zone and that pile design cannot rely on friction between the soil and pile within the liquefiable zone; such piles are longer and more costly than typical piles for comparable sites in the area; and

WHEREAS, the applicant states that the adjacent buildings to the west and north will require underpinning which, due to the poor soil conditions, will likely involve drilled piles spaced every eight feet, with the foundations of the adjacent structures supported on new grade beams

cast against/under the existing foundations and spanning between the new piles; and

WHEREAS, as to the uniqueness of the soil conditions, the applicant states that although a similar zone of probable liquefaction exists nearby, other recent construction such as the Standard Hotel is within a "liquefaction unlikely zone;" and

WHEREAS, the applicant states that the Standard Hotel is supported on drilled micro-piles that obtain capacity via friction in the sand layer and the columns that support the hotel are supported by higher capacity drilled mini caissons bearing in the bedrock; but, in contrast, the piles for the subject building would have to extend through the liquefiable zone and require piles that are longer and more costly than comparable piles on the Standard Hotel site; and

WHEREAS, in support of these assertions, the applicant submitted copies of soil reports related to the variance for 437-447 West 13<sup>th</sup> Street under BSA Cal. No. 314-08-BZ in 2009 and the Standard Hotel; and

WHEREAS, the applicant asserts that the requested waivers are required to allow for a more efficient building with more rentable office area at a complying FAR; and

WHEREAS, the applicant states that the design with higher floor to ceiling heights and a greater percentage of perimeter office area, which allows the building to generate sufficient income to overcome the premium construction costs of approximately \$6.3 million and inefficiencies associated with the unique conditions of the site; and

WHEREAS, as to the uniqueness of these soil conditions, the applicant's research reflects that recent developments in the vicinity of the site were either able to utilize previously existing building foundations for the new construction, or were not located in a probable liquefiable zone, and therefore could use shorter piles than the subject site; and

WHEREAS, the High Line Building asserts that the West 13<sup>th</sup> Street variance, which relied on certain similar hardship conditions as the subject site, undermines the applicant's claims of uniqueness; and

WHEREAS, the Board disagrees, noting that a finding of uniqueness, does not require that a given parcel be the only property so burdened by the condition(s) giving rise to the hardship, only that the condition is not so generally applicable as to dictate that the grant of a variance to all similarly situated properties would effect a material change in the district's zoning (see Douglaston Civ. Assn. v. Klein, 51 N.Y.2d 963, 965 (1980); and

WHEREAS, based upon the above, the Board finds that the presence of the High Line, the irregular shape of the developable portion of the lot, and the poor soil conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a

**299-12-BZ**

**CEQR #13-BSA-048M**

feasibility study that analyzed: (1) a complying commercial development on the subject lot; (2) the original 6.68 FAR commercial development with height and setback waivers; (3) a complying commercial development on a lot without a hardship; (4) a lesser variance scenario with only an FAR waiver; and (5) a lesser variance scenario with only height and setback waivers; and

WHEREAS, the applicant concluded that only the 6.68 FAR scenario would realize a reasonable rate of return; and

WHEREAS, in response to the Board's concerns, the applicant revised its analysis to include first a 6.18 FAR scenario and ultimately the proposed 5.0 FAR scenario; and

WHEREAS, the Board also raised concerns about assigning premium costs to the proposed design choices not associated with the hardship at the site; and

WHEREAS, in response, the applicant excluded any premium costs associated with specific design choices; and

WHEREAS, the High Line Building submitted a financial analysis which questioned the applicant's conclusions including, specifically, the capitalization rate, the cost valuations and the underlying formulas; and

WHEREAS, in response, the applicant notes that due to the risk in speculative commercial development, a higher, more conservative, capitalization rate is appropriate; the applicant states that its data source is derived from surveys of investors in similar development projects; and

WHEREAS, the applicant concluded that none of the as-of-right scenarios would result in a reasonable return, due to the unique physical conditions of the site and the resulting premium construction costs, but that the proposed building would realize a reasonable return and has submitted evidence in support of that assertion; and

WHEREAS, the Board has reviewed the applicant's revised analysis and assumptions and finds that they are consistent with financial analyses that the Board has accepted for similar variance applications; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, as to bulk, the applicant represents that the proposed height of 175 feet to the roof of the tenth floor and 199 feet to the top of the rooftop

mechanicals and 5.0 FAR are compatible with the neighborhood character; and

WHEREAS, the applicant notes that 5.0 FAR is permitted pursuant to underlying zoning district regulations; and

WHEREAS, the applicant notes that the Standard Hotel, an 18-story hotel building located immediately south of the subject site is built to a height of 271 feet; and

WHEREAS, the applicant represents that the scale and bulk of the proposed building is similar to that of the Standard Hotel and the High Line Building, a 14-story retail office building northwest of the project site, with a height of 221 feet; and

WHEREAS, the applicant asserts that the proposed design is more compatible with the surrounding area than a complying building would be as it will protect easterly and southerly light and air to this segment of the High Line and protects southwesterly light, air, and views for this section of the High Line; and

WHEREAS, the applicant states that although the Environmental Assessment Statement does not predict any significant environmental impacts to the High Line from construction at the site due to the fact that the Washington Grasslands area is planted with shade-tolerant grasses and flowers, the applicant proposes to carve out a portion of the building to maintain more daylight on the High Line than would be provided by the complying design without a carve out; and

WHEREAS, the applicant notes that the proposed design sets back the portion of the building closest to the High Line to preserve the light and air access; and

WHEREAS, the applicant states that its engineering consultant performed a study with three-dimensional models of the proposal, an as-of-right building; and a building with a complying setback/non-complying FAR building to determine the annual potential for solar exposure; and

WHEREAS, the applicant states that the study depicts the total number of hours of direct sunlight that could potentially reach the Washington Grasslands section under each scenario and concluded that the as-of-right and FAR variance buildings had more significant impact on the High Line than the proposal which shifts the bulk of the building to the Tenth Avenue frontage and includes an angled carve-out on the lower levels; and

WHEREAS, the applicant notes that the height and setback waivers are primarily attributed to the design which pulls the bulk of the building off of the High Line and onto Tenth Avenue, a wide street; and

WHEREAS, as noted, the majority of the required rear yard at the interior corner of the site is actually traversed by the High Line and only a very small portion remains that would be impractical to remain undeveloped; and

WHEREAS, due to the site's location within the State/National Register Gansevoort Market Historic

**299-12-BZ**

**CEQR #13-BSA-048M**

District, the Landmarks Preservation Commission (LPC) confirmed its review of the proposed demolition of the existing buildings on the site by letter dated December 13, 2013; and

WHEREAS, the High Line Building raised concerns that the applicant has not established a context for the FAR or building height and that a proposed outdoor commercial space would not be compatible with the High Line; and

WHEREAS, the Board is not persuaded by the applicant's assertions and finds that the applicant has established a context for the proposed FAR and building height; specifically, the Board notes that the revised proposal for 5.0 FAR complies with zoning district regulations and that, as noted above, the High Line Building is among those with heights greater than 199 feet in the immediate vicinity; the Whitney Museum also has a proposed height of 199 feet; and

WHEREAS, the Board notes that the as-of-right building could have greater impact on the High Line Building by obscuring lot line windows and reaching a height of 267 feet; and

WHEREAS, in contrast, the proposed building sets back from the High Line Building by approximately 16 feet along its western façade; and

WHEREAS, as to the proposed outdoor commercial space, the Board notes that it is a conforming use in the zoning district and that the height of the outdoor terrace was designed to be compatible with the High Line and only requires a waiver for the portion that is within the required rear yard; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is due to the proximity of the High Line, the irregularity of the subject lot, and the subsurface soil conditions on the site; and

WHEREAS, as noted above, the applicant initially proposed to construct a building with a floor area of floor area of 157,280 sq. ft. (6.68 FAR), which required a waiver of the FAR due to the zoning district maximum of 5.0 FAR; and

WHEREAS, the High Line Building raised concerns that as the FAR was reduced, the height should also have been reduced in order to reflect the minimum variance; and

WHEREAS, the Board notes that the applicant does not seek a height waiver and that the proposed building height is 20 to 45 feet lower than that of the High Line Building; and

WHEREAS, accordingly, the Board finds that this

proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA048M, dated May 5, 2014; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the site is located in the State/National Register Gansevoort Market Historic District, and the buildings on the site are to be demolished for the proposed project; and

WHEREAS, the New York City Landmarks Preservation Commission ("LPC") has reviewed the Environmental Assessment Statement ("EAS") and the Historical Documentation Alternatives Analysis and Mitigation Plan, dated May 2, 2014 and concurs with the findings that there are no feasible or prudent alternatives to demolition; and

WHEREAS, LPC has requested a Historic American Building Survey ("HABS") Level II documentation for buildings to be demolished on the site and design review of the proposed new building; and

WHEREAS, according to the EAS and the September 2011 Remedial Action Plan, the site has been submitted for entry into the New York City Brownfield Cleanup Program administered by the Office of Environmental Remediation ("OER"); and

WHEREAS, based on the level of site contamination and the applicant's proposal to construct subject to BCP approval, the Department of Environmental Protection recommends that an E designation for hazardous materials be placed on the site as part of the approval; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type I Negative

**299-12-BZ**

**CEQR #13-BSA-048M**

Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, in an M1-5 zoning district, the construction of a ten-story commercial building which does not comply with the zoning requirements for rear yard, height and setback, and sky exposure plane regulations contrary to ZR §§ 43-12, 43-311, 43-312, and 43-43, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 19, 2014"– (21) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum height of 175 feet to the roof of the tenth floor; a maximum total height of 199 feet, including rooftop mechanicals; and a maximum total floor area of 117,705 sq. ft. (5.0 FAR), as reflect on the BSA-approved plans;

THAT prior to the issuance by DOB of permits for demolition of the buildings on the site, LPC will have reviewed and approved a scope of work for HABS documentation and reviewed the design of the proposed building;

THAT an E designation (E-334) is placed on the subject site to ensure proper hazardous materials remediation;

THAT prior to the issuance by DOB of permits that involve any soil disturbance, the applicant will receive approvals from OER for the hazardous materials remediation plan and construction-related health and safety plan;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT substantial construction shall be completed in accordance with ZR § 72-23;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any

other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 13, 2014.

**A true copy of resolution adopted by the Board of Standards and Appeals, May 13, 2014.**

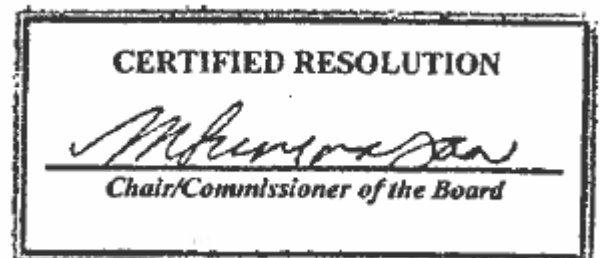
**Printed in Bulletin No. 20, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**



**279-12-BZ**

**CEQR #13-BSA-034Q**

APPLICANT – Akerman Senterfitt LLP, for Bacele Realty, owner.

SUBJECT – Application September 20, 2012 – Variance (§72-21) to permit a bank (UG 6) in a residential zoning district, contrary to §22-00. R4/R5B zoning district.

PREMISES AFFECTED – 27-24 College Point Boulevard, northwest corner of the intersection of College Point Boulevard and 28th Avenue, Block 4292, Lot 12, Borough of Queens.

**COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 22, 2012, acting on Department of Buildings Application No. 420511495, reads in pertinent part:

Office use (UG 6) in R4/R5B is contrary to ZR 22-10; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R4 zoning district and partially within an R5B zoning district, the construction of a two-story commercial building to be occupied as a bank (Use Group 6) with five accessory off-street parking spaces and a drive-through, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on August 20, 2012, after due notice by publication in the *City Record*, with continued hearings on November 19, 2013 and December 17, 2013, and then to decision on January 28, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, the subject site is located at the northwest corner of the intersection of College Point Boulevard and 28th Avenue, partially within an R4 zoning district and partially within an R5B zoning district; and

WHEREAS, the site has approximately 66 feet of frontage along College Point Boulevard, approximately 131 feet of frontage along 28th Street, and a lot area of 5,765 sq. ft. (1,845 sq. ft. within the R4 district and 3,919 sq. ft. within the R5B district); and

WHEREAS, the site is occupied by a vacant, two-story building with approximately 3,760 sq. ft. of floor

area; and

WHEREAS, the applicant represents that from approximately 1947 until 2011, the building and site were occupied by a gasoline and automotive service station (Use Group 16) on the first story and a single-family dwelling on the second story; the applicant notes that the site has been subject to the Board's jurisdiction since 1947, when the Board granted a variance under BSA Cal. No. 359-47-BZ to permit the station; such grant expired in 1985 and was reinstated under BSA Cal. No. 5-00-BZ, for a term of ten years; the 2000 grant expired on October 3, 2010; and

WHEREAS, the applicant proposes to construct the following at the site: a two-story commercial building with 5,082 sq. ft. of floor area (0.88 FAR) to be occupied as a bank (Use Group 6); an accessory parking lot with five spaces; and a drive-through for bank services; and

WHEREAS, because Use Group 6 is not permitted within the subject residence districts (R4 and R5B, as noted above), the subject use variance is requested; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions, which create practical difficulties and unnecessary hardship in occupying the subject site in conformance with underlying district regulations: (1) the site's contamination; and (2) the site's proximity to manufacturing uses; and

WHEREAS, the applicant states that underground gasoline storage tanks were maintained in connection with the gasoline and automotive service station, and that the presence of such tanks resulted in subsurface contamination; such contamination, in turn, led to the development and implementation of a remediation plan under the supervision of the New York State Department of Environmental Conservation; and

WHEREAS, in support of this statement, the applicant provided estimates of costs associated with remediation of the site; and

WHEREAS, as to the adjacency of manufacturing uses, the applicant states that the site is located directly across the street from M1-1 and M1-2 zoning districts, which are occupied with industrial uses that render the site unsuitable for conforming uses; and

WHEREAS, in particular, the applicant states that there are five corner lots (including the subject site) at the intersection of 28th Avenue and College Point Boulevard and that all five contain manufacturing, industrial or automotive uses; accordingly, a residential or community facility building would have to be offered at discounted rates that would be insufficient to offset the costs of remediation and the inefficiencies inherent in developing a trapezoidal site; and

WHEREAS, based upon the above, the Board finds that the site's contamination and proximity to manufacturing uses create unnecessary hardship and practical difficulty in developing the site in conformance with use regulations; and

WHEREAS, the applicant assessed the financial feasibility of three scenarios: (1) an as-of-right mixed residential and community facility building; (2) an as-of-right community facility building; and (3) the proposal; and

WHEREAS, the applicant concluded that only the proposal would result in a sufficient return; and

WHEREAS, at hearing, the Board directed the applicant to clarify the costs associated with remediation of the contaminated site; and

WHEREAS, in response, the applicant submitted detailed calculations and an itemized cost breakdown; and

WHEREAS, based upon its review of the record, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that, in accordance with ZR § 72-21(c), the proposed use will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the immediate area is characterized by low- to medium-density commercial and manufacturing uses; and

WHEREAS, the applicant states that there are non-conforming commercial and manufacturing uses on the two blocks directly north and directly south of the site along College Point Boulevard, and that the areas south and east of the site are almost exclusively commercial and manufacturing; and

WHEREAS, the applicant acknowledges that its two immediately adjacent lots are occupied by a mixed residential and commercial building on Block 4292, Lot 11 (which is directly north of the site) and a single-family residence on Block 4292, Lot 75, which is directly west of the site; however, the applicant states that the proposed bank office use is harmonious with a residential neighborhood, in that it has regular, daytime business hours and does not create any noise, traffic, or air quality impacts; further, the applicant has located the bank building on the southeastern-most corner of the lot and provided appropriate buffering measures, including a six-foot opaque fence with plantings; and

WHEREAS, the applicant also notes that the proposal has the support of a nearby homeowner's association; and

WHEREAS, the applicant represents and the Board agrees that the proposed bank (including its drive-through) will have significantly less traffic impacts on the neighborhood than the gasoline and automotive service station that previously occupied the

site; and

WHEREAS, finally, the applicant states that a manufacturing use has occupied the site for nearly 70 years and that the change to office use brings the site more into conformance with the site's R4/R5B designation and its nearby residential uses; and

WHEREAS, at hearing, the Board directed the applicant to clarify the need for the second story and the drive-through, and their impacts on the parking requirements of the bank; and

WHEREAS, in response, the applicant submitted a letter from the prospective tenant of the space, which stated that both the second floor and the drive-through are essential to its banking operations; according to the bank, the second floor would provide space for loan officers and customer service representatives to meet with patrons but would not increase the number of employees working at the branch; as such, the second floor has no impact on the parking requirements of the bank; in addition, the applicant provided a parking survey that demonstrated the proposed five spaces would, in light of nearby on-street parking, be adequate to accommodate the expected parking demand of the bank; and

WHEREAS, as for the drive-through, the applicant states that it is an amenity that would be particularly desirable for its local patrons, who tend to be automobile-oriented; and

WHEREAS, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the practical difficulties and unnecessary hardships associated with the site result from the shape of the site, its contamination, and its proximity to manufacturing uses; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, in accordance with ZR § 72-21(d); and

WHEREAS, the applicant represents and the Board agrees that, per ZR § 72-21(e), the proposal represents the minimum variance needed to allow for a reasonable and productive use of the site; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an as unlisted action pursuant to 6 NYCRR, Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13-BSA-034Q, dated September 19, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on

**279-12-BZ**

**CEQR #13-BSA-034Q**

Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site partially within an R4 zoning district and partially within an R5B zoning district, the construction of a two-story commercial building to be occupied as a bank (Use Group 6) with five accessory off-street parking spaces and a drive-through, contrary to ZR § 22-10; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 12, 2013"— (8) sheets; and *on further condition*:

THAT the bulk parameters of the building will be as follows: two stories; a maximum floor area of 5,082 sq. ft. (0.88 FAR); a maximum height of 26'-10"; a maximum lot coverage of 2,541 sq. ft.; and five accessory parking spaces;

THAT the building will be used as a bank;

THAT any change in use of the building will be subject to the Board's approval;

THAT landscaping and fencing will be in accordance with the BSA-approved plans;

THAT signage will comply with C1 district regulations;

THAT this approval is limited to the relief granted

**A true copy of resolution adopted by the Board of Standards and Appeals, January 28, 2014.**

**Printed in Bulletin Nos. 4-5, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

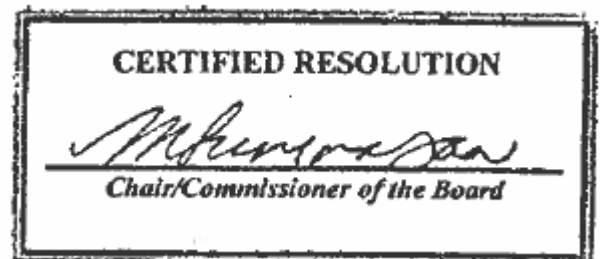
by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT substantial construction will proceed in accordance with ZR § 72-23;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 28, 2014.



**263-12-BZ**

**CEQR #13-BSA-029X**

APPLICANT – Sheldon Lobel, P.C., for Luke Company LLC, owner.

SUBJECT – Application September 4, 2012 – Variance (§72-21) to permit senior housing (UG 2), contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 232 & 222 City Island Avenue, site bounded by Schofield Street and City Island Avenue, Block 5641, Lots 10, 296, Borough of Bronx.

**COMMUNITY BOARD #10 & 13BX**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 21, 2013, acting on DOB Application No. 220206783, reads, in pertinent part:

Residential use is not permitted in an M1-1 zoning district, per ZR Section 42-00

Residential use does not have the required front yard along the zoning district boundary, as required by ZR Section 43-304; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, within the Special City Island District, the construction of a three-story residential building with age-restricted dwelling units (Use Group 2) with a front yard depth of 10’-0”, contrary to ZR §§ 42-00 and 43-304; and

WHEREAS, a public hearing was held on this application on June 11, 2013, after due notice by publication in the *City Record*, with continued hearings on October 29, 2013, and February 25, 2014. On May 20, 2014, the case was reopened and closed, and then to decision on June 17, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the Board notes that the application has been significantly altered through the hearing process; the original application included four stories, 132,271 sq. ft. of floor area (2.4 FAR), 65 percent lot coverage, 214 assisted-living dwelling units, 102 parking spaces, no front yards, a rear yard depth of 20’-0”, and a variance of Building Code Section BC G304 (which, among other things, requires that residential buildings be elevated above the design flood elevation) under BSA Cal. No. 264-12-A (the “Original Application”); the amended proposal includes three stories, 33,310 sq. ft. of floor area (0.6 FAR), 22-percent lot coverage, 45 age-

restricted (persons 55 years of age or older) dwelling units, 48 parking spaces, two front yards with depths of 10’-0”, a rear yard depth of 30’-0”, and construction in accordance with Building Code Section BC G304 (the “Amended Application”); and

WHEREAS, Community Board 10, Bronx, recommended disapproval of the Original Application and recommends disapproval of the Amended Application, citing concerns regarding: (1) the placement of housing on a site within a manufacturing district and a flood plain; (2) the amount of open space provided on the lot; and (3) the absence of “green” initiatives and flood-prevention measures at the building and site; and

WHEREAS, State Senator Jeffrey Klein and City Councilmember James Vacca recommended disapproval of the Original Application; and

WHEREAS, the City Island Chamber of Commerce recommends approval of the Amended Application; and

WHEREAS, certain members of the surrounding community submitted testimony in support of both Original and Amended Applications; and

WHEREAS, certain members of the surrounding community and the City Island Civic Associated (through counsel) submitted testimony in opposition to the Original Application (the “Opposition”); and

WHEREAS, the Opposition identified the following reasons for its objection to the Original Application: (1) the applicant lacks the legal capacity to develop or operate a residence for the elderly; (2) the proposed building is grossly incompatible with the surrounding community and puts building and neighborhood residents at risk; (3) the applicant fails to make the required findings to justify the variances it seeks under the Zoning Resolution and the Building Code; and (4) the application does not reflect the January 2012 Federal Emergency Management Agency (“FEMA”) Advisory Flood Insurance Rate Map changes, which increased the minimum elevation requirement of the building’s lowest floor to an adjusted height of 13’-6”; and

WHEREAS, a member of the City Island Civic Association states that the group does not oppose the Amended Application; however, it requests the following modifications: (1) the inclusion of a permeable paved surface; and (2) the inclusion of a “green” roof; and

WHEREAS, in response, the applicant states that it is unable to utilize a permeable paved surface because it must cap the soil prevent the risk of human exposure to certain contaminants that may be present in the soil; the applicant notes that the drainage for the site will be in accordance with the applicable provisions of the building code; and

WHEREAS, as to the green roof, the applicant states that 34 percent of the roof is dedicated as a “green” roof; and

WHEREAS, this application is brought on behalf of

**263-12-BZ**

**CEQR #13-BSA-029X**

the Italian Hospital Society, a not-for-profit organization, which the applicant states was established in 1937 in conjunction with the founding of the Italian Hospital of New York on West 110th Street; and

WHEREAS, the subject site is an irregularly-shaped parcel located on the southeast corner of the intersection of City Island Avenue and Schofield Street, within an M1-1 zoning district, within the Special City Island District; and

WHEREAS, the site has approximately 191 feet of frontage along Schofield Street, approximately 237 feet of frontage along City Island Avenue, and 55,529 sq. ft. of lot area; and

WHEREAS, the site is currently used as a contractor's yard (Use Group 17); and

WHEREAS, as noted above, the applicant seeks to construct a three-story building with three stories 33,310 sq. ft. of floor area (0.6 FAR), 22 percent lot coverage, 45 age-restricted dwelling units, 48 parking spaces, two front yards with depths of 10'-0", and a rear yard depth of 30'-0"; the applicant notes that although the residence will be age-restricted, no assisted-living services will be provided; and

WHEREAS, because, per ZR § 42-00, Use Group 2 is not permitted within the subject M1-1 zoning district, the applicant requests a use variance; and

WHEREAS, in addition, because Schofield Street is a narrow street and its center line is a district boundary between the subject M1-1 zoning district and an R3A zoning district, a front yard depth of 20'-0" is required along the Schofield Street frontage, per ZR § 43-304; however, the applicant seeks to provide a front yard depth of 10'-0" along Schofield Street, and, as such, a variance of ZR § 43-304 is requested; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site's contaminated soil; (2) its high water table; and (3) its location within a flood plain; and

WHEREAS, the applicant states that the site suffers from high levels of contamination, including the presence of a layer of coal ash, slag and petroleum, volatile organic compounds, semi-volatile organic compounds, and metals; as such, the site will require significant remediation, including soil removal, disposal, and replacement of soils; further, the foundation will require special ventilation to allow trapped vapors to be safely exhausted and the underlying soil will be sealed with a concrete cap; and

WHEREAS, the applicant also notes that the site has been admitted into the New York State Department of Environmental Conservation Brownfields Cleanup Program, which will help to defray some but not all of the costs associated with redevelopment of the site; and

WHEREAS, the applicant states that ground water at the site fluctuates between five and ten feet below grade, which prevents the use of sub-grade spaces for administrative offices and common dining and recreational areas; and

WHEREAS, in addition, the applicant represents that the high water table will require dewatering and shoring of excavation walls during the construction of the foundation, at significant costs; and

WHEREAS, lastly, the applicant states that the site's location within a flood plain results in additional premium construction costs; and

WHEREAS, specifically, the applicant states that the site is within Zones AE and X of FEMA Advisory Flood Insurance Rate Map; as such, the lowest story of the building must be elevated above the design flood elevation, dry flood-proofing materials must be utilized at the cellar and first story, and utilities and equipment must be located at or above the design flood elevation or constructed so as to prevent water from entering or accumulating within the components during flooding; and

WHEREAS, as to the uniqueness of the site's physical conditions, the applicant states that while many sites on City Island are either contaminated, have a high water table, or are within a flood plain, no other site of remotely comparable size has all three conditions; accordingly, the applicant asserts that the site is unlike any other site on City Island; and

WHEREAS, thus, the applicant asserts that the site's unique combination of physical conditions—and their attendant premium construction costs—make a conforming development at the site impractical; and

WHEREAS, in particular, the applicant states that an as-of-right three-story office building with 34,800 sq. ft. of floor area (0.63 FAR) and 116 surface parking spaces does not produce sufficient returns to offset the above-noted premium construction costs; and

WHEREAS, the Board agrees that the aforementioned unique physical conditions, when considered individually and in the aggregate, create unnecessary hardship and practical difficulty in developing the site in accordance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, in particular, in addition to the proposal, the applicant examined the economic feasibility of: (1) an as-of-right office building with (0.63 FAR); (2) an as-of-right office building with (1.0 FAR); (3) a lesser variance multiple dwelling with 0.5 FAR; (4) a lesser variance 0.5 FAR residential scenario with 21 single-family dwellings; and (5) the proposal; and

WHEREAS, the applicant concluded that only the proposal results in a positive rate of return, making it

**263-12-BZ**

**CEQR #13-BSA-029X**

economically viable; and

WHEREAS, based upon its review of the applicant's economic analysis, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance and compliance with applicable zoning requirements will provide a reasonable return, in accordance with ZR § 72-21(b); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by a predominance of two-story residential buildings, except along City Island, which, to the north, includes local retail and office uses, and, to the south, P.S. 175, a portion of Ambrosini Field along City Island Avenue, and a yacht club; and

WHEREAS, as to immediately adjacent uses, the applicant states that there are residences or mixed residential and commercial buildings directly north and west of the site, an unmapped street (Centre Street) and Ambrosini Field directly south of the site, and a Verizon telephone exchange building directly east of the site; and

WHEREAS, thus, the applicant contends that the proposed residential use is entirely consistent with surrounding neighborhood; and

WHEREAS, turning to bulk, the applicant states that while the proposed 0.6 FAR is higher than the 0.5 FAR permitted in the nearby R3A district, it is well within the 1.0 FAR permitted for a conforming use at the site; and

WHEREAS, as noted above, through the hearing process and in response to concerns articulated by the community and by the Board, the applicant significantly scaled down the size and changed the nature of the project, from a four-story, assisted-living facility with 132,271 sq. ft. of floor area (2.4 FAR) and 214 dwelling units to a three-story, age-restricted apartment building with 33,310 sq. ft. of floor area (0.6 FAR) and 45 dwelling units; and

WHEREAS, additionally, the applicant notes that the proposed height complies with height regulations of the Special City Island District (ZR § 112-106) and the proposed density (45 dwelling units) is less than would be permitted if the site were subject to the density regulations of an R3A zoning district (47 dwelling units); and

WHEREAS, as to the requested front yard waiver, the applicant states that providing a front yard depth of 20'-0" along Schofield Street for the proposed residential

building is impractical and unnecessary, and would result in a loss of dwelling units that would make the proposal infeasible; and

WHEREAS, the applicant asserts that the neighborhood context, parking and open space requirements of an R3A zoning district, and programmatic needs of the Italian Hospital Society in creating an appropriate age-restricted living environment with easily accessible parking and outdoor recreation space must be considered in determining the appropriate depth of the front yard along Schofield Street; and

WHEREAS, further, the applicant states that providing a front yard depth of 20'-0" along Schofield Street does not further the purposes of the ZR § 43-304, because the section was clearly intended to provide an added buffer between residential uses and manufacturing uses and the proposed building is residential within the manufacturing district; thus, no buffer is necessary and a front yard depth of 10'-0" (the requirement in the adjacent R3A zoning district) is appropriate; and

WHEREAS, thus, the applicant states that the proposed bulk is consistent with the built character of the surrounding neighborhood; and

WHEREAS, the Board agrees that the character of the area is residential, and finds that, pursuant to ZR § 72-21(c), this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board also finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's soil contamination, high water table, location within a flood plain, as well as the limited economic potential of conforming uses on the lot; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA029X, dated August 31, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit

**263-12-BZ**

**CEQR #13-BSA-029X**

and Pedestrians; Air Quality; Noise; and Public Health;  
and

WHEREAS, the site has been submitted for entry into the New York State Brownfield Cleanup Program ("BCP") administered by the New York State Department of Environmental Conservation ("DEC"); and

WHEREAS, based on the level of site contamination and the applicant's proposal to construct subject to BCP approval, the Department of Environmental Protection ("DEP") recommends that an E designation for hazardous materials be placed on the site as part of the approval; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an M1-1 zoning district, within the Special City Island District, the construction of a three-story residential building with age-restricted dwelling units (Use Group 2) with a front yard depth of 10'-0", contrary to ZR §§ 42-00 and 43-304, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 13, 2014"- four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: three stories, a maximum floor area of 33,310 sq. ft. (0.6 FAR), a maximum lot coverage of 22 percent, a maximum of 45 age-restricted dwelling units, 48 parking spaces, two front yards with minimum depths of 10'-0", and a minimum rear yard depth of 30'-0";

THAT the occupancy of the building will be limited to persons 55 years of age or older;

THAT landscaping will be in accordance with the

**A true copy of resolution adopted by the Board of Standards and Appeals, June 17, 2014.**

**Printed in Bulletin No. 25, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

BSA-approved drawings;

THAT substantial construction will be completed in accordance with ZR § 72-23;

THAT, an E designation (E-347) is placed on the subject property to ensure proper hazardous materials remediation;

THAT, prior to the issuance by DOB of permits that involve soil disturbance, the applicant shall obtain from OER a Notice to Proceed, which shall be based on DEC's letter of acceptance into the Brownfield Cleanup Program;

THAT, prior to the issuance by DOB of a certificate of occupancy, the applicant shall obtain from OER a Notice of Satisfaction, which shall be based on DEC's letter of satisfaction regarding completion of the Brownfield Cleanup Program;

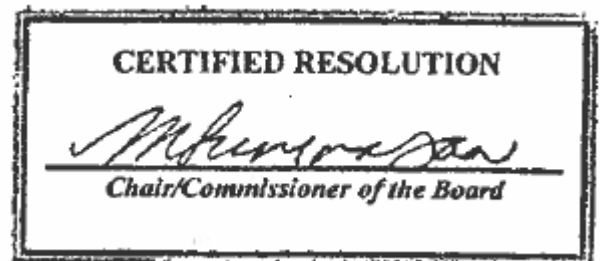
THAT, should the applicant not obtain an approval from DEC for completion of the BCP, the applicant must obtain approval from OER for a hazardous materials remediation plan and construction health related safety plan prior to the issuance of a Certificate of Occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,  
June 17, 2014.



**241-12-BZ**

**CEQR #13-BSA-013M**

APPLICANT – Greenberg Traurig, LLP by Deidre A. Carson, Esq., for 8-12 Development Partners, owners; 10-12 Bond Street, lessee.

SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a new mixed residential and retail building, contrary to use regulations (§42-10 and 42-14D(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 8-12 Bond Street aka 358-364 Lafayette Street, northwest corner of the intersection of Bond and Lafayette Streets, Block 530, Lot 62, Borough of Manhattan.

**COMMUNITY BOARD #2M**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 11, 2012, acting on Department of Buildings Application No. 121183316, reads in pertinent part:

Proposed UG 6 below the floor level of the second story is not permitted; contrary to ZR 42-14D(2)(b)

Proposed UG 2 is not permitted; contrary to ZR 42-10; and

WHEREAS, this is an application under ZR §72-21, to permit, in an M1-5B zoning district within the NoHo Historic District, the construction of a seven-story (including penthouse) mixed-use residential/commercial building with 11 dwelling units and retail use below the level of the second floor, contrary to ZR §§ 42-14 and 42-10; and

WHEREAS, a public hearing was held on this application on October 30, 2012, after due notice by publication in the *City Record*, with a continued hearing on December 11, 2012, and then to decision on March 5, 2013; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of the application, with the following conditions: (1) commercial use not be permitted above the ground floor or in the proposed open courts or rear yard; (2) an eating and drinking establishment not be permitted; and (3) the proposed accessory garage not be permitted; and

WHEREAS, a representative of the NoHo-Bowery Stakeholders, Inc., provided testimony in support of the

application; and

WHEREAS, the site is located on the northwest corner of the intersection of Bond Street and Lafayette Street, in an M1-5B zoning district within the NoHo Historic District; and

WHEREAS, the site has 60'-3½" of frontage along Bond Street, 100'-6¼" of frontage along Lafayette Street, and a total lot area of 6,471 sq. ft.; and

WHEREAS, on February 9, 2010, under BSA Cal. No. 195-07-BZ, the Board granted a variance to permit the construction of a seven-story 50-room hotel building with hotel and retail uses below the level of the second floor; and

WHEREAS, the applicant represents that the prior owner was unable to develop the hotel building, in part due to additional hardship costs that were not discovered at the time of the previous grant and which made the use of the site for a hotel building unviable; and

WHEREAS, the site is currently occupied by a two-story and mezzanine building, a one-story structure formerly used as an automotive service station, an open parking lot, and an advertising sign, all of which will be demolished or replaced; and

WHEREAS, the proposed seven-story (including penthouse) building will have a total floor area of 32,227 sq. ft. (4.98 FAR), with 29,459 sq. ft. (4.55 FAR) of residential floor area and 2,768 sq. ft. (0.43 FAR) of commercial floor area on the first floor, an additional 5,910 sq. ft. of floor space in the cellar, a wall height of 76'-0", and a total height of 84'-9"; and

WHEREAS, the proposal provides for the following uses: (1) retail space, an accessory fitness center, accessory residential storage, and mechanical use at the cellar level; (2) retail space, residential space, a residential lobby, an open court, and an accessory garage for one vehicle at the first floor; and (3) residential units at the second through seventh floors; and

WHEREAS, because general residential use is not permitted as-of-right in the subject M1-5B zoning district and retail use is not permitted below the level of the second floor, the subject use variance is requested; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the combined effect of the site's adjacency to an existing 30-inch gas main, the Lexington Avenue subway line, and adjacent buildings; (2) the site's unusual depth to bedrock; and (3) the historic use of the site as an automotive service station, which has resulted in soil contamination; and

WHEREAS, the applicant submitted a letter from a geotechnical engineering consultant which states that a settlement analysis was performed based on a review of collected boring data and that the predicted settlements for the proposed building would be "unacceptable for the 30-inch gas main and subway structure located beneath

**241-12-BZ**  
**CEQR #13-BSA-013M**

Lafayette Street”; and

WHEREAS, the applicant states that based on the settlement analysis, the foundation for the proposed building has been designed for caisson support with piles drilled to bedrock, as driven piles are not permitted under applicable New York City Transit Authority (“NYCTA”) regulations due to the adjacent subway line; and

WHEREAS, the applicant represents that collectively, the location of the 30-inch gas main and subway structure result in additional construction costs of \$748,816, which includes special monitoring and inspection costs required under NYCTA regulations; and

WHEREAS, the applicant further represents that an additional \$238,218 of construction costs is attributable to the cost of underpinning the adjacent buildings, which have unusual foundation conditions; and

WHEREAS, the applicant notes that in the variance approved under BSA Cal. No. 195-07-BZ, it proposed a hotel building with two cellar levels excavated to a depth of 20 feet (as opposed to the current proposal for a one-cellar building) in order to provide a sound subsurface base for a mat foundation, due to the presence of uncontrolled fill and loose sand throughout much of the site and the efficiency gains associated with locating certain accessory hotel uses below grade; and

WHEREAS, the applicant represents that for the proposed mixed-use residential/commercial building there are few uses that can be located below grade, reducing the efficiencies gained from the additional excavation, and that employing a caisson support system allows the owner to avoid any of the extra bracing and shoring costs that would have been associated with deeper excavation; and

WHEREAS, at hearing the Board asked the applicant to compare the costs associated with building a foundation for the two-cellar alternative that was proposed for the hotel building with the currently proposed one-cellar building; and

WHEREAS, in response, the applicant submitted a cost schedule which shows that the two-cellar alternative would be approximately \$364,181 more costly to construct; and

WHEREAS, the applicant notes that the project engineer also does not recommend the two-cellar alternative from a safety point of view because of the adjacency to the subway and gas line and the relative amount of settlement that it would produce; and

WHEREAS, the Board also requested that the applicant provide a comparison between the cost to build the proposed foundation with the cost of a “normal” foundation if the site was not encumbered with the aforementioned physical conditions; and

WHEREAS, in response, the applicant submitted a comparison prepared by its construction consultant which reflects that a standard foundation for a building of this

type and size without the special conditions would be built on spread footings and the difference between the proposed foundation and the spread footing foundation is approximately \$1,510,663; and

WHEREAS, as to the depth of the bedrock on the site, the applicant submitted another letter from the geotechnical consultant stating that the bedrock in the area surrounding the site is typically 50 to 60 feet below grade, while the boring logs show that the depth to bedrock for the subject site is between 80 and 90 feet below street grade, approximately 30 feet below the local bedrock elevation; and

WHEREAS, the applicant represents that the unusual depth of bedrock results in additional construction costs of \$895,482; and

WHEREAS, as to the soil contamination, the applicant represents that remedial work will be required due to the industrial character of the historic uses on the lot, which included processes and businesses that used lead, mercury, and petroleum products; and

WHEREAS, the applicant states that three underground storage tanks associated with the former automotive service station located on the site were legally closed in 2006, and that the results of testing that was performed at that time confirmed the presence of elevated mercury and semi-volatile organic compound levels in the soil on the site; and

WHEREAS, the applicant submitted an environmental report and cost estimates documenting the expected testing and remediation of the soil, including the removal and disposal of one underground storage tank and the removal and disposal of soil (assuming it is substantially contaminated), and the potential inclusion of a vapor barrier and ventilation system, due to its historic use as an automotive service station; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study that analyzed: (1) a lesser variance seven-story 50-room hotel as approved in the prior variance, but without a sub-cellar; and (2) the proposed residential building with ground floor retail use; and

WHEREAS, the Board notes that conforming hotel and office scenarios were previously analyzed under BSA Cal. No. 195-07-BZ and it was determined that they would not realize a reasonable return; and

WHEREAS, accordingly, the applicant concludes that the conforming and lesser variance scenarios would not result in a reasonable return, due to the unique physical conditions of the site and the resulting premium construction costs, but that the proposed hotel building would realize a reasonable return and has submitted evidence in support of that assertion; and

WHEREAS, based upon its review of the

**241-12-BZ**

**CEQR #13-BSA-013M**

applicant's submissions, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, as to bulk, the applicant notes that the proposed 4.98 FAR complies with the maximum 5.0 FAR permitted for an as-of-right hotel building in the subject zoning district, and that no bulk waivers are requested; and

WHEREAS, the applicant represents that the immediate area is a mix of residential and commercial uses; and

WHEREAS, specifically, the applicant states that the immediate adjacent uses are largely comprised of ground floor and cellar retail uses with residential uses above; and

WHEREAS, in support of the above statements, the applicant submitted a 400-ft. radius diagram, showing the various uses in the immediate vicinity of the site; and

WHEREAS, as to the Community Board's requested conditions, the applicant is not proposing any commercial uses above the level of the second floor or in the open courts or rear yard, and has agreed that an eating and drinking establishment will not be permitted in the commercial space; and

WHEREAS, as to the Community Board's request that the curb cut and accessory parking garage be removed, the applicant seeks to maintain the proposed curb cut and accessory garage and notes that the proposed curb cut already exists as the current use of the site is as an open parking lot, and that four other curb cuts are being eliminated on the site; and

WHEREAS, the applicant notes that the proposed accessory garage is small and accommodates only one vehicle, and represents that the space would not be viable as additional retail space; and

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

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission (LPC), dated February 12, 2013; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in

title, but is the result of the site's unique subsurface soil conditions; and

WHEREAS, the Board finds that this proposal is the minimum necessary to compensate for the additional construction costs associated with the uniqueness of the site and to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA013M dated January 3, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials, air quality and noise impacts; and

WHEREAS, DEP reviewed and accepted the July 2012 Remedial Action Plan site-specific Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, DEP reviewed the applicant's stationary source air quality screening analysis and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, DEP reviewed the results of noise monitoring and determined that a minimum of 31 dBA window-wall noise attenuation is required for both the windows and the walls of the proposed building and an alternate means of ventilation should be provided in order to achieve an interior noise level of 45 dBA; and

WHEREAS, DEP determined that, with these noise measures, the proposed project is not anticipated to result in significant noise impacts; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse

**241-12-BZ**  
**CEQR # 13-BSA-013M**

impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, in an M1-5B zoning district within the NoHo Historic District, the construction of a seven-story (including penthouse) mixed-use residential/commercial building with 11 dwelling units and retail use below the level of the second floor, contrary to ZR §§ 42-14 and 42-10, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received December 21, 2012” – nineteen (19) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: seven stories; a maximum total floor area of 32,227 sq. ft. (4.98 FAR); a maximum residential floor area of 29,459 sq. ft. (4.55 FAR); a maximum commercial floor area of 2,768 sq. ft. (0.43 FAR); a wall height of 76'-0"; and a total height of 84'-9", as illustrated on the BSA-approved plans;

THAT no eating and drinking establishment (Use Group 6 or Use Group 12) will be permitted on the site;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided it with DEP's approval of the Remedial Closure Report; and

THAT the proposed building's windows and walls will have a noise attenuation rating of 31 dBA OITC and that an alternate means of ventilation will be provided throughout the building;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT construction will proceed in accordance with ZR § 72-23; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

**A true copy of resolution adopted by the Board of Standards and Appeals, March 5, 2013.**  
**Printed in Bulletin No. 10, Vol. 98.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

Adopted by the Board of Standards and Appeals,  
March 5, 2013.

**66-12-BZ**

**CEQR #12-BSA-098M**

APPLICANT – Bryan Cave LLP/Frank E. Chaney, Esq., for Nicholas Parking Corp./Owner of Lot 30, owner; Ladera, LLC, Owner of Lot 35, lessee.

SUBJECT – Application March 20, 2012 – Variance (§72-21) to permit a new mixed-use building containing a FRESH Program food store, a preschool and 164 residential units, contrary to use (§22-10), lot coverage (§24-11) and parking (§25-23) regulations. R7A, R8A/C2-4 zoning districts.

PREMISES AFFECTED – 223-237 Nicholas Avenue, aka 305 W. 121<sup>st</sup> Street and W. 122<sup>nd</sup> Street, Block 1948, Lot 30, 35, Borough of Manhattan.

**COMMUNITY BOARD #10M**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 23, 2012, acting on Department of Buildings Application No. 120562284, reads, in pertinent part:

1. ZR 22-00 The proposed commercial use in an R7A residential zoning district is contrary to ZR 22-00.
2. ZR 23-145 The proposed lot coverage, for a corner lot portion of a zoning lot, exceeds the maximum allowed by ZR 23-145.
3. ZR 25-23 The proposed (0) accessory residential parking spaces is less than that required by ZR 25-23.; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R7A zoning district and partially within an R8A (C2-4) zoning district, the proposed construction of a 13-story mixed-use residential / commercial / community facility building that does not comply with use and parking regulations and exceeds the permitted lot coverage, contrary to ZR §§ 22-00, 23-145, and 25-23; and

WHEREAS, a public hearing was held on this application on August 14, 2012 after due notice by publication in *The City Record*, with a continued hearing on September 25, 2012, and then to decision on October 23, 2012; and

WHEREAS, Community Board 10, Manhattan, recommends disapproval of this application, citing a concern that affordable housing was not included; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan,

Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Lots 30 and 35 (the “Project Site”) on the block bounded by St. Nicholas Avenue, West 22<sup>nd</sup> Street, West 121<sup>st</sup> Street, and Manhattan Avenue are part of a larger zoning lot that will also include Lots 24, 25, 26, 29, and 40 (a/k/a condominium lots 1001-1006) collectively (the “Zoning Lot”); and

WHEREAS, the subject application concerns proposed construction only on the Project Site; and

WHEREAS, the Project Site’s lot area is 20,606 sq. ft., which occupies most of the western block front of St. Nicholas Avenue between West 121<sup>st</sup> Street and West 122<sup>nd</sup> Street and is currently occupied by a two-story garage (Lot 30) and a gas station (Lot 35); and

WHEREAS, the applicant is also seeking an approval from the City Planning Commission for a floor area bonus associated with the FRESH Program, pursuant to ZR § 63-211, and an authorization for the proposed height, pursuant to ZR § 63-22; and

WHEREAS, the applicant proposes to construct a 13-story, 169,192 sq. ft. mixed-use building with the following uses: (1) a FRESH food store with a floor area of 16,710 sq. ft. on the first floor and 11,340 sq. ft. of floor space in the cellar; (2) a preschool with a floor area of 15,551 sq. ft. of community facility floor area on the second floor, with a first floor entrance and lobby on West 121<sup>st</sup> Street; and (3) 164 residential units with a total floor area of 136,931 sq. ft. (including the 15,936 sq. ft. of FRESH bonus floor area) and a first floor lobby on West 122<sup>nd</sup> Street; and

WHEREAS, the variance is required because the applicant seeks to (1) occupy 970 sq. ft. of commercial use (above and below grade) within the R7A portion of the site; (2) distribute the lot coverage without regard to corner or interior lot portions; and (3) reduce the number of required accessory parking spaces; and

WHEREAS, the applicant states that the proposed building will comply with all relevant floor area regulations, across the zoning lot (which includes the Project Site and the additional lots) and will comply with street wall location, maximum street wall height, and minimum setback requirements; and

WHEREAS, however, the applicant asserts that because of the unique shape of the Project Site, two small triangular portions of it totaling 744 sq. ft. of lot area and 907 sq. ft. of FRESH food store floor space (744 sq. ft. on the first floor and 163 sq. ft. in the cellar) are located in the R7A zoning district, contrary to use regulations; and

WHEREAS, additionally, the applicant notes that it does not comply with lot coverage regulations in that each corner lot, through lot, or interior lot portion of a zoning lot must separately and individually comply with the maximum lot coverage requirement for such portion; specifically, under ZR § 77-24, for zoning lots divided by zoning district boundaries, the maximum permitted lot coverage for each corner lot, through lot or interior lot

**66-12-BZ**

**CEQR #12-BSA-098M**

portion of the zoning lot must be calculated separately for each zoning district within which each portion is located; and

WHEREAS, the applicant notes that although the proposal reflects 965 sq. ft. less total lot coverage (24,042 sq. ft.) than the total maximum lot coverage permitted (25,007 sq. ft.) and the West 121<sup>st</sup> Street and St. Nicholas Avenue corner lot portions and the St. Nicholas Avenue and West 121<sup>st</sup> Street interior lot portions have less than the permitted maximum lot coverage, the West 122<sup>nd</sup> Street and St. Nicholas Avenue corner lot portion exceeds the permitted maximum by 689 sq. ft.; and

WHEREAS, as to parking, one parking space is required for 50 percent of the dwelling units in the R7A portion of the site and for 40 percent of the dwelling units in the R8A portion of the site; because the proposal reflects 164 dwelling units (eight in the R7A portion of the site and 144 in the R8A(C2-4) portion of the site), a total of 66 parking spaces is required (four for the R7A dwelling units and 62 for the R8A (C2-4) dwelling units); and

WHEREAS, the applicant proposes to provide 30 of the 66 required parking spaces off-site at 2280 Frederick Douglas Boulevard, one block north and across the street from the Project Site, which is also owned by the applicant; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the site in compliance with underlying district regulations: (1) the irregular shape of the Project Site; (2) the split zoning of the Project Site and the Zoning Lot; (3) the proximity of the Eighth Avenue subway to the Project Site's St. Nicholas Avenue street line, (4) the high water table; and (5) the existence of hazardous materials due to the historic use of the site by automotive uses; and

WHEREAS, as to the irregular shape, the applicant states that (1) St. Nicholas Avenue runs at an approximately 45 degree angle through the otherwise rectilinear street grid and (2) the Project Site wraps around Lot 29 at the corner of St. Nicholas Avenue and West 121<sup>st</sup> Street; and

WHEREAS, the applicant states that the site is a highly irregular polygon, with multiple different interior angles, including 45, 90, 135, and 270 degrees and with only two of its eight sides having the same dimension; and

WHEREAS, the applicant asserts that the highly irregular shape makes it impossible to design a symmetrical or rectilinear building that is more efficient and economical to construct; and

WHEREAS, further, the applicant states that because the Project Site is located between two cross streets and the block has a depth of 201.84 feet, it is divided into multiple corner and interior lot portions, including two corner lot portions and two interior lot portions and all of the different lot portions are also of

irregular shape; and

WHEREAS, the applicant asserts that the irregular shape creates a practical difficulty in complying with lot coverage and use regulations; and

WHEREAS, as to the split zoning lot, the applicant asserts that the portion of the Project Site and Zoning Lot that is within 100 feet of St. Nicholas Avenue is zoned R8A with a C2-4 overlay and the remainder is zoned R7A; therefore, while most of the Project Site is located within the R8A (C2-4) zoning district (18,761 sq. ft.), a portion (1,935 sq. ft.) is located in the R7A zoning district; and

WHEREAS, the applicant notes that the zoning district boundary line runs diagonally through the site; and

WHEREAS, as to the proximity to the subway, the applicant states that the MTA's Eighth Avenue subway line runs along St. Nicholas Avenue in front of the Project Site, at a distance from the site ranging from five feet (at the West 121<sup>st</sup> Street end of the site) to 31 feet (at the West 122<sup>nd</sup> Street end of the site); and

WHEREAS, further, the applicant notes that a 24-inch sewer is located between the site and the subway, getting as close as 12 inches to the site; and

WHEREAS, the applicant asserts that due to these conditions, construction requires a permit from the MTA, which includes engineering review and approval by the MTA and adherence to strict vibration limits and continuous monitoring; and

WHEREAS, the applicant represents that certain standard construction methods such as pile-driving are not permitted due to the vibrations they create and that the construction will require additional sheeting and shoring as part of the foundation system, which incur construction premiums; and

WHEREAS, as to the uniqueness of the condition, the applicant states that while there are other sites in the area that front on the subway line, it is not found generally; specifically, of the more than 100 properties on the three blocks between West 121<sup>st</sup> Street and West 122<sup>nd</sup> Street from Morningside Avenue to Adam Clayton Powell Boulevard, the Project Site is one of only ten that front on the subway; and

WHEREAS, further, the applicant submitted a map, which reflects that within the extended area bounded by Morningside Avenue/Manhattan Avenue and Adam Clayton Powell Boulevard between Central Park North and St. Nicholas Park/West 128<sup>th</sup> Street, there are a total of 1,127 individual properties, of which a total of 103 (9.1 percent) front on the subway that runs beneath Frederick Douglas Boulevard and St. Nicholas Avenue; and

WHEREAS, the applicant asserts that even among the 103 properties fronting on the subway, the Project Site is unique in that a portion of the site is only five feet from the subway tunnel due to the fact that the subway turns the corner at 121<sup>st</sup> Street, from St. Nicholas Avenue to Frederick Douglas Boulevard; and

**66-12-BZ**

**CEQR #12-BSA-098M**

WHEREAS, additionally, the applicant states that the Project Site is within 4.5 feet of a subsurface fan chamber at the middle of the St. Nicholas Avenue frontage; and

WHEREAS, the applicant asserts that it is the only one of more than 100 properties in the vicinity that is in such close proximity to the subway tunnel; and

WHEREAS, in contrast, the applicant submitted maps reflecting that many of the sites adjacent to the subway line are between 70 and 100 feet from the tunnel; and

WHEREAS, the applicant states that all other sites within the extended survey area, that are as close to the subway tunnel as the subject site, are occupied by buildings built before the subway tunnel was constructed in 1932; and

WHEREAS, the applicant asserts that the construction premiums associated with the irregular shape and the proximity to the subway tunnel necessitate that the cellar be used for an income-generating purpose, rather than for the required accessory parking; and

WHEREAS, the applicant represents that the food store requires a second floor for storage and other uses in order to be functional; and

WHEREAS, as to the water table, the applicant states that water is encountered at a depth of approximately 18 feet and, thus, the depth of the cellar is proposed at 15 feet, so as to avoid the high costs of dewatering; and

WHEREAS, accordingly, the applicant asserts that it would be too costly to construct a sub-cellar so that both the FRESH market and the required parking could be provided below grade; and

WHEREAS, as to hazardous materials and soil contamination, the applicant states that the historic use of the Project Site has been for a garage and a gas station use and that there are underground and aboveground gas storage tanks still in place; and

WHEREAS, the applicant states that there have been several subsurface investigations which have documented the existence of 15 gasoline storage tanks on the gas station site (Lot 35) and potentially three underground storage tanks on the garage site (Lot 30), which have led to contamination with primarily petroleum-based contaminants; and

WHEREAS, due to the evidence of contamination, the applicant filed an application with the New York State Department of Environmental Conservation for inclusion in the New York State Brownfield Cleanup Program; and

WHEREAS, under the Brownfield Cleanup Agreement, the applicant will prepare a Remedial Investigation Report, Remedial Action Work Plan, a Construction Health and Safety Plan and a Community Air Monitoring Program; and

WHEREAS, the applicant has identified premium construction costs associated with the remediation of the

site; and

WHEREAS, the Board inquired into whether the applicant would be eligible for a Brownfield Redevelopment Tax Credit and the applicant replied that it would be eligible for \$2,331,000 of discretionary, after-tax credits; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate create practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) a complying development consisting of the proposed uses with the proposed amount of floor area and height, but with a smaller FRESH food store that does not extend into the R7A zoning district and which accommodates the required parking in the cellar, but only 144 dwelling units; (2) a lesser variance building with all required parking spaces and less floor area for the FRESH food store and, thus no need for the use waiver, but maintaining the proposed non-complying lot coverage, and providing 162 dwelling units; and (3) the proposed building, with the FRESH food store at the first floor and cellar level, no parking onsite, and 164 dwelling units; and

WHEREAS, the study concluded that neither the complying development nor the lesser variance scenario would result in a reasonable return, but that the proposal would realize a reasonable return; and

WHEREAS, the Board directed the applicant to explain the effect of the Brownfield tax credits, and the applicant stated that even with the tax credits, the proposal did not realize a reasonable rate of return for a completely as-of-right proposal; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that only 744 sq. ft. of above grade FRESH food store space is within the R7A zoning district and thus contrary to use regulations, and that the remainder of the uses on the 20,606 sq. ft. lot area of the Project Site conform with use regulations; and

WHEREAS, further, the applicant states that St. Nicholas Avenue is a major thoroughfare, which was zoned for local retail use by the Department of City Planning's 2003 rezoning so as to encourage the development of additional commercial uses on this portion of the avenue; and

WHEREAS, as to the lot coverage, the applicant asserts that the waiver will allow for 689 sq. ft. of excess lot coverage in the West 122<sup>nd</sup> Street and St. Nicholas Avenue corner of the site to be offset by an equal amount of open space in the West 121<sup>st</sup> Street and St. Nicholas Avenue corner of the site; and

**66-12-BZ**  
**CEQR #12-BSA-098M**

WHEREAS, the applicant notes that if taken as a whole, the lot coverage across the site complies with total lot coverage regulations and, in fact will have 965 sq. ft. more of open space than required; and

WHEREAS, further, the applicant notes that the lot coverage and open space requirement is not applicable to the ground floor, which will be occupied by a commercial use, which is a permitted obstruction; and

WHEREAS, as to parking, the applicant studied the factors including the forecasted age and demographics of the future residents of the building, the location and type of building, and the proximity to mass transit and determined that a mostly non-family building close to multiple mass transit options results in a parking demand of as low as 16 percent and at most 18 percent, which is substantially less than the 40 to 50 percent requirements of ZR § 23-145; and

WHEREAS, the applicant asserts that even at 18 percent parking demand, only 30 spaces would be required; and

WHEREAS, the applicant proposes to satisfy its most conservative assessment of demand through 30 parking spaces off-site at 2280 Frederick Douglas Boulevard, one block north and across the street from the Project Site, which is also owned by the applicant; and

WHEREAS, the applicant notes that in addition to the proposed 30 parking spaces, within a half-mile radius of the Project Site, there are 15 off-street parking facilities having a total of 1,590 parking spaces, which would produce an average of 196 available spaces; and

WHEREAS, additionally, the applicant notes that the area is well-served by public transportation, including the A, C, B, and D lines, which run along St. Nicholas Avenue and Frederick Douglas Boulevard; and the 1, 2, and 3 lines, which run along Broadway and Lenox Avenue, each just three blocks from St. Nicholas Avenue; several bus lines through the north-south and east-west; as well as bicycle lanes; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental

Assessment Statement ("EAS") 12BSA098M, dated March 5, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, lots 30 and 35 were assigned an "E" designation for hazardous materials as part of the Frederick Douglas Boulevard zoning changes adopted in 2003, and the lots were assigned E-120 under CEQR number 03DCP026M; and

WHEREAS, the "E" designation requires an environmental review by the New York City Office of Environmental Remediation ("OER"), which must be satisfied before DOB will issue building permits for the property; and

WHEREAS, the subject site was also accepted into the New York State Brownfield Cleanup Program ("NYSBCP") on February 9, 2011 and a Brownfield Cleanup Agreement ("BCA") was executed by the New York State Department of Environmental Conservation ("DEC") on March 17, 2011; and

WHEREAS, under the BCA, the applicant is required to submit a Remedial Investigation Report ("RIR") and Remedial Action Work Plan ("RAWP") to DEC, the New York State Department of Health ("DOH") and OER for review and approval; and

WHEREAS, the DEC is currently reviewing the RAWP; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under ZR § 72-21, to permit, on a site partially within an R7A zoning district and partially within an R8A (C2-4) zoning district, the proposed construction of a 13-story mixed-use residential / commercial / community facility building that does not comply with use and parking regulations and exceeds the permitted lot coverage, contrary to ZR §§ 22-00, 23-145, and 25-23; and *on condition* that any and all work shall substantially conform to drawings as they apply to the

**66-12-BZ**

**CEQR #12-BSA-098M**

objections above noted, filed with this application marked "October 15, 2012"-- twenty (20) sheets; and *on further condition*:

THAT a minimum of 30 accessory residential parking spaces be provided and maintained at 2280 Frederick Douglas Boulevard;

THAT the above condition will be noted on the Certificate of Occupancy;

THAT prior to DOB's issuance of any building permit, OER must issue a Notice to Proceed pursuant to the site's "E" designation and the NYS Brownfield Cleanup Agreement;

THAT prior to DOB's issuance of a Certificate of Occupancy, OER must issue a Certificate of Completion and a Notice of Satisfaction;

THAT the parameters of the proposed building include the following: a maximum of 164 dwelling units; a residential floor area of 136,931 sq. ft. a commercial floor area of 16,710 sq. ft.; a community facility floor area of 15,551 sq. ft.; and a total floor area of 169,192 sq. ft., as reflected on the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT the Board has not waived floor area or height regulations and notes that (1) the proposed floor area relies on certification by the City Planning Commission to allow a bonus of 15,936 sq. ft. associated with the FRESH Program, pursuant to ZR § 63-211 and (2) the height relies on an authorization by the City Planning Commission to allow the proposed height associated with the FRESH Program, pursuant to ZR § 63-22; in the absence of such actions, the applicant must revise its plan and comply with underlying floor area and height regulations;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 23, 2012.

**A true copy of resolution adopted by the Board of Standards and Appeals, October 23, 2012.  
Printed in Bulletin No. 44, Vol. 97.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

**66-11-BZ**

**CEQR #11-BSA-096K**

APPLICANT – Jesse Masyr, Wachtel & Masyr LLP, for Whole Foods Market Group, owner.

SUBJECT – Application May 13, 2011 – Variance (§72-21) to permit a UG6 food store (*Whole Foods*) larger than 10,000 square feet, contrary to use regulations (§42-12). M2-1 zoning district.

PREMISES AFFECTED – 172-220 Third Street, block bounded by 3<sup>rd</sup> Street, 3<sup>rd</sup> Avenue, 4<sup>th</sup> Street Basin and Gowanus Canal, Block 978, Lot 1, 7, 16, 19, 23, 30, 32, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

**APPEARANCES –**

For Applicant: Jerry Johnson.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT –**

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION –**

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 10, 2011, acting on Department of Buildings Application No. 301923346, reads in pertinent part:

Food store (UG 6) greater than 10,000 sf in an M2-1 district is not permitted pursuant to Section ZR 42-12, referred to the Board of Standards and Appeals for determination; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M2-1 zoning district, the construction of a two-story food store (Use Group 6) in excess of 10,000 sq. ft., which does not conform to district use regulations, contrary to ZR § 42-12; and

WHEREAS, a public hearing was held on this application on December 13, 2011 after due notice by publication in *The City Record*, with a continued hearing on January 24, 2012, and then to decision on February 28, 2012; and

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

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application, with the following conditions: (1) a follow-up traffic study be conducted within a three-quarter mile radius of the site one year after the store opens; (2) the food store closes by 10:00 p.m.; and (3) the Third Avenue and 3<sup>rd</sup> Street frontages be treated with windows to create a more inviting design and encourage pedestrian traffic; and

WHEREAS, City Council Member Sara M. Gonzalez provided testimony in support of this application; and

WHEREAS, City Council Member Diana Reyna

provided testimony expressing concern about the effect of the proposed development on industrial uses in the surrounding area; and

WHEREAS, the applicant submitted a letter from Borough President Marty Markowitz in support of the proposed food store; and

WHEREAS, representatives of the Brooklyn Chamber of Commerce and the Gowanus Alliance provided testimony in support of this application; and

WHEREAS, representatives of the Gowanus Canal Community Advisory Group provided testimony expressing its concern that the proposal be executed in a manner that is compatible with the Environmental Protection Agency's ("EPA") Superfund cleanup process, and requesting that the Board postpone its decision until the EPA releases its decision for the Gowanus Canal cleanup program; and

WHEREAS, representatives of the Gowanus Canal Conservancy provided testimony requesting that the applicant take measures to ensure that the development of the site is consistent with the character of the Gowanus neighborhood and the goals the City has identified for the development of the waterfront in its Vision 2020 Comprehensive Waterfront Plan; and

WHEREAS, representatives of the Gowanus Institute, the Gowanus Canal Conservancy, the Friends and Residents of Greater Gowanus, the Southwest Brooklyn Industrial Development Corporation, the Sierra Club, and certain members of the community provided oral and written testimony in opposition to this proposal (hereinafter, the "Opposition"); and

WHEREAS, the Opposition raised the following primary concerns: (1) the proposal does not satisfy the findings of ZR § 72-21, primarily because the site is not unique, the site could realize a reasonable return without the requested variance, and the proposed food store in excess of 10,000 sq. ft. would alter the character of the neighborhood; (2) the proposed food store will be detrimental to the surrounding manufacturing and artistic community; (3) the proposed food store will not create the quantity or quality of jobs that could be created by an as-of-right manufacturing use; (4) the proposal will increase traffic in the surrounding neighborhood; and (5) the proposal has the potential to disrupt the EPA's cleanup program for the Gowanus Canal; and

WHEREAS, the subject site is located on an irregularly-shaped lot comprising the entire block bounded by Third Avenue to the east, 3<sup>rd</sup> Street to the north, the 4<sup>th</sup> Street Basin to the south, and the Gowanus Canal to the west, within an M2-1 zoning district; and

WHEREAS, the site is a single zoning lot comprising seven tax lots (tax lots 1, 7, 16, 19, 23, 30 and 32), with approximately 337 feet of frontage along Third Avenue, 635 feet of frontage along 3<sup>rd</sup> Street, 666 feet of frontage along the 4<sup>th</sup> Street Basin, and 175 feet of frontage along the Gowanus Canal, with a total lot area of 185,163 sq. ft.; and

**66-11-BZ**

**CEQR #11-BSA-096K**

WHEREAS, the site is currently a primarily vacant lot, with the exception of a two-story former office building with a floor area of 2,940 sq. ft. (.02 FAR) constructed in 1872-1873 which is designated as an individual New York City Landmark (the "Landmark Building" or "the Landmark Building Site") located on a portion of tax lot 7 at the corner of 3<sup>rd</sup> Street and Third Avenue; and

WHEREAS, the applicant proposes to construct a two-story building to be occupied by a food store (Use Group 6) with a floor area of 56,470 sq. ft. (0.30 FAR) and a rooftop greenhouse (Use Group 17) with a floor area of 19,400 sq. ft. (0.10 FAR), for a total floor area of 75,870 sq. ft. (0.41 FAR), and with 246 accessory off-street parking spaces; and

WHEREAS, the applicant states that the proposed building will be located on the northeast corner of the site adjacent to the east and south sides of the Landmark Building Site; and

WHEREAS, the applicant further states that the proposed building will provide loading docks on the Third Avenue frontage and a waterfront public access area along the entire waterfront edge of the property adjacent to the 4<sup>th</sup> Street Basin/Gowanus Canal (the "Shore Public Walkway"), which will require a separate application at the Department of City Planning ("DCP"); and

WHEREAS, although the proposed building's FAR would be permitted for a conforming use, the applicant seeks a use variance because food stores in excess of 10,000 sq. ft. are not permitted in the subject M2-1 zoning district; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site in conformance with the underlying zoning regulations: (1) there is significant soil contamination on the site; (2) the site consists of poor load bearing soils; (3) the site has a high water table; (4) there is a significant amount of water frontage on the site; and (5) there are varying elevations on the site; and

WHEREAS, as to the contamination on the site, the applicant states that the site was historically developed with noxious industrial uses which have resulted in significant soil contamination at the site; and

WHEREAS, the applicant notes that the subject site is the only property within the existing M2-1 district to be included within the New York State Department of Conservation's ("DEC") Brownfield Cleanup Program due to the prior contamination on the site, which is a clean-up program designed to ensure that contaminated sites are cleaned up under governmental oversight utilizing remedies that are protective of human health and the environment; and

WHEREAS, the applicant notes that the Gowanus Canal has been placed on the EPA's Superfund National Priorities List, which is a federal program designed to

locate, investigate, and clean up the most environmentally hazardous sites nationwide; and

WHEREAS, the applicant states that the Phase I and Phase II Environmental Site Assessments found evidence of contamination and underground storage tanks on tax lots 1, 7, 16 and 19, with less severe soil contamination on tax lots 23, 30 and 32; and

WHEREAS, the applicant further states that due to the presence of contamination, significant remedial actions have been or will be undertaken at the site, including: (1) removal and off-site disposal of underground storage tanks; (2) excavation and off-site disposal of contaminated soil; (3) construction and maintenance of a composite cover system consisting of a demarcation barrier beneath a two-ft. thick cover layer of clean crushed rock to prevent human exposure to the remaining contaminated soil at the site; and (4) installation of a chemical vapor barrier and subslab pressurization system for the proposed building; and

WHEREAS, the applicant states that it will execute and record an Environmental Easement to restrict land use and prevent future exposure to contamination remaining at the site by (1) limiting the use and development of the property to commercial/industrial use; (2) complying with a DEC-approved Site Management Plan; (3) restricting the use of ground water as a source of potable or process water; and (4) requiring the property owner to complete and submit a periodic certification of industrial and engineering controls to DEC; and

WHEREAS, the applicant further states that it will develop and implement a Site Management Plan for long term management of remaining contamination as required by the Environmental Easement, which includes plans for: (1) institutional and engineering controls; (2) monitoring; (3) operation and maintenance; and (4) reporting; and

WHEREAS, the applicant represents that the above-mentioned remedial actions required to clean up the contamination on the site result in significant premium costs for any development on the site; and

WHEREAS, as to the poor load bearing soil on the site, the applicant submitted a geotechnical report stating that soil borings taken at the site reflect that the soil is composed of urban fill to depths of seven to 29 feet below the ground surface, with eight to 26 feet of organic deposits below the urban fill layer consisting of organic silt and clay with shells, fibers, and peat observed, and a layer of sand and silt and sand and gravel below the organic deposits; and

WHEREAS, the geotechnical report further states that bedrock was not encountered in any of the borings; and

WHEREAS, the applicant states that the uncontrolled fill and organic deposits are not suitable for support of the building loads, necessitating deep pile foundations which must penetrate the poor surface soils to transfer the building loads to the underlying sand and gravel; and

**66-11-BZ**

**CEQR #11-BSA-096K**

WHEREAS, the geotechnical report recommends a foundation system for the subject site that consists of driven friction piles extending into competent soils below the organic stratum, with drilled piles within 30 feet of the Landmark Building; and

WHEREAS, the applicant states that the specialized foundation system consisting that is necessitated by the poor soil conditions significantly increases the cost of any development on the site; and

WHEREAS, as to the high water table, the geotechnical report reflects that groundwater across the site ranges from an elevation of 4.8 feet to 7.1 feet, and the site is within the 100-year flood zone; and

WHEREAS, the applicant states that these conditions would result in significant dewatering costs associated with the as-of-right food store development, which consists of a building limited to 10,000 sq. ft. of food store floor area above grade with an additional 39,000 sq. ft. of floor space located below grade; and

WHEREAS, specifically, the geotechnical report states that the as-of-right design with a cellar at or below the flood zone would require waterproofing, floodproofing, and a foundation designed to resist uplift forces; and

WHEREAS, the geotechnical report further states that continuous dewatering would be necessary for the as-of-right food store in order to bring the groundwater down to a level sufficiently below subgrade and to permit proper compaction of the subgrade prior to the placement of foundation concrete, and that due to the subsurface contamination on the site, an on-site treatment system will be necessary to treat and remove groundwater before it is discharged to the Gowanus Canal/4<sup>th</sup> Street Basin; and

WHEREAS, the applicant notes that the proposed building will avoid the costs associated with the high water table and location within the 100-year flood zone by setting the building eight feet above the 100-year flood elevation; as a result, the applicant is unable to locate any floor space in the cellar, where it would not contribute to floor area calculations; and

WHEREAS, as to the amount of water frontage on the site, the applicant states that site is located immediately adjacent to the Gowanus Canal to the west and the 4<sup>th</sup> Street Basin to the south, with a total of 860 linear feet of water frontage; and

WHEREAS, the applicant states that there are increased development costs along the waterfront from Third Avenue to 3<sup>rd</sup> Street including the construction and maintenance of the required Shore Public Walkway, which provides public access to 860 linear feet of water frontage, and the removal of 300 linear feet of deteriorating bulkhead and its replacement with DEC-mandated soft shoreline (rip rap); and

WHEREAS, as to the need to replace a portion of the bulkhead, the applicant states that approximately 300 feet of the 4<sup>th</sup> Street Basin/Gowanus Canal frontage

nearest the Third Avenue bridge contained a non-functioning bulkhead, and this portion of the site was determined to be a tidal wetlands adjacent area, requiring a DEC permit to develop the site; and

WHEREAS, the applicant further states that the DEC Tidal Wetlands Permit requires the creation of a 15-ft. rip rap slope to replace the non-functional bulkhead along the waterfront; the applicant notes that a temporary rip rap slope has already been created and the final slope will be constructed during the construction of the proposed building; and

WHEREAS, the applicant represents that the 15-ft. rip rap slope also restricts the development of the site by pushing the area where the southern side of the building can be located by an additional 15-ft. to the north, thus reducing the lot area for the footprint of the building; and

WHEREAS, accordingly, the applicant states that there are significant costs associated with any development on the site due to its large size and the extent of water frontage on the site; and

WHEREAS, as to the change in elevation across the site, the applicant states that there is a grade change of approximately 12 feet from the southeast corner of the site to the northwest corner of the site; and

WHEREAS, specifically, the applicant states that the elevations on the site range from approximately eight feet near the 3<sup>rd</sup> Street bridge to approximately 20 feet near the Third Avenue bridge; and

WHEREAS, the applicant states that the site is bounded by streets on the north and east sides and a public waterway on the south and west sides and it abuts two bridges, the Third Avenue bridge that spans above and over the end of the 4<sup>th</sup> Street Basin and the 3<sup>rd</sup> Street bridge and gatehouse, a drawbridge spanning over the Gowanus Canal, and that these bridges and the grade elevations along the streets abutting the site and the Gowanus Canal result in the substantial grade change of approximately 12 feet across the site; and

WHEREAS, the applicant states that the location of the bridges contributes to the unique grading of the site because the Third Avenue bridge (located to the southeast of the site) is high relative to the canal while the 3<sup>rd</sup> Street bridge (located to the northwest of the site) is low relative to the canal; and

WHEREAS, the applicant further states that the location of the bridges is significant due to the additional construction costs associated with constructing near the bridge structures, and because the style of the bridge on Third Avenue is one of the reasons the elevations of the street at that location are so high relative to the surrounding area; and

WHEREAS, the applicant represents that the site conditions require that the building be located on the eastern end of the zoning lot, as the western end of the site cannot accommodate the building because loading and deliveries would not be permitted on the south and west sides due to water frontage, the 3<sup>rd</sup> Street bridge approach would preclude the use of the western end of 3<sup>rd</sup> Street,

**66-11-BZ**

**CEQR #11-BSA-096K**

and loading and deliveries would conflict with the pedestrian and vehicular use if located in front of the building; and

WHEREAS, the applicant states that the 12-ft. elevation change also results in significant site planning and development challenges that contribute to the hardships on the site, as the building's finished floor elevation must be located near the high point of the site along Third Avenue to provide the required loading docks and proper deliveries, the site must then be graded appropriately to provide ADA compliant waterfront access for the Shore Public Walkway along the site's 860 feet of water frontage, and the interior of the site must also be graded to provide proper vehicular access to the parking area and pedestrian access to the front of the store; and

WHEREAS, the applicant states that the elevation differential is significant because it greatly increases the costs of the as-of-right food store development on the site; and

WHEREAS, specifically, the applicant states that the need to locate the building on the eastern side of the site requires the excavation of 16,712 cubic yards of soil for the as-of-right food store development because that scenario includes 39,000 sq. ft. of floor space located below grade while the other development scenarios do not locate floor space below grade; and

WHEREAS, the applicant further states that conducting the excavation on a site in the Brownfields Cleanup Program adds a significant premium to such work; and

WHEREAS, the applicant represents that the change in elevations on the site also results in the need for sheeting and shoring to support the surrounding streets, the cost of which is increased by the additional depth that results from locating the building on the eastern side of the site; and

WHEREAS, as to the uniqueness of the aforementioned physical conditions, the applicant submitted a land use map and chart which analyze the existing FAR, lot area, water frontage, occupancy, environmental contamination, groundwater elevation, adjacency to bridges, and elevation changes of 44 sites located along the canal in the subject M2-1 district; and

WHEREAS, the land use map reflects that, within the study area, the subject site is the only full block site that is primarily vacant, bounded on two sides by the Gowanus Canal/4<sup>th</sup> Street Basin, adjacent to two bridges with different elevations, occupied by a vacant landmark structure, and part of the Brownfields Cleanup Program; and

WHEREAS, the evidence submitted by the applicant reflects that 26 of the sites in the study area are underbuilt (defined by the study as sites developed with less than 25 percent of the permitted FAR); the subject site is significantly underbuilt with an FAR of .02; and

WHEREAS, the applicant states that of the 26 underbuilt sites analyzed, only one site had a greater percentage of its site perimeter occupied by water frontage than the subject site at 46.9 percent; and

WHEREAS, the applicant further states that the unusually high percentage of water frontage along the site's perimeter results in a high water table occupying a significant portion of the site; and

WHEREAS, the applicant represents that the high water table results in increased construction costs for the as-of-right food store, due to the dewatering costs associated with excavating for the below grade space; and

WHEREAS, in contrast, the proposed project would minimize construction costs related to the high water table as it would be located entirely above-grade, and its footprint is located at the northeast corner of the site, away from much of the water frontage; and

WHEREAS, as to the soil contamination on the site, the applicant represents that while other sites in the surrounding area have environmental contamination, the subject site is the only one in the M2-1 district that has been accepted into the Brownfield Cleanup Program due to prior contamination and has a cleanup that is regulated by DEC at significant expense; and

WHEREAS, the applicant further represents that the large size and the extent of water frontage exacerbate the hardships on the site due to the significant amount of lot area subject to environmental remediation and cleanup and the increased development costs along the waterfront from Third Avenue to 3<sup>rd</sup> Street; and

WHEREAS, as to the uniqueness of the elevation differentials and adjacency to bridges, the applicant provided an analysis of all the elevations applicable to properties abutting the canal and adjacent to bridges; and

WHEREAS, the analysis reflects that those properties abutting one bridge had differentiations in curb level averaging 2.5 feet while the only other property abutting two bridges had a differential of 1.2 feet, significantly less than the elevation differential of 12 feet on the subject site; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) a seven-story as-of-right warehouse building with a floor area of 348,580 sq. ft.; (2) a two-story as-of-right warehouse building with a floor area of 196,716 sq. ft.; (3) an as-of-right food store with 10,000 sq. ft. of floor area located at the first floor, a 20,000 sq. ft. rooftop greenhouse, and an additional 39,000 sq. ft. of floor space located below grade, and with 258 accessory parking spaces; (4) a two-story as-of-right retail building with a floor area of 61,898 sq. ft. and with 224 accessory parking spaces; (5) a lesser variance scenario consisting of a one-story food store with 43,534

**66-11-BZ**

**CEQR #11-BSA-096K**

sq. ft. of floor area and 235 accessory parking spaces; and (6) the proposed two-story food store with 55,870 sq. ft. of floor area located on the first and second floor, a 20,000 sq. ft. rooftop greenhouse, and with 246 accessory parking spaces; and

WHEREAS, the study concluded that the conforming and lesser variance scenarios would not result in a reasonable return, but that the proposed building would realize a reasonable return; and

WHEREAS, at hearing, the Board directed the applicant to analyze whether an as-of-right manufacturing use would be viable at the site; and

WHEREAS, in response, the applicant submitted a supplemental feasibility study which included (1) an as-of-right seven-story active manufacturing building with a floor area of 348,580 sq. ft.; and (2) an as-of-right two-story active manufacturing building with a floor area of 196,716 sq. ft.; and

WHEREAS, the revised study concluded that neither of the supplemental manufacturing scenarios would realize a reasonable return; and

WHEREAS, throughout the course of the hearing process, the Opposition contended that that the subject site is not unique and that the site could realize a reasonable return without the requested variance; and

WHEREAS, as noted above, the applicant has submitted sufficient evidence to establish that there are unique physical conditions on the site which result in unnecessary hardship and that development of the proposed food store is necessary to realize a reasonable return on the site; and

WHEREAS, accordingly, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the subject site is located in the Gowanus section of Brooklyn, an industrial area located between the more residential neighborhoods of Park Slope to the east, Carroll Gardens to the west, and Boerum Hill to the north, and the subject area is currently characterized by industrial properties, old factory and storage buildings, and the Gowanus Canal and its series of basins/extensions; and

WHEREAS, the applicant represents that the Gowanus area has experienced development pressure to redevelop for mixed uses and outdoor recreation in recognition of the Gowanus Canal as a unique waterfront resource, and while the designation of the Gowanus Canal as a Federal Superfund Site has lessened development pressure, the overall outlook for the long term future of

this area is as a mixed-use community; and

WHEREAS, the applicant notes that a food store (Use Group 6) is a permitted use in the subject M2-1 zoning district, and it is only the proposed size in excess of 10,000 sq. ft. that requires a variance; further, the proposed rooftop greenhouse (Use Group 17) complies with bulk and use regulations; and

WHEREAS, the applicant further notes that a similarly sized food store could be developed on the subject site as-of-right, however, a significant portion of the building would have to be located below grade which would significantly increase construction costs; and

WHEREAS, the Board notes that a conforming commercial or manufacturing use would be entitled to an as-of-right floor area of 370,326 sq. ft. (2.0 FAR) on the site; therefore, although the subject M2-1 zoning district limits the size of food stores to a maximum of 10,000 sq. ft. of floor area, the proposed building, with a total floor area of 75,870 sq. ft. (0.41 FAR), is significantly below the bulk that is permitted on the site; and

WHEREAS, the applicant states that the building is designed as a mix of one- and two-story components with a hydroponic greenhouse located on the roof, and that the proposed building will be faced with repurposed brick to provide a more natural aged patina that will be in context with the existing industrial area; and

WHEREAS, the applicant further states that the proposed building will be located on the northeast corner of the site adjacent to the east and south sides of the Landmark Building Site, and the portions of the building immediately adjacent to the Landmark Building Site are setback to provide more distinctive views of the landmark from the street; and

WHEREAS, the applicant notes that the Shore Public Walkway will provide public access to 860 feet of the Gowanus Canal and 4<sup>th</sup> Street Basin which was previously inaccessible; and

WHEREAS, although the applicant is not seeking any bulk waivers for the proposal, the applicant notes that if the underlying M2-1 district bulk regulations were applied to the proposal, the bulk parameters would be well below the district maximums (as discussed above), but additional zoning relief would be required for the proposed parking and parking area design; and

WHEREAS, as to the parking, the applicant states that the proposal provides 246 accessory off-street parking spaces, and that 292 spaces would be required for the proposed building if the food store was permitted as-of-right; and

WHEREAS, the applicant submitted a traffic analysis which demonstrates that at peak weekday hours a maximum demand of 204 spaces is anticipated and at peak weekend hours a maximum demand of 166 spaces is anticipated; thus, the proposed 246 parking spaces are sufficient to meet the projected parking demand; and

**66-11-BZ**  
**CEQR #11-BSA-096K**

WHEREAS, as to the parking area design, the applicant notes that in 2007 the City Planning Commission ("CPC") adopted regulations for parking lots designed for commercial and community facility developments, which require open parking areas to comply with special screening and planting requirements for sustainable drainage design and beautification measures; and

WHEREAS, the applicant states that the special features of the subject site, including the location in the waterfront area with a tidal wetlands adjacent area, the elevation differentials, and other design requirements such as the Shore Public Walkway make it infeasible to provide the parking lot design in strict compliance with the CPC regulations while maintaining the proposed number of parking spaces; and

WHEREAS, accordingly, the applicant states that certain aspects of the parking area design, such as the planter sizes, the buffer area design with respect to drainage requirements, and the location of fencing deviate from the regulations, but that the modifications will not impact the viability of the planting areas for sustaining trees and shrubbery per the CPC guidelines; and

WHEREAS, the applicant notes that following the January 24, 2012 action of the Landmarks Preservation Commission ("LPC") which modified the boundaries of its 2006 designation of the Landmark Building Site, LPC review and approval of the proposal is not required; and

WHEREAS, by letter dated January 25, 2012, LPC confirmed that its review and approval of the proposal is not required; and

WHEREAS, during the hearing process, the Opposition raised arguments that the proposed food store in excess of 10,000 sq. ft. will have a detrimental impact on existing uses in the surrounding area, will not maximize job creation, will increase traffic concerns, and will disrupt the EPA's cleanup of the Gowanus Canal; and

WHEREAS, as to the Opposition's arguments regarding job creation, the applicant states that the site is currently vacant and employs only security guards, that the application materials demonstrate that no new manufacturing developments are viable, and that the proposed food store will provide employment opportunities to the local population on a site that currently sits fallow; and

WHEREAS, specifically, the applicant states that the proposed food store will create 300 construction jobs and approximately 450 new jobs when complete and fully staffed, 80 percent of which will be full time; and

WHEREAS, in response to the concerns raised about the proposal's impact on traffic, the applicant submitted a traffic analysis which identified a series of measures that will be implemented to ensure that the proposed food store will not have a negative impact on the surrounding traffic network; and

WHEREAS, specifically, the applicant states that

the proposed improvements, which were approved by the New York City Department of Transportation ("DOT") on January 9, 2012, include the installation of a traffic signal at the intersection formed by 3<sup>rd</sup> Street and the driveway to the site, signal timing shifts at surrounding intersections, lane restriping, and the addition of new directional signage; and

WHEREAS, as to the Opposition's arguments regarding the proposal's impact on the Gowanus Canal and the EPA's cleanup of the site, the applicant states that the site is regulated by DEC, all development plans have been reviewed and approved by DEC and DEP, and all work will be performed in accordance with DEC permits; thus, the proposed development will have no impact on the EPA's cleanup of the site; and

WHEREAS, finally, in response to the Opposition's contention that the proposed food store will have a detrimental effect on the existing industrial and artistic communities in the area, the applicant notes that food stores are permitted as-of-right in the subject M2-1 district, and represents that development of the proposed food store will be a benefit to the surrounding area, as it will provide fresh produce, meat and other grocery items to an area experiencing mixed-use growth and will service the nearby established residential neighborhoods; and

WHEREAS, the Board has considered the Opposition's concerns related to the proposal's effect on traffic, environmental cleanup, and the overall neighborhood character, but was not persuaded by these arguments given the measures taken by the applicant to address the traffic and environmental concerns and to otherwise ensure that the proposal will not have a negative impact on the surrounding area; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

WHEREAS, as noted above, food stores (Use Group 6) are permitted as-of-right in the subject M2-1 zoning district up to a floor area of 10,000 sq. ft., the proposed building is well below the maximum permitted FAR for a conforming use in the district, and the proposal would comply with all other bulk regulations for a conforming use aside from parking; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I Action pursuant to 6 NYCRR, Part 617.4; and

**66-11-BZ**

**CEQR #11-BSA-096K**

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 11-BSA-096K dated February 13, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis has reviewed the project for potential hazardous materials, infrastructure and natural resources impacts; and

WHEREAS, DEP reviewed and accepted the September 2011 Remedial Action Plan and the Construction Health and Safety Plan for lots 23, 30 and 32 of the subject site; and

WHEREAS, DEP requested that a Remedial Closure Report for lots 23, 30 and 32 be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, the applicant entered into a Brownfield Cleanup Agreement with the DEC in March 2005 for the remainder of the site (lots 16, 19 and a portion of lots 1 and 7); and

WHEREAS, the applicant has completed the remediation work described in the DEC-approved Remedial Work Plan and a final engineering report has been prepared; and

WHEREAS, DEP requires that the proposed project use Best Management Practices in designing and constructing the on-site stormwater management infrastructure as found in the New York Standards and Specifications for Erosion and Sediment Control, and the New York State Stormwater Management Design Manual; and

WHEREAS, the project site includes a classified DEC-regulated tidal wetland along the bank of the 4<sup>th</sup> Street Basin; and

WHEREAS, DEC issued a Tidal Wetlands and Protection of Waters permit in 2009 ("2009 DEC permit") for the proposed project; and

WHEREAS, the applicant will seek a minor modification to the 2009 DEC permit to conform the permit's scope of work with the proposal under the variance application; and

WHEREAS, as previously noted, the applicant has proposed traffic improvement measures, including the

installation of a traffic signal at the intersection formed by 3<sup>rd</sup> Street and the driveway to the site, signal timing shifts at surrounding intersections, lane restriping, and the addition of new directional signage; and

WHEREAS, in a January 9, 2012 letter, DOT identifies all of the proposed measures and notes that the improvements appear reasonable and feasible; and

WHEREAS, DOT will participate in the review process relating to all future modifications to geometric alignment, striping and signage during the preliminary and final design phases as well as the design installation of the new traffic signal; and

WHEREAS, DOT notes in its January 9, 2012 letter that the applicant is committed to holding discussions with Verizon regarding resolving potential safety and operational issues with the existing entrance to the Verizon facility on Third Street and the proposed entrance to Whole Foods on Third Street; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type I Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, in an M2-1 zoning district, the construction of a two-story food store (Use Group 6) in excess of 10,000 sq. ft., which does not conform to district use regulations, contrary to ZR § 42-12; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 8, 2012" – (19) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a maximum total floor area of 75,870 sq. ft. (0.41 FAR), with a Use Group 6 floor area of 56,470 sq. ft. (0.30 FAR) and a Use Group 17 floor area of 19,400 sq. ft. (0.10 FAR); and a minimum of 246 accessory parking spaces, as indicated on the BSA-approved plans;

THAT a permit shall not be issued for any grading, excavation, foundation or other permit which involves soil disturbance until the City Planning Commission has issued a certification for waterfront public access pursuant to ZR § 62-811;

THAT a permit shall not be issued for any grading, excavation, foundation or other permit which involves soil disturbance until the DEC has issued a modified Tidal Wetlands and Protections of Waters permit;

THAT a Temporary Certificate of Occupancy ("TCO") shall not be issued until DEP has approved the Remedial Closure Report;

**66-11-BZ**

**CEQR #11-BSA-096K**

THAT a TCO shall not be issued until DEC has issued a Certificate of Completion for remediation under the Brownfield Cleanup Program;

THAT the applicant is responsible for all costs associated with the design and construction of all traffic improvement measures proposed in the EAS, including the new traffic signal, consistent with the customary and standard DOT practice;

THAT the applicant will submit to DOT at least six months in advance of completion of the project all of the required drawings/designs relating to the improvements identified in DOT's January 9, 2012 letter;

THAT if the boundaries of the Landmark Building Site are changed by any action subsequent to the Board's approval, the applicant must seek any required review and approval from the Landmarks Preservation Commission and any resultant requirement for modification to the plans from the Board;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 28, 2012.

**A true copy of resolution adopted by the Board of Standards and Appeals, February 28, 2012.  
Printed in Bulletin Nos. 9-10, Vol. 97.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

**194-09-BZ**

**CEQR #09-BSA-120K**

APPLICANT – Sheldon Lobel, P.C., for Dabes Realty Company, Incorporated, owner.

SUBJECT – Application June 17, 2009 – Variance to allow the construction of a four story mixed use building contrary to floor area (§23-141), open space (§23-141), lot coverage (§23-141), front yard (§23-45), height (§23-631), open space used for parking (§25-64) and parking requirements (§25-23); and to allow for the enlargement of an existing commercial use contrary to §22-10. R3-2 zoning district.

PREMISES AFFECTED – 2113 Utica Avenue, 2095-211 Utica Avenue, East side of Utica Avenue between Avenue M and N, Block 7875, Lot 27, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

**APPEARANCES –**

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD –** Application granted on condition.

**THE VOTE TO GRANT –**

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION –**

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 14, 2011, acting on Department of Buildings Application No. 302310942, reads in pertinent part:

- “1. Proposed floor area exceeds that which is permitted pursuant to ZR 23-141;
2. Proposed lot coverage and open space are less than that required pursuant to ZR 23-141;
3. Proposed number of dwelling units exceeds that permitted by ZR 23-22;
4. Proposed front yard along Utica Avenue is less than required pursuant to ZR 23-45(a);
5. Proposed aggregate wall width exceeds that permitted by ZR 23-463;
6. Proposed perimeter wall height at Utica Avenue is more than permitted pursuant to ZR 23-631;
7. Proposed use of more than 50% of development’s open space for parking is contrary to ZR 25-64;
8. Proposed enlargement of existing, legal non-conforming manufacturing building in a R3-2 zoning district is contrary to ZR 22-10;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R3-2 zoning district, the construction of four single-family homes, a three-story residential building, 30 accessory parking spaces, and the enlargement of an existing commercial building, which exceeds the maximum permitted floor area, lot coverage,

number of dwelling units, aggregate wall width, perimeter wall height, and open space used for parking, does not provide the required front yard along Utica Avenue, and includes a non-conforming use, contrary to ZR §§ 23-141, 23-22, 23-45(a), 23-463, 23-631, 25-64, and 22-10; and

WHEREAS, a public hearing was held on this application on April 27, 2010, after due notice by publication in the *City Record*, with continued hearings on September 14, 2010, December 7, 2010 and January 25, 2011, and then to decision on April 5, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 18, Queens, recommended disapproval of an earlier iteration of the proposal, citing concerns about the bulk and height of the proposed project and its effect on the character of the neighborhood; and

WHEREAS, representatives of the Mill Basin Civic Association provided oral testimony in opposition to the original proposal; and

WHEREAS, certain members of the community provided oral testimony in opposition to the original proposal; and

WHEREAS, the subject premises is located on a through lot bounded by Utica Avenue to the west and East 51<sup>st</sup> Street to the east, within an R3-2 zoning district; and

WHEREAS, the site is an L-shaped lot with 240 feet of frontage on Utica Avenue, 100 feet of frontage on East 51<sup>st</sup> Street, a depth ranging between 100 feet and 200 feet, and a total lot area of 34,000 sq. ft.; and

WHEREAS, the site is occupied by a pre-existing two-story sales and storage building with a floor area of 5,383 sq. ft., which is occupied in connection with a legal non-conforming building materials supply yard operated at the site; a portion of the existing building fronting Utica Avenue is also rented to a used car dealer; and

WHEREAS, the Board notes that the applicant has gone through several iterations of the proposal throughout the hearing process; and

WHEREAS, the applicant originally proposed to construct: (1) a four-story residential building along Utica Avenue with a floor area of 37,440 sq. ft., a perimeter wall and total height of 39’-8”, and 32 dwelling units; (2) four single-family semi-detached homes along East 51<sup>st</sup> Street with a floor area of 1,500 sq. ft. each; (3) a total residential floor area on the zoning lot of 43,437 sq. ft. (1.28 FAR); (4) a 1,150 sq. ft. enlargement to the existing commercial building, for a total commercial floor area of 6,531 sq. ft. (0.19 FAR); (5) a total floor area for the zoning lot of 49,968 sq. ft. (1.47 FAR); and (6) 30 accessory parking spaces; and

WHEREAS, in response to concerns raised by the Board, the applicant submitted an interim proposal which reduced the size of the proposed residential building along Utica Avenue to a three-story building with a floor area of 28,080 sq. ft. (for a total residential floor area of 34,080 sq. ft. (1.0 FAR)), a perimeter wall and total height of 31'-6" (with no setback), and 26 dwelling units; and

WHEREAS, the Board directed the applicant to further reduce the size of the multi-family building and the number of dwelling units so that the project was more compatible with adjacent uses and the neighborhood context and so that the proposal met the minimum variance finding; and

WHEREAS, the applicant now proposes to construct: (1) a three-story residential building along Utica Avenue with a floor area of 22,667 sq. ft., a perimeter wall and total height of 31'-6" with a 20'-4" setback along Utica Avenue above a height of 21'-6", and 20 dwelling units; (2) four single-family semi-detached homes along East 51<sup>st</sup> Street with a floor area of 1,178 sq. ft. each; (3) a total residential floor area of 27,379 sq. ft. (0.81 FAR); (4) a 1,150 sq. ft. enlargement to the existing commercial building, for a total commercial floor area of 6,531 sq. ft. (0.19 FAR); (5) a total floor area for the zoning lot of 33,910 sq. ft. (1.0 FAR); and (6) a total of 30 accessory parking spaces (two spaces located adjacent to each single-family home, and an accessory parking lot with 22 spaces located behind the three-story residential building); and

WHEREAS, the applicant states that the proposal results in the following non-compliances: a residential floor area of 27,378 sq. ft. (the maximum permitted floor area is 17,000 sq. ft.); a residential FAR of 0.81 (the maximum permitted FAR is 0.50); lot coverage of 46 percent (the maximum permitted lot coverage is 35 percent); an open space of 54 percent (the minimum required open space is 65 percent); a total of 24 dwelling units (the maximum number of dwelling units permitted on the zoning lot is 19); a perimeter wall height of 31'-6" (the maximum permitted perimeter wall height is 21'-0"); a front yard with a depth of 10'-0" along Utica Avenue (a front yard with a minimum depth of 15'-0" is required); an aggregate street wall width of 180'-0" along Utica Avenue (the maximum permitted aggregated street wall width is 125'-0"); utilization of 53 percent of the zoning lot's open space for driveways and parking (a maximum of 50 percent of the zoning lot's open space may be utilized for driveways and parking); and

WHEREAS, additionally, the applicant proposes to enlarge the commercial building on the site occupied by a legal non-conforming commercial use; commercial use is not permitted in the subject R3-2 zoning district, thus, the applicant also seeks a use variance; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance

with applicable zoning district regulations: (1) soil contamination due to the site's history as a legal non-conforming lumber and building supplies yard; (2) the presence of a pre-existing and obsolete building on the site; (3) the location on a heavily traveled roadway; and (4) the commercial nature of Utica Avenue; and

WHEREAS, as to the soil contamination, the applicant states that the site's history of use as a legal non-conforming open lumber and building materials supply yard, has resulted in elevated concentrations of heavy metals; and

WHEREAS, in support of the legal non-conforming status of the use on the site, the applicant submitted: (1) certificates of occupancy from 1954 which lists the site's uses as "Lumber yard-sale and storage of lumber" and "Lumber storage trim, building materials, store for retail sales. 488 sq. ft. loading and unloading space. Office;" and (2) a certificate of occupancy dated February 1, 2010 which lists the site's uses as "Open building material sales. Building materials, store for retail and storage for retail sales. Loading and unloading space. Accessory offices;" and

WHEREAS, the applicant states that properties that have been used as lumber and building supply yards for extended periods of time have the potential for the presence of elevated concentrations of heavy metals due to the chemicals that were used in the treatment of preserved lumber and galvanized building materials; and

WHEREAS, the applicant represents that the open storage of these materials at the subject site led to contamination of the soil; and

WHEREAS, the applicant submitted a subsurface investigation report which states that ten boring samples were taken from the site, which showed elevated concentrations of heavy metals including lead, arsenic, copper, chromium, nickel and zinc which exceed the soil cleanup objectives set by the New York State Department of Environmental Conservation; and

WHEREAS, the subsurface investigation report notes that the combination of heavy metals found at the site is consistent with the storage of treated lumber and galvanized building materials; and

WHEREAS, the applicant states that the presence of heavy metals at the site, some of which approach hazardous levels, will require remediation of the site prior to development with residential use; and

WHEREAS, the applicant submitted a remediation and cost analysis which estimates that the costs attributed to remediation of the site range between \$532,128 for the proposed development of the site and \$575,771 for the as-of-right development of the site; and

WHEREAS, the applicant represents that the requested waivers are necessary to overcome the premium costs associated with soil remediation on the site; and

**194-09-BZ**  
**CEQR #09-BSA-120K**

WHEREAS, as to the existing commercial building on the site, the applicant states that the subject building was originally constructed more than 60 years ago and was designed to serve the building supply business which is no longer commercially viable at the site; and

WHEREAS, the applicant states that the L-shaped building has a width of 22 feet along the Utica Avenue frontage and a width of 40 feet along the rear portion of the building; and

WHEREAS, the applicant states that the unique L-shaped configuration creates an inefficient floor plate with the wider open space being located in the rear of the lot and not along the street frontage; and

WHEREAS, the applicant states that the proposed 1,150 sq. ft. enlargement of the existing commercial building will enable the applicant to square-off the building to create a more efficient floor plate so that the building can be utilized independent of the open sales yard; and

WHEREAS, as to the site's location on a heavily traveled thoroughfare, the applicant states that Utica Avenue is a four-lane, heavily traveled commercial thoroughfare that connects the Flatlands and Mill Basin neighborhoods in southern Brooklyn via Flatbush Avenue to Atlantic Avenue in Crown Heights; and

WHEREAS, the applicant states that Utica Avenue is not only heavily traveled by the residents of this part of Brooklyn, but also by bus traffic resulting from the Metropolitan Transit Authority bus terminal located two block south of the site, and by truck traffic from the many commercial and manufacturing uses located along the 4.5 mile length of Utica Avenue; and

WHEREAS, the applicant represents that the busy nature of Utica Avenue significantly reduces the value of as-of-right, low-density residential uses; and

WHEREAS, as to the commercial nature of Utica Avenue, the applicant states that, in addition to being located on a heavily traveled thoroughfare, the site is also located on a block that is predominantly commercial/industrial in nature; and

WHEREAS, specifically, the applicant submitted a land use map reflecting that, of the 24 lots with frontage on Utica Avenue between Avenue M and Avenue N, 17 of the lots are occupied either partially or wholly by legal non-conforming commercial uses; and

WHEREAS, the applicant states that the stretch of Utica Avenue between Avenue M and Avenue N is the only portion of Utica Avenue that is zoned for low-density residential uses, as the majority of Utica Avenue's 4.5 mile length is zoned for intense commercial or manufacturing uses (C8-1, C8-2 and M1-1) and most of the remaining blocks have commercial overlays; and

WHEREAS, the applicant further states that there are only seven blocks fronting Utica Avenue that are zoned solely for residential use and the blocks fronting Utica Avenue between Avenue M and Avenue N are the

only blocks along the entire length of Utica Avenue that have a zoning designation lower than R5; and

WHEREAS, the applicant represents that the commercial and manufacturing use classifications along the entire length of Utica Avenue generate far more automotive and truck traffic than a typical street that is zoned R3-2; and

WHEREAS, accordingly, the applicant represents that the commercial nature of the properties located along Utica Avenue in the vicinity of the site, in addition to the volume of traffic that travels along the roadway, significantly decreases the value of low-density residential uses at the site; and

WHEREAS, the Board does not find that the preponderance of commercial uses on Utica Avenue or the site's location on a heavily trafficked street present unique conditions that create practical difficulty or unnecessary hardship; and

WHEREAS, however, the Board agrees that the increased construction costs as a result of contamination, in combination with the preponderance of commercial uses in the vicinity and the site's location on a heavily trafficked street may inhibit the marketability of low-density residential development along Utica Avenue; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted financial analyses of: (1) a 0.60 FAR as-of-right scenario of 12 two-family homes (with eight homes fronting Utica Avenue and four homes fronting East 51<sup>st</sup> Street) and two single-family homes fronting Utica Avenue, with no commercial use at the site; (2) a 0.77 FAR alternative as-of-right scenario of four single-family homes fronting East 51<sup>st</sup> Street, two two-story residential buildings with 16 dwelling units fronting Utica Avenue, and the existing commercial building; (3) a 0.81 FAR lesser variance scenario of four single-family homes fronting East 51<sup>st</sup> Street, two two-story residential buildings with 16 dwelling units fronting Utica Avenue, and the enlargement of the existing commercial building from 5,382 sq. ft. to 6,531 sq. ft.; (4) a 0.89 FAR lesser variance scenario of four single-family homes fronting East 51<sup>st</sup> Street, one two-story residential building with 20 units fronting Utica Avenue, and the enlargement of the existing commercial building from 5,382 sq. ft. to 6,531 sq. ft.; and (5) the proposed 1.0 FAR scenario development; and

WHEREAS, the applicant concluded that the proposed 1.0 FAR scenario was the only scenario of the five analyzed that provided a reasonable rate of return; and

WHEREAS, as noted, throughout the hearing

**194-09-BZ**

**CEQR #09-BSA-120K**

process, the Board directed the applicant to reduce the degree of waivers requested to reflect the minimum variance; thus, the applicant modified the financial analysis to reflect different scenarios and to respond to the Board's concerns; and

WHEREAS, ultimately, the applicant provided a revised financial analysis which reflects that the proposed 1.0 FAR scenario of four single-family homes fronting East 51<sup>st</sup> Street, one three-story residential building with 20 units fronting Utica Avenue, and the enlargement of the existing commercial building from 5,382 sq. ft. to 6,531 sq. ft. is the minimum capable of yielding a reasonable return; and

WHEREAS, thus, the applicant asserts that the use, number of dwelling units, FAR, open space, lot coverage, height, front yard, and aggregate wall width waivers are required to overcome the premium construction costs, construct a marketable residential use, and provide an efficient floor plate for the existing obsolete commercial building, given the constraints of the site; and

WHEREAS, based upon its review of the applicant's financial studies, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, as to the East 51<sup>st</sup> Street frontage, the applicant states that East 51<sup>st</sup> Street is a residential street developed primarily with single-family and two-family homes; and

WHEREAS, the applicant notes that the subject proposal includes the construction of four single-family homes along East 51<sup>st</sup> Street; and

WHEREAS, the applicant states that each of the proposed single-family homes along East 51<sup>st</sup> Street will have a floor area of 1,178 sq. ft., and the homes will be fully compliant with the R3-2 district regulations if this portion of the property were to be treated as a separate zoning lot; and

WHEREAS, as to the Utica Avenue frontage, the applicant states that the section of Utica Avenue in the vicinity of the site has a great variation in building types and sizes, as well as in the types of uses; and

WHEREAS, the applicant represents that the proposed three-story multi-family residential building and the enlargement of the existing commercial building along Utica Avenue will not alter the character of the surrounding area because the diversity of use and building types on Utica Avenue supports commercial use and denser residential development than what is found on the low-density residential side streets; and

WHEREAS, as to the proposed commercial use, the applicant states that the range of uses located on Utica Avenue in the vicinity of the site include two- and three-story mixed-use buildings, automotive sales and/or warehouse buildings, attached row homes, open contractor or building supply yards, and automotive service stations or repair facilities; and

WHEREAS, the applicant notes that the proposed commercial building has existed as a legal non-conforming use at the site for more than 50 years, and the proposed enlargement will merely square-off the L-shaped building to provide a more efficient rectangular floor plate; and

WHEREAS, as noted above, the applicant submitted a land use map reflecting that, of the 24 lots with frontage on Utica Avenue between Avenue M and Avenue N, 17 of the lots are occupied either partially or wholly by legal non-conforming commercial uses; and

WHEREAS, as to the proposed bulk of the three-story residential building, the applicant submitted an FAR survey that identified all properties that front commercially-oriented streets in the vicinity of the site and have FARs exceeding 1.0; and

WHEREAS, the FAR survey reflects that of the 111 tax lots with frontage on one of the commercial streets in the study area, 46 percent have an FAR that exceeds 1.0; and

WHEREAS, the FAR survey further reflects that of the 26 lots on the subject block with frontage on Utica Avenue, 81 percent have an FAR that exceeds 1.0; and

WHEREAS, the applicant states that, based on the FAR survey, the proposed buildings along Utica Avenue are consistent with the density of properties within the study area; and

WHEREAS, the applicant also submitted a survey of buildings stories and heights within approximately 500 feet of the site; and

WHEREAS, the height survey submitted by the applicant reflects that: (1) 14 semi-detached two-family three-story homes located on Avenue M and East 52<sup>nd</sup> Street range in height from 27'-0" to 27'-9"; (2) two semi-detached homes located on East 51<sup>st</sup> Street immediately behind the site have a height in excess of 26'-0"; (3) a three-story building on the southeast corner of Utica Avenue and Avenue N has a height of approximately 30'-0"; and (4) the row of attached mixed-use buildings directly to the south of the site have a height of approximately 25'-0"; and

WHEREAS, the applicant notes that although the proposed three-story residential building along Utica Avenue has a height of 31'-6", the front of the building is setback 20'-4" above a height of 21'-6"; and

WHEREAS, accordingly, the applicant states that there are many buildings in the vicinity of the site with comparable heights to the proposed three-story residential building along Utica Avenue; and

WHEREAS, based upon the above, the Board finds that this action will neither alter the essential character of the surrounding neighborhood, nor impair the use or development of adjacent properties, nor be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, as noted, the Board does not regard the contaminated soil condition to be a self-created hardship since it can be attributed to a legal non-conforming use at the site which predates modern environmental regulations; and

WHEREAS, the Board notes that the applicant initially claimed that even greater floor area, height, and dwelling units were required to overcome the hardship at the site; and

WHEREAS, the Board agrees that there is practical difficulty due to the unique conditions of the site, which require additional floor area and the other noted waivers, but disagrees that the initially proposed degree of FAR, height and dwelling count waivers were needed to make the building feasible; and

WHEREAS, the Board notes that the applicant has significantly reduced the total residential floor area on the site from 43,437 sq. ft. (1.28 FAR) to 27,379 sq. ft. (0.81 FAR), reduced the number of dwelling units from the 36 initially proposed to 24, and reduced the total height and perimeter wall height for the three-story residential building from 39'-8" to 31'-6"; and

WHEREAS, accordingly, the Board finds that the current proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") 09BSA120K, dated March 29, 2011; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEP reviewed the August 2010 Phase II Environmental Subsurface Investigation Report and requested that a Remedial Action Plan and Construction Health and Safety Plan be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, a Restrictive Declaration was executed on March 30, 2011 and filed for recording on April 3, 2011; and

WHEREAS, the New York City Landmarks Preservation Commission requested a Phase I archaeological documentary study; and

WHEREAS, a Restrictive Declaration regarding the preparation of this documentary study was executed on March 8, 2010 and filed for recording on April 29, 2010; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R3-2 zoning district, the construction of four single-family homes, a three-story residential building with 20 dwelling units, 30 accessory parking spaces, and the enlargement of an existing commercial building, contrary to ZR §§ 23-141, 23-22, 23-45(a), 23-463, 23-631, 25-64, and 22-10; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 18, 2011" – eleven (11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum residential floor area of 27,379 (0.81 FAR); a maximum commercial floor area of 6,531 sq. ft. (0.19 FAR); a maximum of 24 dwelling units; a maximum lot coverage of 46 percent; a minimum open space of 54 percent; a maximum total height and perimeter wall height of 31'-6"; a front yard with a minimum depth of 10'-0" along Utica Avenue; a maximum aggregate street wall width of 180'-0" along Utica Avenue; and 30 parking spaces, as illustrated on the BSA-approved plans;

THAT prior to the issuance of any building permit

**194-09-BZ**

**CEQR #09-BSA-120K**

that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor shall obtain from DEP a Notice to Proceed and from LPC a Notice of No Objection or a Notice to Proceed;

THAT prior to the issuance by DOB of a temporary or permanent Certificate of Occupancy, the applicant or successor shall obtain from DEP and LPC a Notice of Satisfaction;

THAT the parking spaces shall be limited to accessory parking for the proposed residential development;

THAT the parking layout shall be as approved by DOB;

THAT the commercial building shall be limited to Use Group 6 uses;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT construction shall be substantially completed in accordance with the requirements of ZR § 72-23; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 5, 2011.

**A true copy of resolution adopted by the Board of Standards and Appeals, April 5, 2011.  
Printed in Bulletin No. 15, Vol. 96.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

**197-08-BZ**

**CEQR #09-BSA-011K**

APPLICANT – Stuart A. Klein, for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application July 23, 2008 – Variance (§72-21) to permit a four-story and penthouse residential building, contrary to §23-141 (FAR, open space ratio), §23-22 (number of dwelling units), §23-45 (front yard), §23-462 (side yard), and §23-631 (wall height). R4 district.

PREMISES AFFECTED – 341/349 Troy Avenue, aka 1515 Carroll Street, corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #9BK**

APPEARANCES –

For Applicant: Jay Goldstein.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, decision of the Brooklyn Borough Commissioner, dated June 23, 2008, acting on Department of Buildings Application No. 301575472, reads in pertinent part:

- “1. Proposed residential Floor Area Ratio, lot coverage, and open space are contrary to ZR Section 23-141(b).
2. Proposed residential density requirement is contrary to ZR Section 23-22.
3. Proposed residential front yard requirement is contrary to ZR Section 23-45.
4. Proposed residential side yard requirement is contrary to ZR Section 23-462(a).
5. Proposed residential perimeter wall height, total building height and sky exposure plane are contrary to ZR 23-631(b);” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R4 zoning district, a proposed five-story (including penthouse) residential building with 34 dwelling units and 35 accessory parking spaces, which exceeds the maximum permitted FAR, lot coverage, wall height, total height, and number of dwelling units and, does not provide the minimum required front or side yards, contrary to ZR §§ 23-141, 23-462(a), 23-631(b), 23-22, and 23-45; and

WHEREAS, a public hearing was held on this application on July 21, 2009, after due notice by publication in the *City Record*, with continued hearings on November 10, 2009, December 15, 2009 and January 26, 2010, and then to decision on March 16, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-

Brown; and

WHEREAS, Community Board 9, Brooklyn, recommends disapproval of this application; and

WHEREAS, City Council Member Letitia James recommends approval of this application; and

WHEREAS, certain community members provided testimony in opposition to the application, citing concerns about neighborhood character and traffic; and

WHEREAS, certain community members provided testimony in support of the application, stating that a building on the lot would be an improvement to the existing vacant lot; and

WHEREAS, the subject site is located on the northeast corner of Troy Avenue and Carroll Street, within an R4 zoning district; and

WHEREAS, the site has 116 feet of frontage on Troy Avenue and 138'-11" of frontage on Carroll Street, and a total lot area of approximately 16,114 sq. ft.; and

WHEREAS, the site, which was formerly occupied by a one-story industrial building, is currently vacant; and

WHEREAS, the site is the subject of two prior variance applications; first, under BSA Cal. No. 173-00-BZ, the applicant sought to construct 72 dwelling units on the site, but later withdrew the application; under BSA Cal. No. 290-04-BZ, the applicant proposed to construct a six-story (including penthouse) residential/commercial building with 62,634 sq. ft. of floor area (3.89 FAR) and the application was also withdrawn; and

WHEREAS, under the subject application, the applicant initially proposed a five-story (including penthouse) residential building with a streetwall height of 47'-0", a height of 57'-6", a total floor area of 48,342 sq. ft. (3.0 FAR), a lot coverage of 72 percent, 34 dwelling units, one front yard with a depth of 6'-0", and one side yard with a width of 6'-0", and with 31 parking spaces; and

WHEREAS, the applicant now proposes a five-story (including penthouse) residential building with a streetwall height of 44'-6", a total height of 54'-6" (the maximum permitted street wall and total height are 25'-0" and 35'-0", respectively); a floor area of 48,342 sq. ft. (3.0 FAR) (the maximum permitted floor area is 21,754 sq. ft. (1.35 FAR)) one front yard with a depth of 6'-0", and one side yard with a width of 6'-0" (a front yard with a depth of 18'-0" and side yards with widths of 8'-0" and 10'-0" are required); a lot coverage of 72 percent (the maximum permitted lot coverage is 55 percent); 34 dwelling units (the maximum permitted number of dwelling units is 24); and 35 parking spaces; and

WHEREAS, the applicant proposes to provide (1) 35 parking spaces and storage in the cellar, (2) a recreation area, a lobby, and dwelling units on the first floor, and (3) dwelling units on the four upper floors; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in

compliance with applicable zoning district regulations; due to a history of industrial uses at the site, the soil is contaminated and requires extensive remediation; and

WHEREAS, as to the soil condition, the applicant represents that soil tests reflect that there is contamination from several chemical pollutants as a result of its prior use; and

WHEREAS, specifically, the soil boring analysis reflects that there are approximately ten volatile organic compounds (VOCs), five semi-volatile organic compounds (SVOCs), and five metals found in the soil, which exceed each compound's respective Recommended Soil Cleanup Objective from the New York State Department of Environmental Conservation's Technical Guidance Memorandum No. 4046; and

WHEREAS, the applicant represents that there are costs of approximately \$1.3 million, not including expected overage, associated with the remediation of the subject site; and

WHEREAS, the applicant represents that these conditions are unique to the subject site and are not customarily found in the subject residential zoning district; and

WHEREAS, the analysis states that the remediation process is likely to include: (1) pumping out all liquids present in the drain using a vacuum truck, (2) removing all contaminated soil, (3) removing all fill material present in the subsurface soil in accordance with all relevant regulations, and (4) installing a vapor barrier under the new foundation; and

WHEREAS, the Board notes that the prior use of the site pre-dates the enactment of modern environmental standards and regulations; and

WHEREAS, the applicant has documented more than \$1.3 million in premium construction costs associated with the remediation of the site; and

WHEREAS, the applicant represents that the waivers are required to accommodate sufficient floor area and dwelling units to overcome the premium construction costs while maintaining a building with a bulk that is compatible with neighborhood character; and

WHEREAS, the Board finds that the aforementioned unique physical condition, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, initially, the applicant submitted a financial analysis for (1) an as-of-right (1.31 FAR) residential building, without special costs; (2) an as-of-right (1.31 FAR) residential building, with special costs; and (3) the proposed (3.0 FAR) residential building; and

WHEREAS, the analysis relied on \$1.6 million in remediation costs and reflected that only the proposal realized a reasonable rate of return; and

WHEREAS, the applicant concluded that neither of the as of right scenarios would result in a reasonable

return, due to prohibitively high construction costs; and

WHEREAS, the Board directed the applicant to (1) analyze a lesser variance alternative and (2) reduce the estimated remediation costs so that only the portion of the site presumed to be contaminated, and not the entire site, was used as the basis for the premium costs; and

WHEREAS, in response, the applicant provided a lesser variance alternative for a residential building with 2.6 FAR and reduced the remediation estimate to approximately \$1.3 million; and

WHEREAS, the applicant's analysis reflects that, due to the contamination of the site, only the proposal, and not the lesser variance alternative, would realize a reasonable rate of return; and

WHEREAS, as noted, the Board directed the applicant to reduce the degree of waivers requested and to reflect the minimum variance; thus, the applicant modified the presumed remediation costs and modified the building envelope to respond to the Board's concerns; and

WHEREAS, thus, the applicant asserts that the additional FAR and other waivers are required to overcome the premium construction costs; and

WHEREAS, based upon its review of the applicant's financial studies, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the surrounding area is mixed use with residential buildings of varying heights; and

WHEREAS, specifically, the applicant notes that there are at least 12 four-story and taller buildings within a 400-ft. radius of the site; and

WHEREAS, the applicant notes that buildings with heights between four and six stories are common in the surrounding area; and

WHEREAS, the applicant provided a land use map and a chart, which reflects the lot size, height, and FAR of a number of buildings in the area that are comparable to the proposed bulk; and

WHEREAS, additionally, the applicant notes that there is a telephone exchange building directly across Troy Avenue, which has a height of 62'-7" and an FAR of 3.0; the two corner lots, directly to the north are both occupied by buildings with heights of approximately 50 feet and FAR of approximately 3.0; and

WHEREAS, the applicant notes that there is a new residential development on Crown Street, between Albany Avenue and Troy Avenue, which reflects two nine-story

**197-08-BZ**

**CEQR #09-BSA-011K**

buildings and 300 residential units; and

WHEREAS, further, the applicant represents that since the fifth floor/penthouse level of the proposed building will be set back 18 feet, it will be barely visible from grade and the eastern portion of the building is three stories, which will provide a transition between the bulk of the proposed building at the corner to the one and two-family homes on Carroll Street; and

WHEREAS, at the Board's direction, the applicant reduced the height of the building from 57'-6" to 54'-6" and the streetwall height from 47'-0" to 44'-6"; and

WHEREAS, the Board notes that the proposed FAR, streetwall height, and total height are compatible with the neighborhood character; and

WHEREAS, the applicant also increased the number of parking spaces from 31 to 35 to provide one space for each dwelling unit; and

WHEREAS, the Board agrees that the proposed residential use is as of right and more compatible with the residential use in the area than the historic pre-existing non-conforming use or the earlier mixed-use proposal; and

WHEREAS, based upon the above, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, as noted, the Board does not regard the contaminated soil conditions to be a self-created hardship since it can be attributed to a legal non-conforming use at the site which pre-dates modern environmental regulations; and

WHEREAS, the Board notes that the applicant initially claimed that the originally proposed height was required to overcome the hardship at the site; and

WHEREAS, the Board agrees that there is practical difficulty due to the unique conditions of the site, which require additional floor area and the other noted waivers, but disagrees that the initially proposed envelope was required to make the building feasible; and

WHEREAS, as noted, the applicant revised the application to reduce the degree of streetwall height and total height non-compliance; and

WHEREAS, accordingly, the Board finds that the current proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has

documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 09BSA011K, dated March 15, 2010; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Assessment has reviewed the project for potential hazardous materials; and

WHEREAS, DEP approved the Remedial Action Plan and the Construction Health and Safety Plan on March 3, 2010; and

WHEREAS, DEP concluded that the proposed project will not result in a significant adverse hazardous materials impact provided that a Remedial Closure Report certified by a professional engineer is submitted to DEP for approval and issuance of a Notice of Satisfaction; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R4 zoning district, a proposed five-story (including penthouse) residential building with 34 dwelling units and 35 accessory parking spaces, which exceeds the maximum permitted FAR, lot coverage, wall height, total height, and number of dwelling units and does not provide the minimum required front or side yards, contrary to ZR §§ 23-141, 23-462(a), 23-631(b), 23-22, and 23-45, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 27, 2009"- thirteen (13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of five stories including

**197-08-BZ**

**CEQR #09-BSA-011K**

penthouse, a maximum of 34 dwelling units, a total height of 54'-6", a streetwall height of 44'-6", a floor area of 48,342 sq. ft. (3.0 FAR), one front yard with a depth of 6'-0", one side yard with a width of 6'-0", a lot coverage of 72 percent, and a minimum of 35 parking spaces, all as illustrated on the BSA-approved plans;

THAT the parking layout shall be as approved by DOB;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until DEP shall have issued a Notice of Satisfaction;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 72-23; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 16, 2010.

**A true copy of resolution adopted by the Board of Standards and Appeals, March 16, 2010.  
Printed in Bulletin No. 12, Vol. 95.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

**93-08-BZ**

**CEQR #08-BSA-083Q**

APPLICANT – Rothkrug Rothkrug & Spector, LLP,  
for Worlds Fair Development LLC, owner.

SUBJECT – Application June 30, 2008 – Variance  
(\$72-21) to allow a six-story transient hotel (UG 5),  
contrary to use regulations (§22-00). R6 district.

PREMISES AFFECTED – 112-12, 112-18, 112-24  
Astoria Boulevard, southwest of the intersection of  
112<sup>th</sup> Place and Astoria Boulevard, Block 1706, Lots 5,  
9, 11, Borough of Queens.

**COMMUNITY BOARD #3Q**

APPEARANCES –

For Applicant: Todd Dole.

**ACTION OF THE BOARD** – Application granted on  
condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson  
and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough  
Superintendent, dated June 11, 2008, acting on  
Department of Buildings Application No. 410053720,  
reads in pertinent part:

“Proposed building use is contrary to ZR section  
22-00. Refer to the Board of Standards and  
Appeals for their review and resolution;”

WHEREAS, this is an application under ZR § 72-  
21, to permit, within an R6 zoning district, a six-story and  
cellar hotel building which does not conform to district  
use regulations, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this  
application on July 29, 2008, after due notice by  
publication in *The City Record*, with continued hearings  
on September 23, 2008, October 28, 2008, and November  
25, 2008, and then to decision on January 13, 2009; and

WHEREAS, the site and surrounding area had site  
and neighborhood examinations by Chair Srinivasan,  
Commissioner Hinkson, Commissioner Montanez, and  
Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Queens  
recommends approval of this application, subject to  
certain conditions; and

WHEREAS, Councilmember Hiram Monserrate  
recommends approval of this application; and

WHEREAS, the subject site is located within an R6  
zoning district on the southwest corner of Astoria  
Boulevard and 112<sup>th</sup> Place; and

WHEREAS, the site is an irregularly shaped corner  
lot with approximately 152 feet of frontage on Astoria  
Boulevard and approximately 96 feet of frontage on 112<sup>th</sup>  
Place, and a total lot area of approximately 16,141 sq. ft.;  
and

WHEREAS, the site is currently developed with  
four vacant one-story and two-story commercial buildings  
formerly occupied by a gasoline service station and  
automotive repair shop that will be demolished to make

way for the proposed development; and

WHEREAS, the applicant proposes to construct a  
six-story hotel (UG 5); and

WHEREAS, the building is proposed to have a total  
floor area of approximately 48,423 sq. ft. (3.00 FAR),  
with 126 rooms and 31 accessory parking spaces; 17  
spaces in the cellar and 14 spaces in a parking lot to the  
building’s rear; and

WHEREAS, commercial use is not permitted in the  
subject R6 district, thus the applicant seeks a use variance  
to permit the proposed hotel use (UG 5); and

WHEREAS, the applicant states that the following  
are unique physical conditions which create unnecessary  
hardship and practical difficulties in developing the site  
with a conforming development: (1) the contamination of  
the site’s soil from a prior commercial use; (2) its location  
adjacent to heavily-traveled arterial roads; (3) its location  
on a street with numerous commercial uses; and (4) its  
irregular shape; and

WHEREAS, as to soil conditions, the applicant  
represents that soil tests reflect significant contamination  
by several chemical pollutants; and

WHEREAS, the applicant states that the site was  
used for approximately 60 years as a gasoline service  
station and automotive repair shop; and

WHEREAS, the Board notes that the previous use  
of the site as an automotive service and repair  
establishment predates the enactment of modern  
environmental standards and regulations; and

WHEREAS, due to documented spills and releases  
of petroleum products from the prior use, significant  
environmental remediation is necessary prior to the  
redevelopment of the subject property; and

WHEREAS, specifically, the applicant states that  
the premium costs associated with the remediation of the  
site are estimated at approximately \$940,000, which  
reflects the need for tank removal, removal of  
contaminated soil, air monitoring and sub-slab ventilation  
and vapor barrier systems, among other remediation work;  
and

WHEREAS, the applicant states that the site’s  
environmental conditions impede the development of the  
site for a conforming residential use; and

WHEREAS, as to the site’s proximity to heavily-  
traveled roadways, the applicant states that the subject site  
is located on a six-lane divided thoroughfare and is  
directly to the south of an entrance ramp servicing the  
Grand Central Parkway and one block south of another  
entrance ramp servicing Northern Boulevard; and

WHEREAS, the applicant represents that the high  
volume of traffic and corresponding noise resulting from  
the site’s proximity to these major roadways inhibits the  
residential use of the property; and

WHEREAS, the applicant also asserts that an

**93-08-BZ**

**CEQR #08-BSA-083Q**

abundance of commercial uses in the surrounding area also diminishes the marketability of the site for a conforming residential use; and

WHEREAS, the applicant submitted a land use map of the area indicating that, of the 31 lots fronting the south side of Astoria Boulevard to the east and west of the subject site, 22 are occupied by commercial uses while only two are occupied by residential uses; and

WHEREAS, the applicant states that the block immediately to the east of the subject site and a portion of the subject block fronting Northern Boulevard are established within a C2-4 overlay district and that both of these blocks are occupied by commercial uses; and

WHEREAS, the applicant represents that the infeasibility of the use of the subject site for a complying development is further evidenced by the discounted sales prices of a new residential development immediately to its west; and

WHEREAS, as to the site's irregular shape, the applicant represents that the depth of the site varies from approximately 95 feet to 125 feet, further constraining a conforming residential development; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed a complying residential development; and

WHEREAS, the feasibility study concluded that a complying residential development would generate a negative rate of return due to the site's constraints, including its proximity to the Grand Central Parkway and the significant premium costs related to environmental remediation; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, specifically, the proposed hotel complies with the FAR, height, setback, and rear yard requirements for a Quality Housing building in the subject zoning district; and

WHEREAS, the applicant further states that the pending North Corona rezoning will change the subject zoning district from R6 to R6A and that the proposed building will comply with FAR, height, setback and rear yard regulations of the new contextual R6 district; and

WHEREAS, the applicant represents that the

proposed use is consistent with the surrounding area, which is characterized by an abundance of commercial uses; and

WHEREAS, as noted above, the block immediately to the east of the subject site and the portion of the subject block fronting Northern Boulevard are within a C2-4 overlay district and both blocks are occupied by commercial uses; and

WHEREAS, the applicant states that, pursuant to ZR § 32-14, the proposed hotel use would be permitted as-of-right within the adjacent C2-4 overlay district, due to its location within a 1,000-foot radius of the entrance to the Grand Central Parkway; and

WHEREAS, the applicant also represents that the proposed hotel use would be more compatible with the residential district than the prior automotive use; and

WHEREAS, the Board has reviewed the map and photos of the immediate area submitted with this application, and concludes that the proposed use of the building will be compatible with the existing conditions in the surrounding neighborhood; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the unique site conditions, specifically the site's contaminated soil conditions and proximity to major arterial roadways; and

WHEREAS, the Board directed the applicant to provide a financial analysis for a smaller hotel; and

WHEREAS, in response, the applicant provided a financial analysis of hotel with 76 rooms and an FAR of 2.0, which did not provide a reasonable rate of return; and

WHEREAS, the applicant represents that the significant premium costs related to environmental remediation constrain the smaller hotel from realizing a reasonable return; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA083Q, dated November 24, 2008; and

**93-08-BZ**

**CEQR #08-BSA-083Q**

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, in connection with the North Corona Rezoning approved by the City Council on September 17, 2003, an "E" designation for hazardous materials was mapped on the subject site shown on the City Zoning Map panel 10b; and

WHEREAS, the Department of Environmental Protection ("DEP") and the New York State Department of Environmental Conservation ("DEC") have reviewed a September 2008 Phase II Subsurface Investigation Report, Remedial Action Plan, and Construction Health and Safety Plan for the subject site, which were completed as a result of the "E" designation imposed on the site; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that, with the implementation of the requirements of the "E" designation, no significant adverse impacts would occur, and that the proposed action will not have a significant adverse impact on the environment; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration based on the implementation of investigation and remediation activities required in connection with the "E" designation under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R6 zoning district, the proposed construction of a six-story hotel building (UG 5) which does not conform with applicable zoning use regulations, contrary to ZR § 22-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 30, 2008" – (13) sheets; and *on further condition*:

THAT street trees shall be planted in accordance with ZR § 28-12;

**A true copy of resolution adopted by the Board of Standards and Appeals, January 13, 2009.  
Printed in Bulletin Nos. 1-3, Vol. 94.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

THAT all signage shall comply with C1 zoning district parameters;

THAT the above conditions shall be stated on the certificate of occupancy;

THAT construction shall be completed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT this grant is contingent upon final approval from the Department of Environmental Protection before an issuance of construction permits other than permits needed for soil remediation; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 13, 2009.

**CEQR #10-BSA-078Q**

APPLICANT – Miele Associates, LLP, for Barnik Associates LLC & Lama Holdings, LLC, owner.

SUBJECT – Application December 3, 2007 – Variance (§72-21) for the development of a one-story automotive service station with accessory convenience store, contrary to §22-10. R3-1 zoning district.

PREMISES AFFECTED – 165-35 North Conduit Avenue, North west corner of North Conduit Avenue & Guy R, Brewer Boulevard. Block 12318, Lot 10, Borough of Queens.

**COMMUNITY BOARD #12Q**

**APPEARANCES –**

For Applicant: Hiram Rothkrug.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT –**

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION –**

WHEREAS, the decision of the Queens Borough Superintendent, dated July 15, 2009, acting on Department of Buildings Application No. 410078623, reads in pertinent part:

“Proposal to alter existing automotive service station to accommodate an automotive service station with an accessory convenience store in an R3-1 zoning district is contrary to 22-10 of the Zoning Resolution;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3-1 zoning district, the re-establishment of an automotive service station (Use Group 16) with an accessory convenience store, which does not conform to district use regulations, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on August 17, 2010 after due notice by publication in *The City Record*, with continued hearings on November 9, 2010, December 14, 2010, January 25, 2011, and February 15, 2011, and then to decision on April 12, 2011; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, Council Member James Sanders, Jr. recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of North Conduit Avenue and Guy Brewer Boulevard, within an R3-1 zoning district; and

WHEREAS, the site has 103'-11" of frontage on Guy Brewer Boulevard, 152'-3" of frontage on North Conduit Avenue, and a lot area of 11,190 sq. ft.; and

WHEREAS, on April 13, 1966, under BSA Cal. No. 697-59-BZ, the Board granted a variance for the subject site, to permit the construction of an automotive service station with accessory uses and accessory signs within a residential zoning district, for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board until its expiration on April 13, 2001; and

WHEREAS, the applicant notes that, despite the expiration of the term of the variance, the site continued to operate as an automotive service station until January 2007; and

WHEREAS, the Board notes that the prior variance has expired and the automotive service station use is not grandfathered on the site; therefore the applicant filed the subject application for a new variance for the entire site; and

WHEREAS, the applicant states that the subject site is currently occupied by the vacant one-story automotive service station building with a floor area of 1,767 sq. ft.; and

WHEREAS, the applicant initially proposed to re-establish the automotive service station use and enlarge the existing building at the site for use as an accessory convenience store with a floor area of 2,100 sq. ft., with seven accessory parking spaces; and

WHEREAS, in response to concerns raised by the Board, the applicant submitted revised plans reflecting a reduction in the size of the proposed convenience store, the addition of landscaped buffering along the side and rear lot lines, and the elimination of one of the proposed accessory parking spaces; and

WHEREAS, the applicant now proposes to re-establish the automotive service station use and to enlarge the existing building at the site for use as an accessory convenience store with a floor area of 1,908 sq. ft., with six accessory parking spaces; and

WHEREAS, commercial use is not permitted in the subject R3-1 zoning district, thus the applicant seeks a use variance to permit the Use Group 16 use; and

WHEREAS, the applicant states that the following is a unique physical condition which creates unnecessary hardship and practical difficulties in developing the site with a conforming development: the history of development on the site and associated contamination; and

WHEREAS, the applicant states that the site's history as an automotive service station has resulted in contamination that requires soil remediation which increases the costs associated with the construction of a conforming residential development; and

WHEREAS, the applicant submitted a report from its environmental consultant, stating that soil borings indicate that there is both soil and groundwater contamination present at the subject site that exceeds the

New York State Department of Environmental Conservation ("DEC") regulatory standards requiring remedial action; and

WHEREAS, the Board notes that the prior approved use of the site as an automotive service station pre-dates the enactment of modern environmental standards and regulations; and

WHEREAS, accordingly, the applicant states that, due to the contamination, the soil must be remediated before any development can occur on the site; and

WHEREAS, the applicant submitted a cost estimate for the soil remediation, which reflects a remediation cost for the development of any commercial use on the site of approximately \$253,000, which includes costs associated with excavating and disposing of backfilled concrete and contaminated soils, installation of monitoring wells, installation of vapor extraction and sparge systems with groundwater treatment, monthly operation and maintenance of the remedial systems, and quarterly sampling and testing; and

WHEREAS, the report submitted by the applicant's environmental consultant states that the full extent of contamination at the site has not yet been determined because below grade obstructions in the areas where tanks were removed and pump islands were located prevented soil borings from being performed in those areas, which are likely areas of contamination; and

WHEREAS, the environmental consultant's report also states that regulatory standards are more stringent for residential use than for commercial use, and therefore additional remediation services will apply if the site is developed with a conforming residential use, resulting in total remediation costs for residential use of approximately \$362,000; and

WHEREAS, the applicant represents that the requested use waiver is necessary to overcome the premium costs associated with soil remediation on the site; and

WHEREAS, the Board finds that the increased construction costs as a result of contamination is a unique physical condition which creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted financial analyses of: (1) a conforming residential scenario consisting of a two-family home; (2) a lesser variance retail scenario; and (3) the proposed automotive service station and accessory convenience store building; and

WHEREAS, at hearing, the Board directed the applicant to analyze an alternative with a stand-alone owner-operated convenience store on the site; and

WHEREAS, in response, the applicant submitted a revised financial analysis which included a lesser variance scenario featuring a stand-alone owner-operated

convenience store; and

WHEREAS, the study concluded that the as-of-right and lesser variance scenarios would not result in a reasonable return, but that the proposed scenario would realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed development will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the surrounding area is characterized primarily by residential uses to the north, however a commercial storage yard and two retail stores are located on the lot immediately adjacent to the north of the site, and the area to the south of the site consists of the Southern Parkway and North and South Conduit Avenues, which operate as service roads to the Parkway; and

WHEREAS, the applicant states that North Conduit Avenue is a one-way, three-lane north/south arterial which serves as the service road for the Belt Parkway, and Guy R. Brewer Boulevard is a two-way, four-lane east/west arterial; and

WHEREAS, the applicant further states that there is heavy traffic along North Conduit Avenue and Guy R. Brewer Boulevard, and that the proposed automotive service station would be in character with other commercial and industrial uses located along these two streets; and

WHEREAS, the applicant submitted a pictorial location and zoning map which reflects that there are at least seven other automotive service stations currently in operation along North Conduit Avenue in the vicinity of the site; and

WHEREAS, the applicant notes that the proposal is consistent with the historical use of the site, which legally operated as an automotive service station for 35 years; and

WHEREAS, at hearing, the Board raised concerns about the effect of the proposed automotive service station on the surrounding residential uses, and requested that the applicant reduce the size of the proposed convenience store and provide landscaping and buffering at the site; and

WHEREAS, in response, the applicant submitted revised plans which reflect that the size of the proposed convenience store will be reduced and there will be a landscaped buffer with a width of nine feet between the convenience store and the North Conduit Avenue frontage and a landscaped buffer with a width of eight

feet between the convenience store and the adjacent lot to the north; and

WHEREAS, the applicant notes that there is also a sidewalk with a width of 15 feet along North Conduit Avenue; thus, the proposed convenience store would be set back a total of 24 feet from the service road; and

WHEREAS, the applicant states that the site has been designed so that vehicular movements into or out of the site will cause minimum obstruction on streets and sidewalks, and submitted a detailed vehicle circulation plan depicting circulation patterns and a passing lane located within the pump island area, and reflecting that one of the existing curb cuts along North Conduit Avenue will be eliminated, and one existing curb cut along Guy R. Brewer Boulevard will be relocated; and

WHEREAS, at hearing, the Board directed the applicant to show that it meets the requirements of the special permit available under ZR § 73-211 for locating automotive service stations in certain commercial zoning districts; and

WHEREAS, in response, the applicant states that: (1) the lot area of 11,171 sq. ft. meets the lot area requirements of the special permit; (2) there are no lubrication or repair operations on the site; (3) as noted above, vehicular movement into or from the site will cause a minimum of obstruction on streets or sidewalks; (4) fencing (at least 50 percent opaque) is proposed along the rear and side lot lines; and (5) there is a total of approximately 99 sq. ft. of signage at the site, which complies with C1 district signage regulations; and

WHEREAS, as to the requirement under ZR § 73-211(b)(2), that the site is so designed as to provide reservoir space for five waiting automobiles within the zoning lot in addition to space available within an enclosed lubritorium or at the pumps, the applicant represents that this condition is meant to pertain to lubritorium/repair facilities on the site rather than queuing space for gasoline, and that in any event there will be six accessory parking spaces for the convenience store; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

WHEREAS, the Board notes that it does not regard the contaminated soil condition to be a self-created hardship because it can be attributed to a permitted use at the site which predated modern environmental regulations; and

WHEREAS, as noted above, the applicant originally proposed to provide an accessory convenience store with a floor area of 2,100 sq. ft., but revised its plans to reduce

the size of the proposed convenience store to a floor area of 1,908 sq. ft., in response to concerns raised by the Board; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") 10BSA078Q, dated March 31, 2011; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, DEC reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEC reviewed the September 24, 2010 Soil and Groundwater Investigation report prepared by Berninger Environmental, which identified petroleum contamination in the soil and groundwater on the site that exceeded the applicable regulatory guideline values (Spill Case No. 10-06820); and

WHEREAS, on March 30, 2011, DEC issued a letter which stated that the former tenants (Exxon/Mobil) of the subject site agreed to submit a Soil and Groundwater Management Plan to DEC for review and approval; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, in an R3-1 zoning district, the re-establishment of an automotive service station (Use Group 16) with an accessory convenience store, which does not conform to district use

**277-07-BZ**

**CEQR #10-BSA-078Q**

regulations, contrary to ZR § 22-10; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 1, 2011"- (8) sheets; and *on further condition*:

THAT the former tenants (Exxon/Mobil) of the subject site shall submit a Soil and Groundwater Management Plan to DEC for review and approval;

THAT the term of the grant shall expire on April 12, 2021;

THAT all signage shall comply with C1 district regulations;

THAT all exterior lighting on the site shall be directed downward and away from nearby residential uses;

THAT landscaping and fencing shall be maintained in accordance with the BSA-approved plans;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 12, 2011.

**A true copy of resolution adopted by the Board of Standards and Appeals, April 12, 2011.  
Printed in Bulletin No. 16, Vol. 96.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

**CEQR #08-BSA-028Q**

APPLICANT – Law Offices of Howard Goldman, for OCA Long Island City, LLC, c/o O’Connor Capital Partners, owners; OCA Long Island City, LLC, lessees. SUBJECT – Application October 23, 2007 – Variance (§72-21) to allow a 13-story residential building (UG 2) contrary to regulations for FAR (§117-21 & §23-145), lot coverage (§117-21 & §23-145), minimum distance between windows (§117-21 & §23-711(b)) and height and setback (§117-21, §23-633 & §23-663). Student dormitory (UG 3) and faculty housing (UG 2) for CUNY Graduate Center is also proposed contrary to use regulations (§42-00). M1-4/R6A (LIC) and M1-4 districts.

PREMISES AFFECTED – 5-11 47<sup>th</sup> Avenue, easterly half of Block 28 on the east side of Fifth Street between 46<sup>th</sup> Road and 47<sup>th</sup> Avenue, 135-180’ west of Vernon Boulevard, Block 28, Lots 13, 15, 17, 18, 21 and 38, Borough of Queens.

**COMMUNITY BOARD #2Q**

**APPEARANCES –**

For Applicant: Howard Goldman.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT –**

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Commissioner, dated May 6, 2008, acting on Department of Buildings Application No. 402661945, reads, in pertinent part:

- “1. Proposed College Dormitory use (UG 3), residential use (UG 2), and non-profit community facility without sleeping accommodation (UG 4) in M1-4 district are contrary to ZR § 42-00;
2. Proposed commercial and residential FAR in lot portion of M1-4/R6A (LIC) district exceeds maximum permitted and is contrary to ZR § 117-21 and ZR § 23-145;
3. Proposed building lot coverage in lot portion of M1-4/R6A exceeds maximum permitted and is contrary to ZR § 117-21 and § 23-145;
4. Proposed building setback above the maximum base height in lot portion of M1-4/R6A (LIC) district is less than the minimum 15’-0” required and is contrary to ZR § 117-21 and § 23-633.
5. Proposed building height in lot portion of M1-4/R6A (LIC) district exceeds maximum permitted 70’-0” and is contrary to ZR § 117-21 and § 23-633.

6. Rear Setback in lot portion of M1-4/R6A (LIC) district is not provided and is contrary to ZR §117-21 and § 23-663.
7. Minimum distance required between building segments for window to window, window to wall and wall to wall are not adequately provided and contrary to ZR §117-21 & 23-711 (b).
8. Proposed wide outer court in M1-4 district is contrary to ZR § 24-632”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an M1-4 district and partially within an M1-4/R6A district within the Special Long Island City Mixed-Use District, the proposed construction of a twelve-story mixed-use residential / commercial retail building and a six-story student dormitory and faculty housing building, connected by a cellar-level accessory parking garage, that does not comply with zoning parameters for use, FAR, lot coverage, building height, minimum distance between building segments, court, front setback, and rear yard setback contrary to ZR §§ 42-00, 117-21, 23-145, 24-632, 23-633, 23-663 and 23-711; and

WHEREAS, this application is brought on behalf of OCA Long Island City, LLC. which proposes to develop a market-rate residential building with ground floor commercial uses and a City University of New York (“CUNY”) Graduate Center student and faculty residence on the subject site, and

WHEREAS, a public hearing was held on this application on April 8, 2008, after due notice by publication in the *City Record*, with continued hearings on May 20, 2008, July 1, 2008 and August 19, 2008, and then to decision on September 23, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2 (Queens) recommends approval of this application subject to the following conditions; that: (1) a deed restriction limit the population of the proposed CUNY Graduate Center residence to CUNY graduate students and faculty; (2) the Queens Council on the Arts increase its outreach to Long Island City-based artists and residents; (3) the proposed garden courtyard be open to the public; (4) 20 percent of the residential dwelling units be set aside for affordable housing; (5) brownfield tax credits be directed to a local library or other community use, and (6) CUNY establish a mentoring relationship with a local school;1 and

WHEREAS, the Queens Borough President

---

1 The Board notes that the Community Board’s conditions fall outside its jurisdiction, but that the applicant has agreed to open the court to the public.

**238-07-BZ**

**CEQR #08-BSA-028Q**

submitted a letter in support and a representative testified at hearing in support of the subject application; and

WHEREAS, Council Member Eric Gioia submitted a letter in support of the subject application; and

WHEREAS, the Co-Chair of the Doctoral Students Council of the CUNY Graduate Center testified in support of the subject application; and

WHEREAS, a number of area residents testified in support and in opposition to the application; and

WHEREAS, additionally, a group of neighbors represented by counsel testified at hearing and made submissions into the record in opposition to the application (the "Opposition"); the arguments made by the Opposition related to the required findings for a variance, and are addressed below; and

WHEREAS, the subject site is a through-block site bounded by Fifth Street to the west, 46<sup>th</sup> Road to the north, and 47<sup>th</sup> Avenue on the south; and

WHEREAS, subject site consists of Tax Lots 12 (a/k/a Tax Lot 13), 15, 17, 18, 21, and 38, which comprise one zoning lot (the "Zoning Lot"); and

WHEREAS, the site has a total lot area of 66,838 sq. ft., with a lot area of 20,000 sq. ft. located within an M1-4/R6A (LIC) zoning district on Fifth Street and a lot area of approximately 46,838 sq. ft. located within an M1-4 district on the eastern portion of the subject site; and

WHEREAS, the subject site is developed with a mix of one-story to three-story vacant industrial buildings which are proposed to be demolished; and

WHEREAS, the applicant proposes: (i) a twelve-story mixed-use building containing residential use (U.G. 2), community facility (U.G.4), and commercial retail use (U.G. 6) (hereinafter "the mixed-use building"); and (ii) a six-story building containing living quarters for CUNY faculty (U.G. 2) and graduate students (U.G. 3); community facility use (U.G. 4) and (iii) 91 spaces of accessory parking (hereinafter "the CUNY building"); and

WHEREAS, the mixed-use building and the CUNY building are proposed to be connected at the cellar level where the accessory parking would be located; and

WHEREAS, the proposed project will have a total floor area of 349,400 sq. ft. (FAR of 5.23) over the entire zoning lot, comprising 169,185 sq. ft. of residential (U.G. 2) floor area, 172,815 sq. ft. of community facility floor area (U.G. 3 and U.G. 4) and 7,400 sq. ft. of commercial floor area (U.G. 6); and

WHEREAS, the mixed-use building is almost entirely within the M1-4/R6A portion of the Zoning Lot (on part of Lot 21); the CUNY building is entirely within the M1-4 portion of the Zoning Lot (on Lots 12, 15, 17, 18, part of Lot 21, and Lot 38), other than a

small portion of the shared accessory garage; and

WHEREAS, the mixed-use building is proposed to have a total floor area of 163,920 sq. ft., a residential floor area of 151,520 sq. ft., community facility floor area of 5,000 sq. ft., and commercial retail floor area of 7,400 sq. ft.; and

WHEREAS, the mixed-use building is proposed to have 200 dwelling units, ground floor retail space, office, exhibition and program space to be occupied by the Queens Council for the Arts, a nonprofit organization, and a small portion of the below-grade parking garage floor space; and

WHEREAS, the CUNY building is proposed to contain 15,666 sq. ft. of Use Group 2 faculty housing (21 units) and 167,815 sq. ft. of Use Group 3 student dormitory suites (228 units housing 380 students) and 91 unattended accessory parking spaces located partially below grade (to be available to residents of both the mixed-use building and the CUNY building); and

WHEREAS, the proposed mixed-use building will have an FAR of 8.2 within the M1-4/R6A district (3.0 is the maximum permitted in an M1-4/R6A zoning district); a front setback of 10'-0" above the maximum base height (a 15'-0" setback is the minimum required on a narrow street in an M1-4/R6A zoning district); a total height of 129'-8" (70'-0" is the maximum permitted in an M1-4/R6A zone); a rear setback of 15'-0" is provided at 109'-0" in height (10'-0" is required in an M1-4/R6A zone above the maximum base height of 60 ft.), a minimum distance between windows of 50'-0" and between windows and a wall of 35'-0" (a minimum window-to window distance of 60'-0" and a minimum window-to-wall distance of 40'-0" are required); and a corner lot coverage of 84.5 percent (80 percent is the maximum permitted lot coverage); and

WHEREAS, the CUNY building will have the following parameters: an outer court on Lot 18 measuring 50'-0" in width and 80'-0" in depth (a width of 80'-0" would be required in an M1-4 zoning district); and

WHEREAS, graduate student housing and faculty housing are not permitted uses in the M1-4 district; and

WHEREAS, thus the subject application was filed to permit the proposed residential and community facility uses; and

WHEREAS, the applicant initially proposed a mixed-use building with thirteen-stories and a total floor area of 171,474 sq. ft., a residential floor area of 158,574 sq. ft., a community facility floor area of 4,500 sq. ft. and a commercial floor area of 7,500 sq. ft., and

WHEREAS, the original application has been slightly modified with respect to the number of CUNY faculty units and graduate student units and community facility floor area; and

WHEREAS, the applicant also modified the proposal to eliminate 7,054 sq. ft. of residential floor area, and reduced the height of the building from 140'-0" to

129'-8", thereby reducing the variances requested for FAR and maximum building height; and

ZR § 72-21 (a) – Unique Physical Conditions Finding

WHEREAS, under § 72-21 (a) of the Zoning Resolution, the Board must find that there are unique physical conditions inherent to the Zoning Lot which create practical difficulties or unnecessary hardship in strictly complying with the zoning requirements (the "(a) finding"); and

WHEREAS, the applicant states that the site's unique degree of contamination creates an unnecessary hardship in complying with the zoning requirements for commercial and residential FAR, lot coverage, height, front and rear setback, and minimum distance between buildings; and

WHEREAS, the applicant states that the site has a long industrial history and site assessment activities have confirmed the presence of heavy metals, petroleum, chlorinated solvents and hazardous wastes in soils and groundwater; and

WHEREAS, the applicant represents that extensive soil sampling of site has identified the presence of arsenic, mercury, cadmium, chromium, selenium, acetone and cyanide and that benzene, toluene and ethylbenzene have been detected in groundwater at upgradient and downgradient locations at concentrations significantly above New York State Class GA groundwater standards; and

WHEREAS, the applicant further represents that soil testing has also revealed the presence of naphthalene at concentrations as high as 160 mg. per kg. and chlorinated solvents at concentrations exceeding Class GA groundwater standards; and

WHEREAS, at hearing, the applicant stated that PCBs (polychlorinated biphenyls) have also been identified on the site, probably resulting from the dumping of electrical transformers; and

WHEREAS, a submission by the applicant states that the parcels were developed prior to 1898 for use by an ink factory and a varnish works; previous site occupants also included a dry cleaning and spotting facility, a metal caster and dyer; and

WHEREAS, the applicant represents that these identified occupants were likely to have used industrial solvents, lubricating and cutting oils, plating bath solutions, paint, painting products and dye products as part of their operations; and

WHEREAS, the applicant further represents that Tax Lot 21 and Tax Lot 38 are subject to a federal Environmental Protection Agency (EPA) Administrative Order requiring hazardous material remediation, including encapsulation of contaminated soil containing lead, arsenic and selenium, and mandates that all renovations meet certain standards to ensure that the integrity of the encapsulation is maintained; and

WHEREAS, the applicant states that the

requirements of the Administrative Order are incorporated into a deed restriction which is the only such deed restriction identified in Long Island City; and

WHEREAS, the applicant states that, in order to remove the deed restriction, the EPA requires that Lots 21 and 38 be placed in the New York State Brownfield Cleanup Program administered by the New York State Department of Environmental Conservation ("DEC") to assist in the cleanup of heavily contaminated sites; and

WHEREAS, the applicant represents that a Brownfield Cleanup application for Lots 21 and 38 was filed in 2006 and that DEC has accepted the applicant's remedial investigation work plan ("RIWP") defining the nature and extent of the site contamination, the contaminant source areas, and an assessment of the contaminant disposal and transport; and

WHEREAS, based on the RIWP, the applicant began the remedial investigation process which has been substantially completed; and

WHEREAS, the applicant states that, based on the findings of its investigation, a remedial work plan (RWP) will be developed and implemented that will be designed to achieve a "Track 1 – Unrestricted Use" standard for the cleanup of the property, allowing for residential use without any land use restrictions; and

WHEREAS, upon completion of remediation, and its verification and approval by DEC, DEC will issue a certificate of completion ("COC") certifying that the site may be safely developed and permitting removal of the deed restriction; and

WHEREAS, the applicant represents that the issuance of a COC does not however guarantee approval of BCP tax credits; and

WHEREAS, according to a remediation plan submitted by the applicant, a Track 1 cleanup the subject site would require excavation to a depth of approximately 15 feet and the removal of approximately 10,000 cubic yards of soil; approximately 75 percent (7,500 cubic yards) requires disposal as petroleum-impacted soil and 25 percent (2,500 cubic yards) requires disposal as hazardous waste, as well as another 1,000 cubic yards of building rubble which encapsulates hazardous waste which requires removal as hazardous waste; and

WHEREAS, the applicant states that the remediation plan also includes the installation of a vapor barrier below grade to prevent the migration of soil vapor onto the site and into the proposed buildings, and the installation of steel sheeting in conjunction with a dewatering system around the perimeter of the site; and

WHEREAS, the applicant further states that the excavation of the site is additionally complicated by the DEC requirement that the applicant characterize the entire subsurface of the property and re-characterize the soils prior to disposal, by the need to avoid breaching a clay layer 15 feet below grade which protects the aquifer from being contaminated, as well as by the necessary

development of an on-site dewatering facility; and

WHEREAS, the applicant represents that the need to protect the surrounding community from the release of hazardous materials during excavation, and the difficulty in disposing of PCBs also complicates the site's remediation and adds to its expense; and

WHEREAS, the applicant states that excavation to a depth of 15 feet is required on the Brownfield portion of the site to meet DEC's cleanup requirements and that excavation of the entire site including the non-Brownfield portion (Tax Lots 12, 15, 17 and 18) is necessary to protect the health of residents and the surrounding community; and

WHEREAS, the applicant represents that enclosing the entire site within steel sheeting prevents the off-site migration of contaminants, which is of particular concern due to the potential effect of recently installed sheeting along the East River to Anable Basin, and the proposed sheeting along the eastern boundary of the BCP site, which might otherwise combine to shift the flow of groundwater toward the southeast, thereby discharging contaminants to the untreated non-BCP portion of the site; and

WHEREAS, the applicant states that cleanup of the entire site is also necessary because procuring financing for redevelopment projects in the current financial climate is becoming more difficult and a lender may be reluctant to finance a project with a separate and inconsistent cleanup on the site, particularly if residual material is allowed to remain on a non-Brownfield area, and

WHEREAS, the Opposition argues that the applicant has failed to prove that the degree of environmental contamination on Lots 21 and 38 is unique in Long Island City, where contaminated conditions are "a common occurrence" given the long history of industrial use in the area; and

WHEREAS, the Opposition states that an EPA map of zip code area 11101 indicates contamination of 545 sites within Long Island City and Astoria, and that the prevalence of these conditions defies a finding of uniqueness; and

WHEREAS, the Board notes that the Opposition has proffered no evidence, to show that other sites within the surrounding area exhibit a similar degree of contamination, or that their cleanup would have to meet similar standards of remediation; and

WHEREAS, the Opposition also argues that the proposed Track 1 level cleanup, estimated to cost approximately \$10.2 million, is unnecessary and that a "Track 2" level Brownfield cleanup, which allows contamination to remain on the site, could be applied instead at far less expense; and

WHEREAS, the applicant states that it cannot remediate the site less expensively because the decision as to the appropriate level of site remediation is determined by DEC, and the agency is increasingly requiring cleanups

to meet Track 1 objectives unless doing so is physically or economically infeasible; and

WHEREAS, the applicant further states that the requirements for the cleanup proposed by the Opposition can be just as expensive to meet as the proposed cleanup and would result in recorded environmental easement and land use restrictions, including post-remediation soil management, monitoring and reporting requirements, that are not required for Track 1 cleanups; and

WHEREAS, the applicant represents that these sustained land use restrictions could therefore give the appearance of a continuing environmental problem which would not be viable for lenders or for CUNY; and

WHEREAS, the Board agrees that the site cleanup proposed by the applicant is necessary and rational; and

WHEREAS, the Opposition additionally argues that costly excavation and remediation would not be necessary if the applicant had chosen instead to develop the site with a slab-on-grade foundation, as was the case with several other projects recently developed as-of-right on contaminated sites in the surrounding area; and

WHEREAS, the applicant states that new developments in the surrounding area cited by the Opposition were able to be developed with a slab on grade foundation because the extraordinary conditions requiring removal of subsurface soils or groundwater treatment were absent, and their excavation and full-site remediation were not necessitated by an EPA deed restriction, as is the case with the subject site; and

WHEREAS, because the cited projects were not burdened by similar remediation costs, variances to height and bulk were not needed to ensure their financial feasibility; and

WHEREAS, the Opposition also contends that the applicant has not provided sufficient information about the contamination of Lots 12, 15, 17 and 18 and the soil in the surrounding neighborhood to establish that the property is singularly burdened by its environmental conditions; and

WHEREAS, the Board notes that Lots 12, 15, 17 and 18 are among those lots proposed to be occupied by CUNY, a nonprofit educational institution, and a showing of physical hardship or practical difficulty is not necessary; and

WHEREAS, the CUNY Graduate Center proposes to provide 228 graduate student units and 21 faculty housing units within the CUNY building, which it will own and operate; and

WHEREAS, the applicant represents that the waivers to use and court are sought to enable the CUNY Graduate Center to meet its programmatic needs; and

WHEREAS, the Board notes at the outset that the CUNY Graduate Center, as a non-profit educational institution, may use its programmatic needs as a basis for the requested waivers; and

WHEREAS, under well-established precedents of the courts and this Board, applications for variances that are needed in order meet the programmatic needs of educational institutions, are entitled to significant deference by zoning boards (see, e.g., Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986); and

WHEREAS, the applicant represents that providing housing to its graduate students and faculty is a significant programmatic need of CUNY and that, unlike New York's private universities, CUNY has no graduate student or faculty housing; and

WHEREAS, at hearing, the President of the CUNY Graduate Center testified that graduate students enrolled in the CUNY Graduate Center serve as part-time instructors throughout the CUNY system under academic fellowships with stipends of \$18,000 per year; and

WHEREAS, the applicant submitted a study of the student housing market in New York City which found that the rents of private housing units were 21 percent to 54 percent higher than the rents at university-sponsored facilities; and

WHEREAS, the study noted that 709 of the 3,393 full-time students then enrolled in the CUNY Graduate Center came from outside New York City and would therefore be likely to need university-sponsored housing; and

WHEREAS, at hearing, the Executive Officer of the CUNY Graduate Program for Speech and Language testified that the lack of CUNY-sponsored housing had hampered her ability to recruit high-achieving students to her program; and

WHEREAS, the Co-Chair of the Doctoral Students Council of the CUNY Graduate Center testified at hearing as to the hardship imposed by rental costs on the 4,300 students now enrolled; and

WHEREAS, the applicant states that the project site was selected by CUNY for its dormitory and faculty housing because of its accessibility to the Graduate Center which is located only one subway stop away from the project site; and

WHEREAS, the Board finds that the applicant has established the programmatic need of the CUNY Graduate Center for the development of the CUNY building and has demonstrated that the extreme contamination and costly remediation of the portion of the site within the M1-4/R6A district presents an unnecessary hardship and practical difficulty to its development in compliance with the applicable zoning regulation; and

**ZR § 72-21 (b) – Financial Return Finding**

WHEREAS, under ZR § 72-21 (b), the Board must establish that the physical conditions of the site preclude any reasonable possibility that its development in strict conformity with the zoning requirements will yield a reasonable return, and that the grant of a variance is therefore necessary to realize a reasonable return (the "(b)

finding"), unless the applicant is a nonprofit organization, in which case the (b) finding is not required for the granting of a variance; and

WHEREAS, since the CUNY Graduate Center is a non-profit institution and the waivers to permit dormitory and faculty units are associated with its community facility use and are sought to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the requested variance, and therefore the financial analysis is adjusted accordingly; and

WHEREAS, an analysis which evaluated the financial feasibility of a conforming development of the entire site was provided by the applicant; and

WHEREAS, the applicant states that the overall environmental cleanup cost for the project site is estimated at \$10.2 million, and that the requested variances are necessary in order to achieve a reasonable economic return from its development; and

WHEREAS, the applicant initially submitted a financial analysis examining the feasibility of: (i) a development scenario that includes a conforming residential use on the M1-4/R6A portion of the site and a conforming industrial development on the portion of the site within the M1-4 zoning district; (ii) a lesser alternative with an as-of-right mixed-use development on the M1-4/R6A portion of the site and the proposed CUNY development within the M1-4 portion; (iii) a lesser alternative with the proposed residential square footage, an increased retail component and a smaller CUNY building; as well as (iv) the original proposed project; the analysis demonstrated that only the proposed project achieved a reasonable rate of return; and

WHEREAS, at hearing, the Board raised concerns as to whether the market rate portion of the development was subsidizing the CUNY facility, and whether this subsidy was the cause for the requested variance; and

WHEREAS, a submission by the applicant explained that CUNY is paying fair market value for its portion of the subject site and is assuming the cost of construction and operation of its facility; and

WHEREAS, the applicant stated that a letter of intent between the developer and CUNY initially set the total of land value and cleanup costs for the CUNY development at approximately \$20 million, apportioned between the fair market value of CUNY's share of the site (approximately \$13.9 million) and the remediation costs of CUNY's share of the site (\$6.7 million); and

WHEREAS, during the course of the hearing, the applicant subsequently lowered the CUNY land value to \$18.8 million to reflect the reduction of building net floor area by 1,550 sq. ft., and the reduced value attributable to dwelling units being developed below-grade; and

WHEREAS, at hearing the Board asked the applicant to examine lesser variance alternatives which request less additional floor area for the mixed-use building, and to explain the basis for the projected construction financing rate used in the financial analysis; and

WHEREAS, in response to the Board's request, the applicant examined three alternatives; (i) a fifty percent reduction in the 13<sup>th</sup> floor; (ii) a 12-story mixed-use building; and (iii) an 11-story mixed-use building and lowered the construction financing rate to conform to recent interest rate reductions; and

WHEREAS, the revised financial analysis showed that none of these three scenarios yielded a reasonable rate of return, while the proposed project provided a marginally positive rate of return; and

WHEREAS, the Opposition contends that the cost of remediation could be offset by the available Brownfield Cleanup tax credits, and that the financial analysis is undermined by its failure to account for the potential offset; and

WHEREAS, the applicant represents that the receipt of Brownfield Cleanup tax credits granted by the New York State Department of Taxation and Finance is speculative; and

WHEREAS, the applicant states that, under the regulations in effect at the time of its application, the value of the tax credit could range from 12 percent to 14 percent of (i) the costs of investigation, remediation, demolition, excavation, grading and temporary fencing, and (ii) tangible property costs associated with the development of the site, including buildings and structural components and that tax credits received under the Brownfield program would be subject to federal income taxes at an effective rate of 50 percent, thereby reducing the projected the after-tax value of the maximum Brownfield credit available to subsidize the remediation of the project site to \$3 million; and

WHEREAS, at hearing, the Board raised a concern that the omission of the potential Brownfield tax credits from the financial analysis could inflate the requested variance; and

WHEREAS, in response, the applicant revised the financial analysis to reflect the reduction in floor area and the effect of the Brownfield tax credit; the revised analysis examines the mixed-use project's rate of return with and without the tax credits, as well as the effect of the tax credits on an as-of-right development scenario; and

WHEREAS, the financial analysis demonstrates that, even with the Brownfield tax credit, an as-of-right project could not achieve a reasonable financial return while the project at the reduced height but with the tax credit achieved a modest financial return; and

WHEREAS, the applicant has modified the proposed project to reflect the projected receipt of

approximately \$3 million in after-tax Brownfield tax credits by reducing the height of the mixed-use building by one floor, with a consequential overall reduction in residential floor area of 7,054 sq. ft., which the applicant represents is roughly equivalent to the projected value of the potential tax credits; and

WHEREAS, the Opposition asserts that the financial analysis is flawed because it failed to consider alternative conforming scenarios, such as a commercial/retail use of the 95,880 sq. ft. of floor area within the M1-4 portion of the site; and

WHEREAS, the Opposition further argues that the proposed excavation and remediation would be unnecessary if the site were instead developed with conforming commercial/retail uses; and

WHEREAS, a response by the applicant indicates that the scenario proposed by the Opposition would be infeasible because: (i) it would require two levels but could not provide loading, parking or servicing on site; (ii) the proposed \$40 per sq. foot rent could not be generated for space on a second level; (iii) there is no proven market in that location for the proposed volume of retail space; (iv) the construction costs and operating costs of a retail project far exceed that of an industrial development, particularly because typical retail leases require owners to provide heat and to pay the base year taxes; and

WHEREAS, the applicant submitted a pro forma of a single level retail project containing 54,000 sq. ft. of floor area over the project site at the same rents proposed by the Opposition, which demonstrated that using the higher levels of construction finishes, plumbing and demising walls required by such a project would render it financially infeasible; and

WHEREAS, the applicant also notes that the infeasibility of a conforming development can be inferred from the site's vacancy over a period of many years; and

WHEREAS, the Opposition also argues that the financial feasibility analysis is flawed because the applicant has not performed sufficient testing to establish the contamination of the site and to support the estimated cost of its cleanup; and

WHEREAS, the applicant represents that sufficient testing has been performed to establish the \$10.2 million estimate and, further, that any additional findings will only serve to increase the cost of remediation; and

WHEREAS, the Opposition also asked the applicant to explore certain design changes to the mixed-use building, specifically, the adoption of loft-style apartment layouts and multiple setbacks that it contends would create increase the square footage of penthouse units and enhance the unit values, consequently allowing a reduction in the building's height and bulk; and

WHEREAS, a submission by the applicant

explains that the unit design for the mixed-use project was based on assessment of the current real estate market, and that the proposed design had been found to offer a higher financial return than a design with larger unit sizes and higher floor to floor heights; and

WHEREAS, the applicant further stated that the setbacks proposed by the Opposition had been incorporated into the project design and that the financial analysis before the Board reflected the increased resulting value; and

WHEREAS, the Board notes that the Opposition has presented no evidence supporting its contention that its alternate design would generate a higher return than the design proposed by the Applicant; and

WHEREAS, based upon its review of the applicant's financial analysis, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and ZR § 72-21 (c) – Neighborhood Character Finding

WHEREAS, the applicant represents that the waivers of FAR, lot coverage, building height, minimum distance between building segments, front setback, and rear yard setback sought to permit the mixed-use building, and the waiver for use sought for the CUNY building, will not alter the essential neighborhood character, impair the use or development of adjacent property, or be detrimental to the public welfare; and

WHEREAS, the applicant proposes an overall development of the subject site with an FAR of 5.2 (347,400 sq. ft.), with an FAR of 8.2 proposed for the westerly portion of the site within the M1-4/ R6A district, and an FAR of 3.92 proposed for the easterly portion of the site within the M1-4 district; and

WHEREAS, the applicant represents that the proposed floor area is within the overall envelope for the site, which would permit an overall FAR of 5.45 (364,447 sq. ft.), based on the maximum FAR of 3.0 within the M1-4/R6A portion and the maximum FAR of 6.5 permitted for community facility uses within the M1-4 portion; and

WHEREAS, the Board notes that the proposed overall FAR of 5.2 is within the FAR contemplated by the zoning of the subject site; and

WHEREAS, the applicant further represents that the heights and massing of the proposed project are compatible with the scale of the development in the surrounding area, stating that the project massing places the bulk of the floor area on Fifth Street opposite a new park and open area and proximate to the high density buildings of the Queens West Development located to the west of the project site; and

WHEREAS, the applicant states that the Queens West development includes building heights of 44

stories, 39 stories and 32 stories and that later phases of the project include seven residential towers ranging from 200 to 400 feet in height; and

WHEREAS, the applicant states that additional projects at the Silvercup site and Anable Basin, three blocks to the southwest and northwest of the project site, respectively, are proposed at heights ranging from 31 to 48 stories; and

WHEREAS, the applicant further states that the proposed 12-story mixed-use building at approximately 130'-0" complies with relevant light and air requirements and is considerably shorter than the 20 to 50-story buildings which have approved to the south, west and north of the subject site; and

WHEREAS, the applicant notes that the westerly portion of the subject site comprising 20,000 sq. ft., is located within the Hunters Point Subdistrict rezoning area and was rezoned to permit mixed-use developments like the proposed project, and that the blocks to the south of the project site extending to Borden Avenue are mixed-use in character and were rezoned to permit residential and community facility use consistent with the proposed CUNY building; and

WHEREAS, the applicant states that the CUNY building complies with all the applicable height and setback regulations of the M1-4 zoning district and its six-story height conforms to the predominant midblock character of the surrounding area; and

WHEREAS, the Opposition asserts that the project is inconsistent with the intent of the Hunters Point rezoning to preserve the character and scale of the "uplands" Long Island City neighborhood and to differentiate that part of the community from the high-rise residential towers of the Queens West Waterfront Project; and

WHEREAS, the Opposition submitted a series of computer-generated streetscapes demonstrating that the proposed development would be significantly out of scale with the surrounding community; and

WHEREAS, at hearing the applicant demonstrated with "before" and "after" montages that the images submitted by the Opposition had exaggerated the height of the proposed development by eliminating all tall existing buildings surrounding it and by distorting the perspectives; and

WHEREAS, the applicant submitted a map showing recent and proposed developments indicating that both the mixed-use building and the CUNY building are considerably shorter than other recent uplands developments proposed within two blocks to the north south and east; and

WHEREAS, the applicant further states and that the east-west view corridor will be maintained and extended, that setbacks are provided on all street frontages above the fifth floor and that each of the faculty units in the CUNY project will set back by five

feet; and

WHEREAS, the applicant further states that the project has been designed to facilitate its integration within the surrounding community; and

WHEREAS, the applicant represents that a publicly accessible-interior garden of approximately 5,000 sq. ft. will be provided, as well as street trees surrounding the three frontages, and that the four project components have been architecturally coordinated to provide active street frontages; and

WHEREAS, the applicant states that represents that accessory parking is provided below-grade within the building to preserve active street frontages, and that the parking facility has been designed to permit ingress and egress from entrances along 46<sup>th</sup> Road to minimize traffic congestion along 5<sup>th</sup> Street and Vernon Boulevard; and

WHEREAS, the applicant further states that providing accessory parking reduces the demand for on-street parking spaces; and

WHEREAS, a shadow analysis of the proposed project indicates that incremental shadows would be cast by the mixed-use building on a new open space under construction to its west during morning hours beginning an hour and a half after sunrise; however, the surface will consist of artificial turf with a surrounding running track and will therefore not be light sensitive; and

WHEREAS, based upon the above, the Board finds that the subject variances, if granted will not alter the essential character of the surrounding neighborhood, impair the appropriate use and development of adjacent property or be detrimental to the public welfare; and

ZR § 72-21 (d) - Self Created Hardship Finding

WHEREAS, as pertains to the (d) finding under ZR § 72-21, the Board is required to find that the practical difficulties or unnecessary hardship burdening the site have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states and the Board agrees, that the practical difficulties and unnecessary hardship associated with the environmental remediation of the project site have not been created by the applicant or a predecessor in title; and

ZR § 72-21 (e) – Minimum Variance Finding

WHEREAS, as pertains to the (e) finding under ZR § 72-21, the Board is required to find that the variance sought is the minimum necessary to afford relief; and

WHEREAS, the applicant states that the requested the waivers of FAR, lot coverage, building height, front setback, and rear yard setback represent the minimum variance necessary to allow the mixed-use building to achieve a reasonable financial return, given its extensive environmental remediation costs, and to meet CUNY's programmatic needs; and

WHEREAS, the applicant originally proposed a

project with a total floor area of 356,454 sq. ft., and a 13-story mixed-use building; the applicant modified the proposal to reduce the height of the mixed-use building by one floor to 12 stories and to reduce the total floor area of the project to 349,400 sq. ft., thereby offsetting the value of the potential receipt of the Brownfield tax credits; and

WHEREAS, the Board notes that the applicant also evaluated the economic feasibility of two lesser variance alternatives, which demonstrated that only the proposed project achieved a reasonable rate of return; and

WHEREAS, the Opposition has argued that a grant of use and bulk variances is unusual and excessive; and

WHEREAS, the Board finds that there is practical difficulty due to the unique conditions of the site which requires additional floor area to offset the remediation costs and other bulk waivers to accommodate the added bulk in a manner most compatible with the scale and bulk of the property and the surrounding area; and

WHEREAS, the Opposition contends that the minimum variance is unknown because testing on the site is incomplete and the ultimate remediation costs are therefore unknown; and

WHEREAS, as discussed above, the applicant represents and the Board finds that sufficient testing has been performed to establish the \$10.2 million estimate for the cost of site remediation and, further, that the financial analysis was adjusted to incorporate the potential receipt of the Brownfield tax credit; and

WHEREAS, Opposition argues that the proposed parking is unnecessary and increases the construction costs and proposes that it be removed to reduce the requested height and bulk variances; and

WHEREAS, the applicant states that because excavation of the site to a depth of 15 feet is necessary for its remediation, the development cost of the parking garage is low but that the elimination of its anticipated revenue would undermine the financial feasibility of the project, further, that providing on-site parking within the project will be an asset to the surrounding community as available on-street parking in the area is limited; and

WHEREAS, based upon its review of the record and its site visits, the Board finds that the applicant has provided sufficient evidence to support each of the findings required for the requested variances; and

WHEREAS, the project is classified as an Unlisted action pursuant to Section 617.2 of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has identified and considered relevant areas of environmental concern about the project documented in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA28Q, dated August 2008; and

WHEREAS, the EAS documents that the project

**CEQR #08-BSA-028Q**

as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Transportation (“DOT”) reviewed the proposed project and issued a sign-off letter on August 13, 2008; and

WHEREAS, the New York City Landmarks Preservation Commission reviewed this project and confirmed that the project site does not contain any areas of historic/architectural or archaeological significance; therefore, no impacts on historic/architectural or archaeological resources are expected as a result from the proposed action; and

WHEREAS, the New York City Department of Environmental Protection (“DEP”) Office of Environmental Planning and Assessment has evaluated the following submissions from the applicant: (1) an August 2008 Environmental Assessment Statement; (2) an October 2007 Phase I Environmental Site Assessment; (3) an April 2008 Phase II Subsurface Investigation Workplan; (4) a March 2007 Health and Safety Plan Report (“HASP”); (5) an August 2008 Remedial Investigation Report (Phase II sampling results); (6) a September 2008 Stationary Source Screening Analysis; and (7) a September 2008 Industrial Source Analysis; and

WHEREAS, the applicant has agreed to implement hazardous materials remediation pursuant to a Restrictive Declaration executed on September 19, 2008 and submitted for recording against the subject property on September 22, 2008; and

WHEREAS, a Remedial Action Plan (“RAP”) and a Construction Health and Safety Plan Report (“CHASP”) must be submitted to DEP for review and approval; and

WHEREAS, the RAP and the remedial work plan to be submitted to DEC will both include the installation of a below grade vapor barrier to prevent the migration of soil vapor onto the site; and

WHEREAS, DEP review and approval of the manufacturer’s specifications and a sample of the vapor barrier material is required prior to its installation; and

WHEREAS, after approval of the RAP and CHASP, DEP will remit a Notice to Proceed to the Department of Buildings (“DOB”); and

WHEREAS, after implementation of the remediation, one or more Remedial Closure Report(s) certified by a professional engineer shall be submitted to DEP; subsequent to its approval, DEP will forward Notice(s) of Satisfaction to DOB; and

WHEREAS, DEP also evaluated air quality analysis submissions to examine the potential stationary and mobile source air quality impacts of the proposed action; and

WHEREAS, a stationary source screening analysis for the heating, ventilating, and air conditioning equipment (HVAC) performed using CEQR Technical Manual methodology determined that the proposed project is not anticipated to result in potential significant impacts on adjacent receptors; and

WHEREAS, another screening analysis determined that the emission stack of the CUNY building must be located at least 160 feet from the façade of the mixed-use building to avoid any significant air quality impacts; and

WHEREAS, an industrial source impact assessment demonstrated that the air quality of the proposed project would not be adversely affected by surrounding industrial/ manufacturing uses; and

WHEREAS, a stationary source screening analysis and mobile source screening analysis determined that the proposed project would not result in any significant noise impacts as a result of using the building mechanical systems at sensitive receptor locations; and

WHEREAS, based on the traffic study, the proposed project would not double traffic levels in passenger car equivalents; therefore the project is not expected to create significant adverse impacts from mobile source emissions; and

WHEREAS, the applicant will provide a minimum of 35 dBA window/wall attenuation to achieve an interior noise level of 45 dBA and use a dedicated HVAC system as an alternate means of ventilation in order to maintain a closed-window condition, therefore satisfying CEQR interior noise requirements and requirements of the Special Long Island City Mixed-use District; and

WHEREAS, the environmental assessment found that the mixed-use building would cast incremental shadows on a new open space under construction to its west during morning hours; however, since the park’s surface will not be light-sensitive, such shadows are not considered to have a significant effect on the environment; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law

**238-07-BZ**

**CEQR #08-BSA-028Q**

and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within an M1-4 district and partially within an M1-4/R6A district within the Special Long Island City Mixed-Use District, the proposed construction of a twelve-story mixed-use residential/commercial retail building and a six-story student dormitory building and faculty housing building connected by a cellar-level accessory parking garage that does not comply with zoning parameters for use, FAR, lot coverage, building height, minimum distance between building segments, court, front setback, and rear yard setback contrary to ZR §§ 42-00, 117-21, 23-145, 24-632, 23-633, 23-633 and 23-711; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 17, 2008"- (19) sheets; and *on further condition*:

THAT the proposed Zoning Lot shall have a maximum FAR of 5.23,

THAT the building on within the M1-4/R6A portion of the zoning lot shall have the following parameters: a floor area of 163,920 sq. ft.; a front setback of 10'-0" above the maximum base height; a total height of 129'-8"; a rear setback of 15'-0" at a height of 109'-0"; a minimum distance between windows of 50'-0" and between windows and a wall of 35'-0"; and a corner lot coverage of 84.5 percent; and the building within the M1-4 portion of the Zoning Lot will have a floor area of 183,480 sq. ft. and an outer court measuring 50'-0" in width and 80'-0" in depth;

THAT a RAP and CHASP shall be submitted to DEP for review and approval;

THAT the applicant shall submit its Remedial Work Plan to DEP;

THAT the emission stack of the building within the M1-4 portion of the Zoning Lot shall be located at least 160 feet from the façade of the building within the M1-4/R6A portion of the zoning lot;

THAT a minimum of 35 dBA window/wall attenuation shall be provided;

THAT issuance of building permits shall be conditioned on DEP review and approval of the specifications and sample material of its proposed vapor barrier;

THAT the issuance of building permits shall be conditioned on the receipt of a DEP Notice to Proceed;

THAT issuance of building permits shall be conditioned on the issuance of a certificate of completion by DEC;

THAT issuance of a permanent certificate of occupancy shall be conditioned on the issuance by DEP of a Notice of Satisfaction;

THAT DEP review and approval is required prior to the approval by DOB of any changes to the BSA-approved site plan or building plans;

THAT construction will be substantially completed in accordance with the requirements of ZR § 72-23; and

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 23, 2008.

**A true copy of resolution adopted by the Board of Standards and Appeals, September 23, 2008.  
Printed in Bulletin No. 39, Vol. 93.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

**195-07-BZ**

**CEQR #08-BSA-011M**

APPLICANT – Greenberg Traurig by Deirdre A. Carson, for Bond Street Partners LLC (as to lot 64) c/o Convermat, owner.

SUBJECT – Application August 9, 2007 – Variance (§72-21) to allow hotel and retail uses below the floor level of the second story, contrary to use regulations (§42-14(d)(2)). M1-5B zoning district.

PREMISES AFFECTED – 8-12 Bond Street, Northwest corner of Bond and Lafayette Streets, Block 530, Lot 62 & 64, Borough of Manhattan.

**COMMUNITY BOARD #2M**

**APPEARANCES –**

For Applicant: Randall Minor.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT –**

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION –**

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 29, 2009, acting on Department of Buildings Application No. 104557221, reads in pertinent part:

“ZR 42-14(D)(2)(B) & (3)(B). Proposed UG 5 & 6 uses below level of second story (i.e. 1<sup>st</sup> floor & 2 cellar levels) are not permitted in M1-5B ZD;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-5B zoning district within the NoHo Historic District, the construction of a seven-story 50-room hotel building with hotel and retail uses below the level of the second floor, which is contrary to ZR § 42-14; and

WHEREAS, a public hearing was held on this application on August 11, 2009, after due notice by publication in the *City Record*, with continued hearings on October 6, 2009, and October 27, 2009, and then to decision on February 9, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of the application, with the following conditions: (1) the second floor courtyard be a primarily planted area not to be used for food and drink service; (2) the physical culture establishment in the cellar not obtain a liquor license; (3) the roof space not obtain a liquor license and not be used for food or beverage service; and (4) no amplified music be located in exterior spaces; and

WHEREAS, the site is located on the northwest corner of the intersection of Bond Street and Lafayette Street, in an M1-5B zoning district within the NoHo

Historic District; and

WHEREAS, the site has 60’-3½” of frontage along Bond Street, 100’-6¼” of frontage along Lafayette Street, and a total lot area of 6,471 sq. ft.; and

WHEREAS, the site is occupied by a two-story and mezzanine building, a one-story structure formerly used as an automotive service station, parking, and an advertising sign, all of which will be demolished or replaced; and

WHEREAS, the proposed building will have a floor area of 31,910 sq. ft. (4.93 FAR), an additional 15,259 sq. ft. of floor space located at the cellar and sub-cellar levels, a wall height of 69’-2”, and a total height of 80’-3”; and

WHEREAS, the proposal provides for the following uses: (1) a spa/fitness center and accessory meeting rooms to the hotel use at the sub-cellar level; (2) accessory storage, laundry, offices, and mechanical use at the cellar level; (3) an eating and drinking establishment without entertainment (Use Group 6C) and a hotel lobby at the first floor; (4) a hotel lounge and rooms at the second floor; (5) hotel rooms at the third through sixth floors; and (6) a mechanical room and hotel rooms at the seventh floor; and

WHEREAS, the applicant represents that the proposed spa/fitness center at the sub-cellar level will initially be an amenity only for hotel guests, but that it will eventually be made available to the public through a separate entrance on Lafayette Street, at which point an application will be made pursuant to ZR § 73-36 to operate a physical culture establishment on the site; and

WHEREAS, the applicant states that the proposed Use Group 5 hotel use is permitted as-of-right at and above the level of the second floor, but that the subject variance is required for the proposed hotel and retail uses below the second floor, which are prohibited pursuant to ZR § 42-14; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) poor subsurface soil conditions; (2) the site is adjacent to the Lexington Avenue subway line; and (3) **the historic use of the site as an automotive service station has resulted in soil contamination;** and

WHEREAS, as to the subsurface soil conditions, the applicant states that the site is burdened by poor soil conditions which require additional excavation, foundation, and underpinning measures; and

WHEREAS, specifically, the applicant submitted a report from its engineering consultant (the “Subsurface Report”) stating that excavation on the site to a depth of 20 feet will be necessary because soil borings indicate the presence of uncontrolled fill and loose sand to that depth throughout much of the site; and

WHEREAS, the applicant represents that even if the owner constructed a building with only one cellar, it would still have to remove the unstable material below the single cellar level from 12 to 20 feet below grade in order to provide a sound subsurface base for the mat foundation; and

WHEREAS, the applicant represents that since the site must be excavated to a depth of 20 feet even for a single cellar level, it is prudent to complete the small amount of additional excavation necessary to provide a sub-cellar level and recoup some of the foundation costs through the additional floor space; and

WHEREAS, according to the Subsurface Report, excavating to a depth of 20 feet necessitates additional removal of fill and sand in the excavation, the installation of deep underpinning to carry the loads of several adjacent buildings, and an excavation support system to brace the adjacent subway; and

WHEREAS, as to the adjacency to the subway, the applicant represents that the eastern boundary of the site coincides with the Lexington Avenue subway line below grade; and

WHEREAS, accordingly, the applicant states that the New York City Transit Authority ("NYCTA") has requirements for the design and construction of an excavation support system at this location; and

WHEREAS, specifically, the applicant states that a raker and waler system will have to be installed along with shoring to brace the adjacent subway in accordance with NYCTA design and performance guidelines; and

WHEREAS, additionally, the applicant represents that the NYCTA requires monitoring of the tunnel structure during foundation construction; and

WHEREAS, the Subsurface Report supports these assertions and documents the anticipated expenses of the noted supplemental measures; and

WHEREAS, as to the soil contamination, the applicant represents that remedial work will be required due to the industrial character of the historic uses on the lot; and

WHEREAS, the applicant states that three underground storage tanks associated with the former automotive service station located on the site were legally closed in 2006, and that the results of testing that was performed at that time confirmed the presence of elevated mercury and semi-volatile organic compound levels in the soil on the site; and

WHEREAS, the applicant submitted an environmental report and cost estimates documenting the expected testing and remediation of the soil, including the potential inclusion of a vapor barrier, due to its historic use as an automotive service station; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in

conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study that analyzed: (1) an as-of-right office development; (2) an as-of-right hotel development; and (3) the proposed hotel development; and

WHEREAS, the applicant concluded that the as-of-right scenarios would not result in a reasonable return, due to the unique physical conditions of the site and the resulting premium construction costs, but that the proposed hotel building would realize a reasonable return and has submitted evidence in support of that assertion; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, as to bulk, the applicant notes that the proposed 4.93 FAR complies with the maximum 5.0 FAR permitted for an as-of-right hotel building in the subject zoning district, and that no bulk waivers are requested; and

WHEREAS, the applicant represents that the immediate area is a mix of residential and commercial uses; and

WHEREAS, the applicant notes that the proposed hotel use is permitted as-of-right at and above the second floor and that the subject variance is only necessary for the proposed hotel and retail uses located below the second floor; and

WHEREAS, the applicant states that the proposed hotel use, with ground floor retail, is consistent with the character of the area, which includes many other such uses; and

WHEREAS, in support of the above statements, the applicant submitted a 400-ft. radius diagram, showing the various uses in the immediate vicinity of the site; and

WHEREAS, specifically, the radius diagram showed that there are 13 eating and drinking establishments in the immediate vicinity of the site, including a restaurant located adjacent to the site, at 6 Bond Street, and a restaurant located one block from the site, at 9 Great Jones Street; and

WHEREAS, the radius diagram also reflects that there are several physical culture establishments in the vicinity of the site, including the Great Jones Spa located one block from the site; and

WHEREAS, as noted above, the applicant represents that the proposed spa/fitness center at the sub-cellar level will initially be an amenity only for hotel

guests, but that it will eventually be made available to the public through a separate entrance on Lafayette Street, at which point an application will be made pursuant to ZR § 73-36 to operate a physical culture establishment on the site; and

WHEREAS, as to the Community Board's requested conditions, the applicant provided revised plans showing a landscaped area at the northwest portion of the second floor, and states that the operator will consider limiting the hours of operation and the activities of the outdoor seating area; and

WHEREAS, the Board notes that the applicant must comply with all relevant provisions of the Noise Code; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of Use Group 5 and 6 uses below the second floor will not impact nearby conforming uses; and

WHEREAS, the applicant received a Certificate of Appropriateness from the Landmarks Preservation Commission (LPC), dated December 7, 2009; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique subsurface soil conditions; and

WHEREAS, the applicant asserts that the request to include uses which would be permitted above the first floor of the building on the first floor and below without any other waivers is the minimum variance; and

WHEREAS, the Board finds that this proposal is the minimum necessary to compensate for the additional construction costs associated with the uniqueness of the site and to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA011M dated February 5, 2010; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and

Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the EAS determined that there could be potential hazardous materials impacts during construction and occupancy of the proposed hotel due to historical land uses; and

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Assessment has reviewed the project for potential hazardous materials impacts; and

WHEREAS, the applicant has submitted a hazardous materials sampling protocol prepared by a qualified consultant and including a health and safety plan ("Sampling Protocol"), which has been approved by DEP, and the applicant proposes to test and identify any potential hazardous materials pursuant to the approved Sampling Protocol and, if such hazardous materials are found, to submit a hazardous materials remediation plan, including a health and safety plan, (as approved by DEP, the "Remediation Plan") for approval by DEP prior to the commencement of any construction or demolition activities at the site; and

WHEREAS, prior to the issuance of any building permit by DOB for the proposed project that would result in grading, excavation, foundation, alteration, building or other permit which permits soil disturbance, applicant proposes to obtain from DEP either: (A) a Notice of No Objection ("Notice of No Objection") upon the occurrence of the following: (i) applicant has completed the project-specific DEP approved Sampling Protocol to the satisfaction of DEP; and (ii) DEP has determined in writing that the results of such sampling demonstrate that no hazardous materials remediation is required for the proposed project, or (B) a Notice to Proceed ("Notice to Proceed") in the event that DEP has determined in writing that: (i) the project-specific Remediation Plan has been approved by DEP and (ii) the permit(s) for grading, excavation, foundation, alteration, building or other permit which permits soil disturbance or construction of the superstructure for the project facilitate the implementation of the DEP approved Remediation Plan; and

WHEREAS, prior to the issuance of any temporary or permanent Certificate of Occupancy by DOB, applicant proposes to obtain from DEP either: (A) a Notice of Satisfaction ("Notice of Satisfaction") in the event that DEP determines in writing that the DEP approved project-specific Remediation Plan has been completed to the satisfaction of DEP, or (B) a Notice of No Objection in the event that DEP determines in writing that the work has been completed as set forth in the project-specific DEP approved Sampling Protocol and the results of such sampling demonstrate that no hazardous materials remediation is required for the proposed project; and

**195-07-BZ**

**CEQR #08-BSA-011M**

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type I Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, in an M1-5B zoning district within the NoHo Historic District, the construction of a seven-story 50-room hotel building with hotel and retail uses below the level of the second floor, which is contrary to ZR § 42-14, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 21, 2010" – ten (10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: seven stories, a maximum floor area of 31,910 sq. ft. (4.93 FAR), with an additional 15,259 sq. ft. of floor space located at the cellar and sub-cellar levels, a wall height of 69'-2", and a total height of 80'-3";

THAT prior to the issuance of any building permit by DOB for the proposed project that would result in grading, excavation, foundation, alteration, building or other permit which permits soil disturbance, the applicant or successor shall obtain from DEP, as applicable, either a Notice of No Objection or a Notice to Proceed, and in the event a Notice to Proceed is obtained, a Notice of Satisfaction, and shall comply with all DEP requirements to obtain such notices;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until DEP has issued a Notice of No Objection, or Notice of Satisfaction;

THAT the use of the site shall comply with all relevant provisions of the Noise Code;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

**A true copy of resolution adopted by the Board of Standards and Appeals, February 9, 2010.  
Printed in Bulletin No. 7, Vol. 95.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

THAT construction shall proceed in accordance with ZR § 72-23; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 9, 2010.

**51-07-BZ**

**CEQR #07-BSA-063Q**

APPLICANT – Gerald J. Caliendo, R.A., AIA, for 70-50 Kissena Boulevard, LLC, owner.

SUBJECT – Application February 22, 2007 – Variance (§72-21) to allow a one-story retail building (U.G. 6); contrary to use regulations (§22-00). R4 district.

PREMISES AFFECTED – 70-44 to 58 Kissena Boulevard, northwest corner of Kissena Boulevard and 70<sup>th</sup> Road, Block 6656, Lot 52, Borough of Queens.

**COMMUNITY BOARD #8Q**

**APPEARANCES –**

For Applicant: Irving Minkin.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT –**

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**THE RESOLUTION –**

WHEREAS, the decision of the Queens Borough Superintendent, dated January 22, 2007, acting on Department of Buildings Application No. 402507060 reads in pertinent part:

“Proposed commercial use is not permitted as-of-right in an R4 zoning district. This is contrary to ZR 22-10;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R4 zoning district, the construction of a one-story commercial building (Use Group 6) with accessory parking which does not conform to district use regulations, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on February 5, 2008, after due notice by publication in *The City Record*, with continued hearings on April 15, 2008, August 19, 2008, and October 7, 2008, and then to decision on November 18, 2008; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 8, Queens, recommends disapproval of an earlier iteration of this application; and

WHEREAS, the proposed building will have one story and a cellar with a total floor area of 6,928 sq. ft., an FAR of 0.70, a height of 15’-6”, and 27 accessory parking spaces; and

WHEREAS, the subject premises is located within an R4 zoning district on the northwest corner of Kissena Boulevard and 70th Road, and

WHEREAS, the site has a parallelogram shape, with 99’-3” of frontage on Kissena Boulevard and approximately 104’-0” of frontage on 70th Road extending to a depth of approximately 103’-0”; and

WHEREAS, the site is currently vacant and has a lot area of 9,921 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 18, 1932, when, under BSA Cal. No. 528-31-BZ, the Board granted a variance to permit the construction and maintenance of a gasoline service station; such variance lapsed in 2000 although the use continued until 2006; and

WHEREAS, the applicant initially proposed a one-story building with a height of 20’-0” -8”, a total commercial floor area of 7,438 sq. ft. (0.63 FAR), and five parking spaces; and

WHEREAS, the applicant subsequently provided another iteration of the plans which added a second floor for a conforming community facility use, increased the height to 24’-0” and the commercial/community facility floor area to 13,856 sq. ft., and provided 27 parking spaces; and

WHEREAS, the applicant now proposes a one-story commercial building with a streetwall and total height of 15’-6”, a total commercial floor area of 6,928 sq. ft. (0.70 FAR) and 27 parking spaces; and

WHEREAS, the applicant states that the proposed first floor will be occupied by five retail stores; the cellar will be occupied by the 27 accessory parking spaces; and

WHEREAS, the applicant represents that the site does not qualify as a predominately built-up area pursuant to ZR § 12-10 and therefore does not qualify for the infill options for predominately built-up areas; and

WHEREAS, as noted above, the proposed building requires a use waiver; thus, the instant variance application was filed; and

WHEREAS, the applicant states that the following unique physical conditions create unnecessary hardship and practical difficulties in developing the site with a complying development: (1) the site’s soil prior contamination; (2) the site’s location on a heavily-traveled arterial road; and (3) a deed restriction that limits the site’s development potential; and

WHEREAS, the applicant represents that the site was in constant use for automotive uses from approximately 1934 until 2006; and

WHEREAS, the Board notes that the prior approved use of the site for automotive uses predates the enactment of modern environmental standards and regulations; and

WHEREAS, the applicant states that the soil was contaminated and required extensive remediation due to the history of automotive-related uses at the site; and

WHEREAS, a Phase 1 Environmental Assessment indicated that underground storage tanks, piping and associated gasoline/ waste oil equipment be closed and removed from the site and contaminated soil removed; and

WHEREAS, the site remediation specifically included: (1) excavation and removal of nine gasoline and waste oil tanks; (2) loading and disposal of all impacted soils within the zone of contamination in

**51-07-BZ**

**CEQR #07-BSA-063Q**

accordance with New York State Department of Environmental Conservation approved procedures; (3) residual waste disposal; (4) post-excavation sample collection and analysis; (5) backfilling the excavation; and (6) groundwater sampling; and

WHEREAS, the applicant has documented more than \$340,000 in premium costs associated with the remediation of the site; and

WHEREAS, the applicant states that expense of remediating the site's contaminated conditions impeded its development for a conforming residential or community facility use; and

WHEREAS, as to its location, the applicant states that the site is located on a major arterial roadway providing access to Long Island, which is lined with commercial uses and local service establishments; and

WHEREAS, the applicant further states that the site is directly north of a C1-2 zoning district at 71<sup>st</sup> Avenue along Kissena Boulevard; and

WHEREAS, the applicant represents that the heavy incidence of traffic and the preponderance of commercial uses limits the marketability of a complying residential development which would front on Kissena Boulevard; and

WHEREAS, the premises are also subject to a deed restriction requiring: (a) an open area with a width of 30'-0" along the westerly lot line; and (b) a height restriction of 30'-0" for residences and 25'-0" for non-residences; and

WHEREAS, the applicant represents that compliance with both the deed restrictions and the zoning requirements would limit a residential development to three three-story row houses with a total of eight dwelling units and a total floor area of 8,902 sq. ft., and that such a restriction constitutes a unique physical condition constraining an as-of-right development; and

WHEREAS, the applicant cites to the decision in *Thompson v. Curcio* (154 A.D.2d 602 (2d Dep't 1989)) in support for the proposition that a deed restriction assumed by a predecessor in title can represent a hardship warranting a variance; and

WHEREAS, the Board notes that Thompson concerned a property that was undersized and undevelopable due to a partial condemnation by New York State, for which the compensation was inadequate to cover the loss of all development rights; the variance application was filed by the children of the former owner who had inherited the property upon her death; and

WHEREAS, the Board finds that Thompson is inapplicable to the instant case, in which the owner purchased the property assumedly with knowledge of the deed restriction at a market value that ought to have reflected its reduced development potential; and

WHEREAS, based upon the above, the Board finds

that the premium costs associated with the site's environmental remediation, when considered in the aggregate with the site's location on a busy thoroughfare with many commercial uses, creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed two as-of-right alternatives: (i) a development consisting of four two-family rowhouses with a total floor area of 8,318 sq. ft.; and (ii) a three-story community facility building with 19,713 sq. ft. of floor area and 40 accessory parking spaces; and (iii) an alternative that complies with the zoning requirements, as well as with the deed restriction, consisting of three three-story townhouses with eight dwelling units; and

WHEREAS, the study concluded that none of three scenarios would realize a reasonable return; and

WHEREAS, the proposed project, as modified, would realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with zoning district regulations will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states bulk and height of the proposed building comply with the R4 and C1-2 zoning parameters; and

WHEREAS, the applicant represents that the surrounding area is characterized by a preponderance of multi-family residential buildings with FARs ranging from 0.77 to 1.6, and an abundance of commercial uses; and

WHEREAS, a radius diagram submitted by the applicant indicates that there is a commercial overlay along Kissena Boulevard between 70<sup>th</sup> Road and 71<sup>st</sup> Avenue directly across from the subject site; and

WHEREAS, the applicant states that a commercial building is currently under construction on Kissena Boulevard directly to the south of the subject site and that an existing commercial building occupies another corner of the intersection; and

WHEREAS, further, photographs submitted by the applicant depict commercial buildings located directly across from the subject site; and

WHEREAS, additionally, the Board directed the applicant to relocate the trash collection site and exterior lighting away from residences; and

WHEREAS, in response, the applicant submitted revised plans relocating the trash collection site and redirecting exterior lighting; and

WHEREAS, the Board also notes that the façade of

**51-07-BZ**

**CEQR #07-BSA-063Q**

the proposed development was redesigned to better integrate it within the surrounding residential neighborhood; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's pre-existing contaminated subsoil condition, and heavily trafficked location; and

WHEREAS, the Board notes that an interim proposal by the applicant provided for a two-story building with a height of 24'-0" and a total commercial/community facility floor area of 13,856 sq. ft.; and

WHEREAS, during the hearing process, the applicant modified the proposal to eliminate the second floor, to reduce the building height and the floor area; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, on June 6, 2007, DEC signed off on the environmental cleanup performed at the site; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable.

*Therefore it is Resolved*, that the Board of Standards and Appeals adopts DCP's Negative Declaration under Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R4 zoning district, the proposed construction of a one-story and cellar commercial building, which does not conform with applicable zoning use regulations, contrary to ZR § 22-10; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 30, 2008"- (5) sheets; and *on further*

*condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 6,928 sq. ft., an FAR of 0.70, a height of 15'-6", and 27 accessory parking spaces, as indicated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 18, 2008.

**A true copy of resolution adopted by the Board of Standards and Appeals, November 18, 2008.**

**Printed in Bulletin Nos. 44-45, Vol. 93.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

**128-06-BZ**

**CEQR #06-BSA-100M**

APPLICANT– Juan D. Reyes III, Esq., for Atlantic Walk, LLC, owner.

SUBJECT – Application June 16, 2006 – Zoning variance pursuant to ZR §72-21 to allow a nine-story residential building in an M1-5 district (Area B-2 of Special Tribeca Mixed Use District). Twenty Six (26) dwelling units and twenty six (26) parking spaces are proposed. The development would be contrary to use (Z.R. §111-104(d) and §42-10), height and setback (Z.R. §43-43), and floor area ratio regulations (Z.R. §111-104(d) and §43-12). The number of parking spaces exceeds the maximum allowed is contrary to Z.R. §13-12.

PREMISES AFFECTED – 415 Washington Street, west side of Washington Street, corner formed by Vestry Street and Washington Street, Block 218, Lot 6, Borough of Manhattan.

**COMMUNITY BOARD #1M**

**APPEARANCES –**

For Applicant: Juan Reyes.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT –**

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4  
Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Manhattan Borough Commissioner, dated June 6, 2006, acting on Department of Buildings Application No. 104147317, reads in pertinent part:

- “1. The proposed number of stories within the front wall is contrary to ZR 111-104(d)1 and ZR 43-43.
3. The proposed residential use (UG2) M1-5 in TMU, area B2 is contrary to ZR 111-104(d) and ZR 42-10; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-5 zoning district within Area B-2 of the Special Tribeca Mixed Use District, the construction of a nine-story with cellar, 22-unit residential condominium building, which is contrary to ZR §§ 111-104(d), 43-43 and 42-10; and

WHEREAS, at the conclusion of the hearing process, the applicant proposed a building that would have a residential floor area of 51,172 sq. ft., a Floor Area Ratio (FAR) of 5.5, a height of 105 ft., a street wall height of 85 ft., complying setbacks, lot coverage of 80 percent, and a 30 ft. rear yard; and

WHEREAS, the applicant originally proposed a nine-story building with a cellar and sub-cellar, an FAR of

6.02, a lot coverage of 85.97 percent, and 26 parking spaces (located in the cellars), and

WHEREAS, this proposal would have required additional waivers for maximum FAR and maximum number of parking spaces, and also would have had non-complying lot coverage and a non-complying rear yard; and

WHEREAS, in response to concerns of the Board about the proposed FAR not being consistent with the degree of hardship present on the site, the construction costs associated with the proposed parking in the sub-cellar, and the lack of a complying rear yard, the applicant revised the proposal to the current version; and

WHEREAS, however, as reflected below, the Board disagrees that an FAR of 5.5 devoted to residential use (which does not comply with the underlying zoning district maximum), reflects the minimum variance necessary for the owner to obtain relief; and

WHEREAS, the Board notes that the applicant provided a revised 5.0 FAR scenario, the plans of which reflect a reasonable unit layout; and

WHEREAS, the Board has reviewed this scenario, and as further explained below, it concludes that it will realize a reasonable return and is therefore the minimum variance necessary; and

WHEREAS, accordingly, the Board approves a building with the following parameters: 22 units, nine stories, a maximum residential and total FAR of 5.0, zoning floor area of 46,520 sq. ft., a total height of 105'-6", a street wall height of 85'-0", a setback of 20'-0", and a rear yard of 30 feet; and

WHEREAS, a public hearing was held on this application on October 31, 2006, after due notice by publication in the *City Record*, with continued hearings on December 12, 2006 and January 23, 2007, and then to decision on March 13, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson and Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of the proposed use change, but only for a building with an FAR of 5.0, not the initially proposed FAR of 6.02; and

WHEREAS, certain neighbors and civic associations provided testimony in opposition to this application, citing concerns about the suggested findings and construction-related issues; the relevant concerns are discussed below; and

WHEREAS, the site is approximately 9,304 sq. ft., and is located at the corner of Washington Street and Vestry Street; and

WHEREAS, the site is located in the Tribeca North Historic District (the "TNHD"); and

WHEREAS, the applicant notes that on August 23, 2006, the City's Landmarks Preservation Commission ("LPC") issued a Certificate of Appropriateness (the

---

1 The Board notes that ZR § 111-104(d) has been re-designated ZR § 111-104(e) in a recent text amendment; however, the text of the provision remains the same and this has no bearing on the Board's waiver of the provision.

**128-06-BZ**  
**CEQR #06-BSA-100M**

“CA”) for the originally proposed building; and

WHEREAS, the site has most recently been used as a parking lot, but was historically developed with seven-story manufacturing buildings (from approximately 1900 to 1950) and then a gas station (from 1950 to approximately 1976); and

WHEREAS, the applicant represents that the foundations of the prior manufacturing buildings, including below-grade party walls, remain on the site; and

WHEREAS, additionally, the site is currently undergoing remediation under the supervision of the State’s Department of Environmental Conservation; and

WHEREAS, because the proposed residential development does not conform to permitted uses in the subject zoning district, and because the street wall height is non-complying, the above-noted wavier requests are necessitated; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance and conformance with applicable regulations: (1) costs related to poor soil conditions on the site; (2) costs associated with addressing the existing foundations from the prior buildings; (3) foundation construction costs related to the presence of the site within the 100 and 500-year flood plains; and (4) environmental remediation costs; and

WHEREAS, as to the poor soil conditions, the applicant notes that the site’s soil consists of loose fill material underlain by loose to medium dense sand at depths below the groundwater level; and

WHEREAS, the applicant claims that this condition afflicts less than 20 percent of the properties within the TNHD, as evidenced by a graph submitted with the applicant’s engineering report (the “Report”); and

WHEREAS, the applicant claims that because of this condition, shallow footings, which are less expensive, cannot be used; instead, a deep foundation system using piles must be installed; and

WHEREAS, as to the pre-existing party walls, the applicant notes that they must remain in place as they support adjacent buildings; and

WHEREAS, the applicant claims that the existing party walls will require special structural details to allow the proposed building’s foundation system to cantilever over the party walls above surface grade; and

WHEREAS, further, at hearing, the project engineer stated that the buildings to the east and west are on shallow foundation systems, which must be protected through the use of drilled piles at this location; and

WHEREAS, the engineer also stated that underpinning is more difficult and expensive since its double-width in depth due to the shared foundation walls; and

WHEREAS, as to the location of the site within the flood zone, the applicant states that 10 percent of sites within the TNHD are part of the 100 year flood plain and 15 percent are part of the 500 year flood plain; and

WHEREAS, the applicant states that the 100-year flood level is more than 4 to 5 feet above the design groundwater level for the upland buildings, and, at the subject site, this will require resistance in the form of dead weight or uplift anchors; and

WHEREAS, as to environmental contamination, the applicant notes that a large portion of the soil mass is contaminated with volatile organic compounds that must be removed prior to residential development; and

WHEREAS, the applicant also notes that the presence of contaminated soil is relatively uncommon in the TNHD; and

WHEREAS, the Board agrees that the site is burdened by a convergence of sub-surface factors that increase construction and site preparation costs; and

WHEREAS, the Board observes that the Report provides a cost comparison between a site not similarly burdened based on factors such as dewatering, excavation and disposal of contaminated soil, underpinning, piles, pressure slab, waterproofing, and engineering support; and

WHEREAS, the applicant established that the premium costs related to the cited physical conditions are approximately 1.9 million dollars; and

WHEREAS, the Board agrees that these costs compromise the viability of a conforming development on the site; and

WHEREAS, the Board notes that the cited unique conditions and the costs associated with them were questioned by an engineer hired by those in opposition to the application; and

WHEREAS, however, the Board finds that these concerns were satisfactorily answered in a response from the project engineer, submitted as an attachment to the applicant’s November 21, 2006 submission; and

WHEREAS, the Board further notes that counsel to the opposition suggests that the Board should not credit the presence of environmental contamination as a unique physical condition; and

WHEREAS, the Board agrees that not every instance of environmental contamination should form the basis, or a part thereof, of a variance application; and

WHEREAS, nevertheless, where the contamination was the result of a lawful commercial operation, was not intentional but merely a cumulative by-product of such operation, and occurred in an era that predates extensive environmental protection regimes, the Board has considered such contamination to be a legitimate hardship; and

WHEREAS, further, the Board notes that even without consideration of the environmental contamination, the other cited unique physical conditions would still prevent a viable conforming development; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

**128-06-BZ**  
**CEQR #06-BSA-100M**

WHEREAS, initially, the applicant submitted a feasibility study that analyzed an as of right 5.0 FAR commercial building; and

WHEREAS, the applicant concluded that such a scenario would result in a negative return, due to the above-cited physical conditions; and

WHEREAS, however, the Board had concerns about the claimed site valuation; and

WHEREAS, specifically, the Board felt that the site valuation was inflated due to the use of certain recent sale comparables that skewed the valuation; and

WHEREAS, the Board also notes that the site valuation was high relative to other recent variance cases in the vicinity; and

WHEREAS, the Board suggested that the applicant review comparable sales with the Area B-2 of the Special Tribeca Mixed Use District for undeveloped or underdeveloped sites, and not include variance-affected sites; and

WHEREAS, in a subsequent submission, the applicant reduced the site valuation based on comparables that the Board finds acceptable; and

WHEREAS, thus, based upon its review of the subsequent submission of the applicant, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance and compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, as to use, the Board observes that the site is on a block with buildings that contain Joint Work/Living Quarters for Artists; and

WHEREAS, the Board also observes that there are residential buildings across Greenwich Street directly to the east and northeast, and a new residential building under construction across Washington Street; and

WHEREAS, the Board finds that the introduction of 22 residential units in this location will not negatively affect the mixed-use character of the immediate neighborhood; and

WHEREAS, further, the Board notes that the proposed residential use of the site will not negatively affect any conforming uses in the neighborhood, which are already accustomed to a considerable residential presence; and

WHEREAS, as to bulk, the Board notes at the outset that the building approved herein reflects a reduced FAR and lot coverage and an increased rear yard from the original proposal, which makes it more compatible with the character of the neighborhood; and

WHEREAS, the Board also observes that the design of the originally proposed building was approved by LPC, as reflected by the C of A; and

WHEREAS, the applicant also states that the proposed building would be compatible in terms of height with existing buildings adjacent or very close to the site; and

WHEREAS, specifically, on the subject block, the applicant cites to a 99'-11" tall building to the east, a 116'-0" tall story building to the south, and an 83'-10" tall building on the corner of Laight and Greenwich Streets; and

WHEREAS, the applicant also cites to new nine and twelve-story buildings located to the west of the site, also on the same block; and

WHEREAS, the Board agrees that the proposed height and street wall height of the building will be compatible with existing buildings in the vicinity; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, during the course of the hearing process, the opposition suggested that the site conditions should have been known to the developer prior to purchase of the site, and that any hardship subsequently discovered should be characterized as self-created; and

WHEREAS, the Board disagrees, noting that the finding set forth at ZR § 72-21(d) specifically provides that purchase with knowledge of a site's hardships does not preclude the grant of a variance; and

WHEREAS, in any event, the opposition did not provide conclusive proof that the developer knew of all hardships related to the site prior to purchase; and

WHEREAS, thus, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, as noted above, the Board is granting a residential variance to the applicant at a lesser FAR than is proposed; and

WHEREAS, this is due to serious concerns the Board has regarding the sell-out value per square foot of the proposed condominium units (the applicant claims that for a 5.0 FAR residential building, the sell out value would be approximately \$1,080 per sq. ft.); and

WHEREAS, at the outset of the hearing process, the Board observed that the claimed sell-out value is low relative to the sell-out value cited in other recent variance applications in the vicinity; and

WHEREAS, for instance, in BSA Cal. No. 297-05-BZ, granted on July 11, 2006, which was a variance application for a residential building at 31-33 Vestry Street (also in Area B2 of the Special Tribeca Mixed Use District), the claimed sell-out value per square foot was \$1,137; and

WHEREAS, likewise, in BSA Cal. No. 181-06-BZ, granted on February 13, 2007, which was a variance application for a residential building at 471 Washington Street (again, in Area B2), the claimed sell-out value per square foot was \$1,246; and

**128-06-BZ**  
**CEQR #06-BSA-100M**

WHEREAS, both of these applications were for buildings with a total FAR of 5.0; and

WHEREAS, further, the Board questioned the comparables of recent sales used by the applicant to arrive at the claimed sell-out value; and

WHEREAS, the initial set of comparables submitted by the applicant consisted of many properties that were geographically distant from the subject site, and thus were not appropriate comparables; and

WHEREAS, accordingly, the Board directed the applicant to submit a set of comparables that are similar to the proposed units in terms of date of construction, views, location, and other pertinent factors, or to justify why the existing set of comparables were in fact similar; and

WHEREAS, after the Board brought this to the applicant's attention, a second set of comparables was submitted that reflected more geographically comparable recent sales; and

WHEREAS, these comparables ranged from 813 dollars to 1,538 dollars per square foot, which is a significantly broad range; and

WHEREAS, in addition to this second set of comparables, the Board received a submission from a marketing executive familiar with the Tribeca residential market in support of the opposition (the "Opposition Report"), which provided a list of recent condominium sales in the area; and

WHEREAS, the Opposition Report indicated that the average per sq. ft. price of units recently sold primarily in the immediate vicinity of the subject site was significantly higher per sq. ft. than that proposed by the applicant; and

WHEREAS, the Board asked the applicant to address the comparables cited by the opposition; and

WHEREAS, the applicant, in a submission dated February 6, 2007, states that the majority of the comparables used by the opposition are not truly comparable in that they are either on higher floors than the proposed units and have views or are appointed with high-end finishes that increase the sell-out value; and

WHEREAS, the applicant suggests that the claimed sell-out value for the proposed units reflects that they are predominantly at lower floors and don't have views and that high-end finishes have not been added to the proposed valuation; and

WHEREAS, however, the Board notes that the applicant's response fails to refute with any specificity each and every comparable cited in the Opposition Report; and

WHEREAS, consequently, the applicant's blanket refutation of all the comparables is without any basis; and

WHEREAS, further, the Board has reviewed the Opposition Report and notes that most of the cited units, with the exception of those located at 145 Hudson Street, are at the 9<sup>th</sup> floor or lower, which calls into question the argument that they are all superior to the proposed units in terms of height and views; and

WHEREAS, even when excluding the 145 Hudson

Street comparables, the average sell-out value reflected in the Opposition Report is still significantly higher than the applicant's; and

WHEREAS, based upon its personal knowledge of the claimed sell-out value in other recent matters, as well as upon its review of the Opposition Report and the applicant's response, the Board finds that the claimed sell-out value for the 5.0 FAR residential building was underestimated; and

WHEREAS, the Board concludes that with more reasonable sell-out values ascribed to the proposed units, a 5.0 FAR building will realize a reasonable return; and

WHEREAS, in addition to the serious concerns about the proposed sell-out value, the Board also notes that the applicant's submissions reflected inconsistency as to sellable residential floor space and the development costs related to the 5.0 FAR scenario; and

WHEREAS, specifically, as reflected in the various submissions, in November 2006, the construction costs for this scenario decreased from the September 2006 submission, but then increased again in the December 2006 submission; and

WHEREAS, the Board also notes that there was a similar disparity as to the amount of residential floor space; and

WHEREAS, the Board observes that no adequate explanation for the disparity between submissions exists in the record; and

WHEREAS, the Board observes that the lower construction costs estimate would support the conclusion that a 5.0 FAR scenario could be viable; and

WHEREAS, while the applicant has contended that a 5.0 FAR building would not realize a reasonable return since that amount of floor area would not fill up the building envelope approved by LPC, the Board notes that double height spaces could be created within individual units that would enhance the value of the units; and

WHEREAS, further, the Board observes that the reduced FAR could be achieved by eliminating a less viable unit proposed at the rear of the building; and

WHEREAS, in sum, the Board finds that a 5.0 FAR building is the minimum variance necessary for the owner to obtain relief; and

WHEREAS, the Board notes that the finding set forth at ZR § 72-21(e) provides that it may permit a lesser variance than that applied for by the applicant; and

WHEREAS, the Board also notes that though it finds it appropriate to approve only an FAR of 5.0, the applicant is receiving a significant use waiver as well as a street wall waiver; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to Sections 617.4(b)(10) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the

**128-06-BZ**

**CEQR #06-BSA-100M**

Final Environmental Assessment Statement (EAS) CEQR No. 06BSA100M, dated June 16, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an M1-5 zoning district within Area B-2 of the Special Tribeca Mixed Use District, the construction of a nine-story with cellar, 22-unit residential condominium 5.0 FAR building, which is contrary to ZR §§ 111-104(d), 43-43 and 42-10, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 26, 2006"-ten (10) sheets; and *on further condition*:

THAT the following shall be the parameters of the building: 22 units, nine stories, a maximum residential and total FAR of 5.0, zoning floor area of 46,520 sq. ft., a total height of 105'-6", a street wall height of 85'-0", setbacks as indicated on the BSA-approved plans, and a rear yard of 30 feet;

THAT all construction shall be performed in compliance with Building Code and LPC and DOB-imposed requirements concerning the protection of adjacent buildings;

THAT this approval is limited to the relief granted

**A true copy of resolution adopted by the Board of Standards and Appeals, March 13, 2007.**

**Printed in Bulletin No. 12, Vol. 92.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 13, 2007.

**25-06-BZ**

**CEQR #06-BSA-054K**

APPLICANT – Dominick Salvati and Son Architects, for Josef Packman, owner.

SUBJECT – Application February 14, 2006 – Variance (§72-21) to allow an eight (8) story residential building with ground floor community facility use to violate applicable regulations for dwelling unit density (§23-22), street wall height (§23-631 and §24-521), maximum building height (§23-631), front yard (§24-34), side yards (§24-35 and §24-551), FAR (§24-11, §24-162 and §23-141) and lot coverage (§23-141 and §24-11). Project is proposed to include 29 dwelling units and 31 parking spaces. R3-2 district.

PREMISES AFFECTED – 2908 Nostrand Avenue, Block 7690, Lots 79 and 80, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**APPEARANCES –**

For Applicant: Peter Hirshman

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT –**

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4  
Negative:.....0

**THE RESOLUTION:**

WHEREAS, decision of the Brooklyn Borough Commissioner, dated October 9, 2007, acting on Department of Buildings Application No. 302022460, reads in pertinent part:

“23-22 ZR - Maximum permitted dwelling units is contrary to section noted.

23-631(b) ZR - Maximum permitted wall height and maximum permitted total height is contrary to section noted.

23-45(a) ZR - Minimum required front yard is contrary to section noted.

23-462(a) ZR - Minimum required side yards contrary to section noted.

23-141 ZR - Floor Area Ratio (FAR) and lot coverage are contrary to section noted.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R3-2 zoning district, a proposed four-story residential building with 15 dwelling units and 15 accessory parking spaces, which exceeds the maximum permitted FAR, lot coverage, wall height, total height, and number of dwelling units and does not provide the minimum required front yard or side yards, contrary to ZR §§ 23-141, 23-462(a), 23-631(b), 23-22, and 23-45(a); and

WHEREAS, a public hearing was held on this application on January 22, 2007, after due notice by publication in the *City Record*, with continued hearings on February 27, 2007, April 17, 2007, July 24, 2007, and September 11, 2007 and then to decision on October 16, 2007; and

WHEREAS, the premises and surrounding area had

site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, certain neighbors provided testimony in opposition to the application, citing concerns about access to light and air and parking issues; and

WHEREAS, the subject premises is located on the west side of Nostrand Avenue, between Avenue P and Kings Highway; and

WHEREAS, the site comprises two tax lots – Lots 79 & 80 – and has a total lot width of 80 feet and a total lot area of approximately 8,800 sq. ft.; and

WHEREAS, Lot 80 is occupied with an automobile storage area and Lot 79 is occupied with a one-story automobile repair shop, which will be demolished; and

WHEREAS, the Board notes that in 1940, under BSA Cal. No. 1181-40-A it granted a variance for auto laundry, greasing, and a garage for storage of five trucks; and

WHEREAS, in 1948, under BSA Cal. No. 410-47-BZ, the Board granted an amendment to permit an automotive repair shop, auto laundry, and lubritorium; and

WHEREAS, the applicant initially proposed an eight-story building with a height of 74’-8”, a total floor area of 46,649 sq. ft. (5.30 FAR), a residential floor area of 43,824 sq. ft., a community facility floor area of 2,825 sq. ft., 29 residential units, and 31 parking spaces; and

WHEREAS, the applicant provided several interim iterations of the plans along with a financial analysis, which incrementally reduced the floor area and height; these iterations also provided for community facility space below grade; and

WHEREAS, the applicant now proposes a four-story residential building with a streetwall and total height of 36’-0” (the maximum permitted street wall and total height are 21’-0” and 35’-0”, respectively); 20,856 sq. ft. of residential floor area (2.37 FAR) (the maximum permitted floor area is 7,040 sq. ft. and 0.6 FAR); a front yard with a depth of 10’-0” (the minimum required front yard is 15’-0”); a lot coverage of 64 percent (the maximum permitted lot coverage is 35 percent); 15 dwelling units (the maximum permitted number of dwelling units is six); no side yards (two side yards with widths of 8’-0” each are required); and 15 parking spaces; and

WHEREAS, the applicant proposes to provide (1) 13 parking spaces in the cellar and two others slightly below grade, (2) three residential units on the lower level, and (3) four residential units on each of the three upper floors; and

WHEREAS, the applicant states that the following are unique physical conditions which create an

unnecessary hardship in developing the site in compliance with applicable zoning district regulations; due to a history of automotive related uses at the site, the soil is contaminated and requires extensive remediation; and

WHEREAS, as to the soil condition, the applicant represents that soil tests reflect that there is contamination by several chemical pollutants as a result of its prior use as an automotive repair shop and vehicle storage facility; and

WHEREAS, the applicant represents that the site has been in constant use for automotive uses since approximately 1930 and until recently; and

WHEREAS, specifically, the soil boring analysis reflects that there are at least eight volatile organic compounds, among other contaminants, present at the site; and

WHEREAS, further, the analysis reflects that the drain, which was used to dispose of paint and auto-body chemical waste, should be removed from the ground and all impacted soils within the zone of contamination (from the ground surface to 22 feet below grade) should be removed and treated and disposed of in accordance with New York State Department of Environmental Conservation approved procedures; and

WHEREAS, the analysis states that these procedures include (1) pumping out all liquids present in the drain using a vacuum truck, (2) removing all contaminated soil with a guzzler truck, (3) removing all fill material present in the subsurface soil in accordance with all relevant regulations, and (4) installing a vapor barrier under the new foundation; and

WHEREAS, the Board notes that the prior approved use of the site for automotive uses pre-dates the enactment of modern environmental standards and regulations; and

WHEREAS, as to the uniqueness of the site conditions, the applicant represent that there are no other available underbuilt or vacant lots within a 200-ft. radius of the site; and

WHEREAS, the applicant has documented more than one million dollars in premium construction costs associated with the remediation of the site; and

WHEREAS, the applicant represents that the waivers are required to accommodate sufficient floor area to overcome the premium construction costs while maintaining a building with a height and yards which are compatible with neighborhood character; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, initially, the applicant submitted a financial analysis for (1) a seven-story building with environmental remediation, (2) a seven-story building without environmental remediation, (3) an eight-story

building with environmental remediation, and (4) an eight-story building without environmental remediation; and

WHEREAS, as noted, throughout the hearing process, the Board directed the applicant to reduce the degree of waivers requested and to reflect the minimum variance; thus, the applicant modified the financial analysis to reflect different scenarios and to respond to the Board's concerns; and

WHEREAS, ultimately, the applicant provided a revised financial analysis which reflects, in addition to the proposed four-story (2.37 FAR) building: (1) an as of right 0.60 FAR scenario if the site were not contaminated, and (2) an as of right 0.60 FAR scenario with the documented environmental remediation; and

WHEREAS, the applicant concluded that none of the as of right scenarios would result in a reasonable return, due to prohibitively high construction costs; and

WHEREAS, thus, the applicant asserts that the additional FAR and height is required to overcome the premium construction costs; and

WHEREAS, based upon its review of the applicant's financial studies, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the surrounding area is mixed use with one-story commercial buildings, two- and three-story residential buildings, and six- and seven-story apartment buildings; and

WHEREAS, the site to the south of the subject site is occupied by a seven-story multiple dwelling building and the site to the north is occupied by a one-story commercial building; the majority of sites on the block are occupied by two-story residential buildings, but multiple dwelling buildings with comparable heights occupy several block fronts on Kings Highway; and

WHEREAS, the Board notes that the adjacent seven-story building does not provide a setback and that there is not a strong streetwall context on Nostrand Avenue near the site; and

WHEREAS, at the Board's direction, the applicant reduced the height of the building by sinking the lower level into the ground to make the overall height more compatible with the buildings in the vicinity; and

WHEREAS, throughout the application process, the applicant eliminated several floors and made the building

**25-06-BZ**

**CEQR #06-BSA-054K**

more compatible with adjacent development; and

WHEREAS, specifically, the final iteration provides for a height of 36 feet, which is only one foot higher than what would be permitted; and

WHEREAS, the applicant initially proposed to provide parking for four cars in the rear yard; and

WHEREAS, the applicant revised the plans to provide for all of the parking either in the cellar or at the front of the building so as to provide an open space at the rear with a depth of 30'-0" and to be more compatible with adjacent neighbors at the rear of the site; and

WHEREAS, the Board notes that the applicant will provide one parking space for each dwelling unit; and

WHEREAS, the Board notes that the proposed residential use is as of right and more compatible with the residential use in the area than the pre-existing non-conforming use; and

WHEREAS, the Board notes that the applicant initially proposed community facility use on the lower level; and

WHEREAS, at the Board's direction, the applicant eliminated the community facility space which increased the floor area and height; and

WHEREAS, based upon the above, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, as noted, the Board does not regard the contaminated soil conditions to be a self-created hardship since it can be attributed to a legal non-conforming use at the site which pre-dates modern environmental regulations; and

WHEREAS, the Board notes that the applicant initially claimed that additional floor area, height, and dwellings were required to overcome the hardship at the site; and

WHEREAS, the Board agrees that there is practical difficulty due to the unique conditions of the site, which require additional floor area and the other noted waivers, but disagrees that the initially proposed degree of FAR, height and dwelling count waivers initially proposed are needed to make the building feasible; and

WHEREAS, as noted, the applicant revised the application to reduce the degree of floor area and FAR waivers, and to reflect the 2.37 FAR distributed appropriately on the site; and

WHEREAS, the Board notes that the applicant has significantly reduced the number of residential units from the initially proposed 29; and

WHEREAS, the Board notes that the applicant also initially proposed two cellar levels; and

WHEREAS, the applicant represented that the two cellar levels were necessary to accommodate the parking and other uses at the site, yet acknowledged that excavating two levels of earth increased the remediation costs; and

WHEREAS, thus, at hearing, the Board directed the applicant to eliminate the second cellar level in order to reduce the costs associated with the remediation and to minimize the requested waivers; and

WHEREAS, accordingly, the Board finds that the current proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Part 617 of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No., dated May 3, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: May, 2006 Environmental Assessment Statement (EAS), June, 2006 Phase I Environmental Site Assessment report (Phase I); and August, 2005 Phase II Environmental Subsurface Investigation report (Phase II).

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials impacts; and

WHEREAS, a DEP Restrictive Declaration (the "DEP RD") was executed on October 11, 2006 and submitted for proof of recording on November 30, 2006 and requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the DEP RD and the applicant's agreement to the conditions noted below; and

**25-06-BZ**

**CEQR #06-BSA-054K**

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R3-2 zoning district, a proposed four-story residential building with 15 dwelling units and 15 accessory parking spaces, which exceeds the maximum permitted FAR, lot coverage, wall height, total height, and number of dwelling units and does not provide the minimum required front yard or side yards, contrary to ZR §§ 23-141, 23-462(a), 23-631(b), 23-22, and 23-45(a), *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 2, 2007"- seven (7) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of four stories including any basement, a maximum of 15 dwelling units, a total height and streetwall height of 36'-0", a floor area of 20,856 sq. ft. (2.37 FAR), a front yard depth of 10'-0", a rear yard depth of 30'-0", a lot coverage of 64 percent, and a minimum of 15 parking spaces, all as illustrated on the BSA-approved plans;

THAT the parking layout shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 16, 2007.

**A true copy of resolution adopted by the Board of Standards and Appeals, October 16, 2007.**

**Printed in Bulletin Nos. 39-41, Vol. 92.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

## 101-05-BZ

APPLICANT - Irving J. Gotbaum, Esq., by Friedman & Gotbaum, LLP, for 377Greenwich LLC, owner.

SUBJECT - Application April 26, 2005 - under Z.R.§72-21 to permit the proposed development of a seven-story, plus penthouse, transient hotel, located in a C6-2A/TMU(A-1) zoning district, which does not comply with the zoning requirements for floor area ratio, also maximum base height and setback requirements, is contrary to Z.R. §111-104 and §35-24.

PREMISES AFFECTED - 377 Greenwich Street, southeast corner of North Moore Street, Block 187, Lot 16, Borough of Manhattan.

### COMMUNITY BOARD #1M

#### APPEARANCES -

For Applicant: Elena Aristova.

**ACTION OF THE BOARD** - Application granted on condition.

#### THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4

Negative:.....0

#### THE RESOLUTION -

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 25, 2005, acting on Application No. 102666394, reads, in pertinent part:

- "1. The proposed building's FAR exceeds that which is allowed and is contrary to ZR 111-104.
2. The proposed building does not comply with ZR 35-24 (proposed building violates requirements for maximum base height and setback of front walls);" and

WHEREAS, a public hearing was held on this application on July 12, 2005 after due notice by publication in The City Record, and then to August 16, 2005 for decision; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Commissioner Chin; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, in a C6-2A/TMU(A-1) zoning district, the proposed development of a seven-story plus penthouse transient hotel, which does not comply with the zoning requirements for floor area ratio, maximum base height and setback, contrary to Z.R. §§ 111-04 and 35-24; and

WHEREAS, the subject site is located on the southeast corner of Greenwich and North Moore Streets, and has a total lot area of 10,085 square feet; and

WHEREAS, the site was previously used as a parking facility; and

WHEREAS, the proposed development contemplates the construction of a seven-story, 94-room, transient hotel, with a floor area of 59,821 sq. ft. and a total height of approximately 108'-0"; and

WHEREAS, the applicant seeks the following waivers: floor area ratio ("FAR") of 5.9 (5.0 FAR maximum permitted); base wall height of 92'-10" (maximum wall height of 85'-0" permitted); and no setbacks on North Moore Street (required setback of 15'-0") or Greenwich Street (required setback of 15'-0"); and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in constructing a complying building: (1) unusual subsurface conditions; (2) contamination on the site from past uses and the existence of underground storage tanks; (3) location adjacent to the 500-year flood zone; and (4) high water table that will require dewatering and sealing of the building's subcellar; and

WHEREAS, the applicant conducted a Phase I Environmental Assessment on the site in July of 2003 which documented that contaminated soil is located throughout the site; and

WHEREAS, the City of New York Department of Environmental Protection ("DEP") issued a Notice to Proceed to the City of New York Department of Buildings ("DOB") on June 29, 2004 with respect to the site's remediation, and the site was remediated in accordance with DEP and other applicable requirements; and

WHEREAS, the applicant submitted a letter from the general contractor that remediated the site that indicates that the total premium costs for site remediation were approximately \$1,700,000; and

WHEREAS, the applicant represents that due to the poor soil conditions, the site had to be excavated and the soil removed; in addition, two sub-surface tanks were removed from the site; and

WHEREAS, the applicant also represents that other premium costs were incurred during the excavation process because of the poor soil conditions on the site, including underpinning and the drilling of soldier piles to prevent damaging ground vibrations; and

WHEREAS, the applicant also represents that the construction of the site's sub-cellar and cellar levels will require temporary dewatering because of the site's location within a floodplain, and the foundation of the building will require a pressure slab/mat in lieu of conventional spread footings; and

WHEREAS, the Board questioned the applicant as to whether the location of the site in the floodplain is unique since the entire area surrounding the site is subject to the same condition; accordingly, all properties surrounding the subject site would require dewatering prior to construction; and

WHEREAS, the applicant responded that

## 101-05-BZ

although dewatering would be required for most foundation construction in the vicinity of the site, this particular site is also burdened with other unique environmental and geological factors, including the presence of two underground storage tanks on the site and contaminated soil across the entire depth and breadth of the site; and

WHEREAS, the Board finds that certain of the aforementioned unique physical conditions, specifically, the poor soil conditions and the presence of underground storage tanks on the site, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformity with the current applicable zoning regulations; and

WHEREAS, the applicant has submitted a feasibility study analyzing the following as-of-right alternatives: (1) a 5.0 FAR office building; (2) 5.0 FAR, 80-room, six-story hotel; and (3) a 5.0 FAR, six-story residential building with ground floor retail; and

WHEREAS, the applicant concluded that none of the complying scenarios would yield the owner a reasonable return; and further represents that with the addition of an extra floor and 14 rooms to the proposed hotel scenario, the owner will be able to realize a reasonable rate of return given the \$1,700,000 in premium costs attributable to the unique conditions on the site; and

WHEREAS, the applicant represents that as part of its financing it is receiving tax-free bonds under the Liberty Bond Financing Program, and that it would be unable to receive Liberty Bond Financing if it developed condominiums; and

WHEREAS, the Board questioned the need for the Liberty Bonds and asked why the applicant would be unable to use the bonds in a condominium development scenario; and

WHEREAS, the applicant responded that initially the project was contemplated as an as-of-right hotel, and Liberty Bonds were part of the financing for the project; subsequent to the drawing down of the bonds and excavation of the property, the owner discovered a significant amount of environmental contamination that exceeded what the owner found in prior borings; and

WHEREAS, the applicant further responded that it was at that point that the applicant came before the Board to seek bulk waivers, so that a reasonable return could be realized on the property despite the soil conditions; and

WHEREAS, the applicant further represents that a condition to the receipt of the Liberty Bond Financing is that the bonds must be held for 30 years, and, during that period, the holder must have a unified underlying asset as surety for their repayment, thereby precluding a condominium scenario; and

WHEREAS, at the request of the Board, the applicant also prepared a financial analysis of the proposed hotel without the Liberty Bonds, which reflects that the costs savings from using the Liberty Bonds is equal to \$1,800,000 during construction and \$800,000 annually in interest payments; and

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that it received an initial Certificate of Appropriateness ("COA") from the New York City Landmarks Preservation Commission ("LPC") for a six-story version of the proposed hotel on August 19, 2003, and received an updated COA on November 29, 2004 for the current version of the hotel; and

WHEREAS, the updated COA states that the LPC found that the proposed seven-story hotel related well to the scale of the adjacent building on Greenwich Street, and to the district as a whole; and

WHEREAS, the applicant has submitted a map of the surrounding buildings that indicates that behind the site is an eight-story building, next to the site is a five-story building, and across the street from the site on Greenwich Street is a 39-story building; therefore, the applicant represents that the height of the building will match the character of the neighborhood; and

WHEREAS, the applicant represents that in a sampling of nearby mid-block residential and residential/commercial buildings, FAR ranges from 5.53 to 8.7; and in a sampling of nearby corner block residential and mixed-use buildings, FAR ranges from 6.93 to 13.26; and

WHEREAS, the applicant notes that the proposed building height of 108'-0" is below the maximum permitted total building height in the zoning district of 120'-0"; and

WHEREAS, the Board finds that the bulk and height of the proposed building is compatible with the surrounding built context; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board further finds that this proposal is the minimum necessary to afford the

**101-05-BZ**

owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the subject site is located within the Tribeca West Historic District and as previously noted in this resolution, a COA has been issued for this proposal by the LPC on November 29, 2004; and

WHEREAS, pursuant to CEQR No. 95DCP010M, the City Planning Commission issued an "E" Designation (E-61) for potential hazardous materials and noise impacts for the subject property; and

WHEREAS, the Notice to Proceed issued by DEP, as previously noted in this resolution, states that the applicant has adequately addressed the terms of this "E" Designation; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA137M dated July 6, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §72-21 and grants a variance to permit, in a C6-2A/TMU(A-1) zoning district, the proposed development of a seven-story plus penthouse transient hotel, which does not comply

with the zoning requirements for floor area ratio, maximum base height and setback, contrary to Z.R. §§111-04 and 35-24, on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 27, 2005"-(15) sheets; and on further condition:

THAT the FAR shall not exceed 5.9; and the base wall height shall not exceed 92'-10";

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 16, 2005.

**A true copy of resolution adopted by the Board of Standards and Appeals, August 16, 2005.**

**Printed in Bulletin No. 35, Vol. 90.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

# EXHIBIT F

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Office of the Director  
625 Broadway, 12th Floor, Albany, New York 12233-7011  
P: (518) 402-9706 | F: (518) 402-9020  
www.dec.ny.gov

CSC 4540 Property Co, LLC  
C/O CSC 4540 LLC  
261 Fifth Ave, Suite 1802  
New York, NY 10016

APR 24 2019

Dear Sir or Madam:

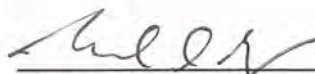
Re: Paragon Paint and Varnish Site  
Site No. C241108  
Modification to Certificate of Completion - Revised

Enclosed please find a Notice of Modification of Certificate of Completion (COC) and a revised COC regarding the above-referenced site. The attached Notice provides the facts and basis for the Department's Modification of the COC for this site.

- As the site owner, you must record the notice of modification the COC in the recording office for the County (or Counties) where any portion of the site is located within 30 days of issuance of the revised COC. Proof of filing must be provided to the Department within 30 days of receipt.
- Place the notice of the modification of COC in the document repository for the site within 10 days of issuance of the revised COC; and
- Continue to implement the Department-approved Site Management Plan (SMP) which details the activities necessary to assure the performance, effectiveness, and protectiveness of the remedial program. You must report the results of these activities to the Department in a Periodic Review Report (PRR) which also includes any required IC/EC certifications. The next PRR is due to be submitted to the Department on **May 15, 2019**.

If you have any questions regarding the reclassification or any of the above tasks, please contact Sondra Martinkat at (718) 482-4891.

Sincerely,



Michael Ryan, P.E.

Director

Division of Environmental Remediation



Department of  
Environmental  
Conservation

Enclosures

ec: George Heitzman, DEC  
Jennifer Andaloro, DEC  
Andrew Guglielmi, DEC  
Jane O'Connell, DEC  
Sondra Martinkat, DEC  
Stephen Russo, [russos@gtlaw.com](mailto:russos@gtlaw.com)

NYSDEC BROWNFIELD CLEANUP PROGRAM (BCP)  
*CERTIFICATE OF COMPLETION*

**CERTIFICATE HOLDER(S):**

**Name**

549 46TH AVENUE LLC  
CSC 4540 Property Co, LLC  
Vernon 4540 Realty LLC

**Address**

11 Ferncliff Road, Cos Cob, CT 06807  
261 Fifth Ave., Suite 1802, New York, NY 10016  
45 Carleon Ave, Larchmont, NY 10538

**BROWNFIELD CLEANUP AGREEMENT:**

**Application Approval:** 3/24/08    **Agreement Execution:** 9/4/08    **Agreement Index No.:** W2-1119-08-03

**Application Approval Amendment:** 8/17/10

**Agreement Execution Amendment:** 8/17/10

**Application Approval Amendment:** 7/21/11

**Agreement Execution Amendment:** 8/2/11

**SITE INFORMATION:**

**Site No.:** C241108    **Site Name:** Paragon Paint and Varnish Corp

**Site Owner:** CSC 4540 Property Co, LLC

**Street Address:** 5-49 46th Avenue

**Municipality:** Long Island City    **County:** Queens    **DEC Region:** 2

**Site Size:** 0.759 Acres

**Tax Map Identification Number(s):** 4-26-4

**Percentage of site located in an EnZone:** 0 - 49 %

A description of the property subject to this Certificate is attached as Exhibit A and a site survey is attached as Exhibit B.

**CERTIFICATE ISSUANCE**

This Certificate of Completion, hereinafter referred to as the "Certificate," is issued pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law ("ECL").

This Certificate has been issued upon satisfaction of the Commissioner, following review by the Department of the final engineering report and data submitted pursuant to the Brownfield Site Cleanup Agreement, as well as any other relevant information regarding the Site, that the applicable remediation requirements set forth in the ECL have been or will be achieved in accordance with the time frames, if any, established in the remedial work plan.

The remedial program for the Site has achieved a cleanup level that would be consistent with the following categories of uses (actual site use is subject to local zoning requirements):

**Allowable Uses under the BCP:** Restricted-Residential, Commercial, and Industrial

**Cleanup Track:** Track 4: Restricted use with site-specific soil cleanup objectives

**Tax Credit Provisions for Entities Taxable Under Article 9, 9-A, 32, and 33:**

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 28 %.

Tangible Property Credit Component Rate is 12 %.

**Tax Credit Provisions for Entities Taxable Under Article 22 & S Corporations:**

Site Preparation and On-Site Groundwater Remediation Credit Component Rate is 28 %.

Tangible Property Credit Component Rate is 10 %.

The Remedial Program includes use restrictions or reliance on the long term employment of institutional or engineering controls which are contained in the approved Site Management Plan and an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Queens County as 2015000400038.

#### **LIABILITY LIMITATION**

Upon issuance of this Certificate of Completion, and subject to the terms and conditions set forth herein, the Certificate holder(s) shall be entitled to the liability limitation provided in ECL Section 27-1421. The liability limitation shall run with the land, extending to the Certificate holder's successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site, subject to certain limitations as set forth in ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

#### **CERTIFICATE TRANSFERABILITY**

This Certificate may be transferred to the Certificate holder's successors or assigns upon transfer or sale of the Site as provided by ECL Section 27-1419.5 and 6NYCRR Part 375-1.9.

#### **CERTIFICATE MODIFICATION/REVOCATION**

This Certificate of Completion may be modified or revoked by the Commissioner following notice and an opportunity for a hearing in accordance with ECL Section 27-1419 and 6NYCRR Part 375-1.9(e) upon a finding that:

- (1) either the Applicant or the Applicant's successors or assigns have failed to comply with the terms and conditions of the Brownfield Site Cleanup Agreement;
- (2) the Applicant made a misrepresentation of a material fact tending to demonstrate that it was qualified as a Volunteer;
- (3) either the Applicant or the Applicant's successors or assigns made a misrepresentation of a material fact tending to demonstrate that the cleanup levels identified in the Brownfield Site Cleanup Agreement were reached;
- (4) there is good cause for such modification or revocation;
- (5) either the Applicant or the Applicant's successors or assigns failed to manage the controls or monitoring in full compliance with the terms of the remedial program;
- (6) the terms and conditions of the environmental easement have been intentionally violated or found to be not protective or enforceable.

The Certificate holder(s) (including its successors or assigns) shall have thirty (30) days within which to cure any deficiency or to seek a hearing. If the deficiency is not cured or a request for a hearing is not received within such 30-day period, the Certificate shall be deemed modified or vacated on the 31st day after the Department's notice.

Basil Seggos  
Commissioner  
New York State Department of Environmental Conservation

By:  Date: 12/16/16

Michael J. Ryan, P.E., Director  
Division of Environmental Remediation

**NOTICE OF MODIFICATION OF CERTIFICATE OF COMPLETION**  
**Brownfield Cleanup Program**  
**6 NYCRR Part 375-1.9(e)**

Paragon Paint and Varnish Corp., Site ID No. C241108  
5-49 46th Avenue, Long Island City, Queens County, New York  
Tax Map Identification Number(s): 4-26-4

**PLEASE TAKE NOTICE**, the New York State Department of Environmental Conservation (Department) previously issued a Certificate of Completion (COC) pursuant to Article 27, Title 14 of the New York State Environmental Conservation Law (ECL) on December 16, 2016 to 549 46TH AVENUE LLC, Anable Beach, Inc., and Vernon 4540 Realty LLC, for a parcel approximately .759 acres in size located at 5-49 46th Avenue, Long Island City, Queens County, and is known as the Paragon Paint and Varnish Corp. site, Site ID No. C241108.

**PLEASE TAKE NOTICE**, that, due to an oversight by the COC holders, the owner of the site, CSC 4540 Property Co, LLC, was not added to the Brownfield Cleanup Agreement prior to issuance of the COC.

**PLEASE TAKE NOTICE**, that CSC 4540 Property Co, LLC has incurred significant costs in remediating the site, which may be eligible for tax credits pursuant to the ECL and New York State Tax Law. CSC 4540 Property Co, LLC also has been voluntarily performing site management activities and been complying with the environmental easement at the property, without a regulatory relationship with the Department.

**PLEASE TAKE NOTICE**, that, in letters of December 19 and 22, 2017 respectively, 549 46TH AVENUE LLC and Vernon 4540 Realty LLC consented to a modification of the COC to add CSC 4540 Property Co, LLC as an additional certificate holder. Anable Beach, Inc. sent a letter to the Department on May 6, 2014, withdrawing as an applicant, and the Department incorrectly included them as a COC holder.

**PLEASE TAKE NOTICE**, that the Department hereby finds that good cause exists under 6 NYCRR § 371-1.9(e)(v) to modify the COC to include the current owner, CSC 4540 Property Co, LLC, as a COC holder and to remove Anable Beach, Inc. as a COC holder. 549 46TH AVENUE LLC and Vernon 4540 Realty LLC are unaffected as COC holders pursuant to this determination.

**PLEASE TAKE NOTICE**, since the remedial program relies upon use restrictions or the long-term employment of institutional or engineering controls; such institutional or engineering controls are contained in an Environmental Easement granted pursuant to ECL Article 71, Title 36 which has been duly recorded in the Recording Office for Queens County as 2015000400038. CSC 4540 Property Co, LLC recognize(s) and agree(s) to implement the Department-approved Site Management Plan (SMP), and any amendments thereto. The SMP, which may be amended from time to time, may include sampling, monitoring, and/or operating a treatment system on the property, providing certified reports to the NYSDEC, and generally provides for the management of any and all plans and limitations on the property. A copy of the SMP is available upon request by writing to the Department's Division of Environmental Remediation, Site Control Section, 625 Broadway, Albany, New York 12233.

Paragon Paint and Varnish Corp., C241108, 5-49 46th Avenue, Long Island City

**PLEASE TAKE NOTICE**, provided that the EE, SMP and COC are complied with, CSC 4540 Property Co, LLC as a COC holder(s), shall be entitled to the liability limitation provided in ECL Section 27-1421. The liability limitation shall run with the land, extending to the COC holder's successors or assigns through acquisition of title to the Site and to a person who develops or otherwise occupies the Site, subject to certain limitations as set forth in ECL Section 27-1421. The liability limitation shall be subject to all rights reserved to the State by ECL Section 27-1421.2 and any other applicable provision of law.

**PLEASE TAKE NOTICE**, any change of use of the site, as defined in 6 NYCRR 375, must be preceded by notice to the Department in accordance with 6 NYCRR 375-1.11(d). A transfer of any or all of the property constitutes a change of use.

**PLEASE TAKE NOTICE**, the COC may be only be transferred to the COC holder's successors or assigns upon transfer or sale of the Site as provided by ECL Section 27-1419.5 and 6 NYCRR Part 375-1.9. Failure to comply with the regulatory requirements for transfer **WILL** bar the successors and assigns from the benefits of the COC.

**PLEASE TAKE NOTICE**, the COC may be modified or revoked by the Commissioner as set forth in the applicable regulations.

**PLEASE TAKE NOTICE**, the COC may be revoked if the EE as implemented, if applicable, is not protective or enforceable.

**PLEASE TAKE FURTHER NOTICE**, that CSC 4540 Property Co, LLC shall file this Notice of Modification of COC, attaching the December 16, 2016 COC, in the Queens County Clerk's Office within thirty days of its signature below.

**WHEREFORE**, the undersigned has signed this Notice of Modification of COC

CSC 4540 Property Co, LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF NEW YORK     ) SS:  
COUNTY OF                 )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment

**Please record and return to:**  
CSC 4540 Property Co, LLC  
C/O CSC 4540 LLC  
261 Fifth Ave, Suite 1802  
New York, NY 10016



**EXHIBIT A**

**METES AND BOUNDS  
FROM THE EASEMENT**

**SCHEDULE "A" PROPERTY DESCRIPTION**

**ALL THAT CERTAIN** plot, piece or parcel of land, together with the buildings and improvements thereon erected, situate, lying and being at Long Island City in the County of Queens, City of New York, known as Lot Numbers 4, 5, 6, 7, 13 14, 15 and 16, in Block 21 "Map of Hunter Van Alst and Debevoise Farms" situate in the 1st, 2nd and 3rd Wards, Long Island, Queens County, surveyed by Peter Van Alst for the Trustees of Union College bounded and described as follows:

BEGINNING at a point on the westerly side of Vernon Boulevard, distant 75 feet northerly from the corner formed by the intersection of the westerly side of Vernon Boulevard and the northerly side of 46th Avenue;

RUNNING THENCE south 75 degrees 17 minutes 05 seconds west and parallel with 46<sup>th</sup> Avenue, 100 feet;

THENCE south 14 degrees 42 minutes 55 seconds east and parallel with Vernon Boulevard, 75 feet to the northerly side of 46th Avenue;

THENCE south 75 degrees 17 minutes 05 seconds west along the northerly side of 46th Avenue, 100 feet to the easterly line of Lot 17 on the aforesaid map;

THENCE north 14 degrees 42 minutes 55 seconds west along the easterly line of Lot 17 and parallel to Vernon Boulevard, 231 feet, 6 inches to the southerly line of the 11th Street Basin;

THENCE north 75 degrees 17 minutes 05 minutes east along the southerly line of the 11th Street Basin and parallel to 46th Avenue, 49 feet to the westerly line of Lot 10;

THENCE south 14 degrees 42 minutes 55 seconds east along the westerly line of Lot 10 and parallel to Vernon Boulevard, 1 foot 6 inches;

THENCE north 75 degrees 17 minutes 05 seconds east along said southerly side of Lot 10 and parallel with 46th Avenue, 51 feet to the westerly side of Lot 9 on said map;

THENCE south 14 degrees 42 minutes 55 seconds east and parallel with Vernon Boulevard and along the westerly sides of Lots 9 and 8, 55 feet to the northerly side of Lot 7 on said map;

THENCE north 75 degrees 17 minutes 05 seconds east and along the northerly side of Lot 7 and parallel with the northerly side of 46th Avenue, 100 feet to the westerly side of Vernon Boulevard;

THENCE south 14 degrees 42 minutes 55 seconds east and along the westerly side of Vernon Boulevard, 100 feet to the point or place of BEGINNING.

Together with all rights, title and interest of, in and to any streets and roads abutting the above described premises, to the center line thereof.

(Vernon Boulevard a/k/a Vernon Avenue f/k/a Central Avenue)

(46th Avenue a/k/a 10th Street f/k/a West 10th Street)

(11th Street Basin f/k/a The Canal)

## EXHIBIT B

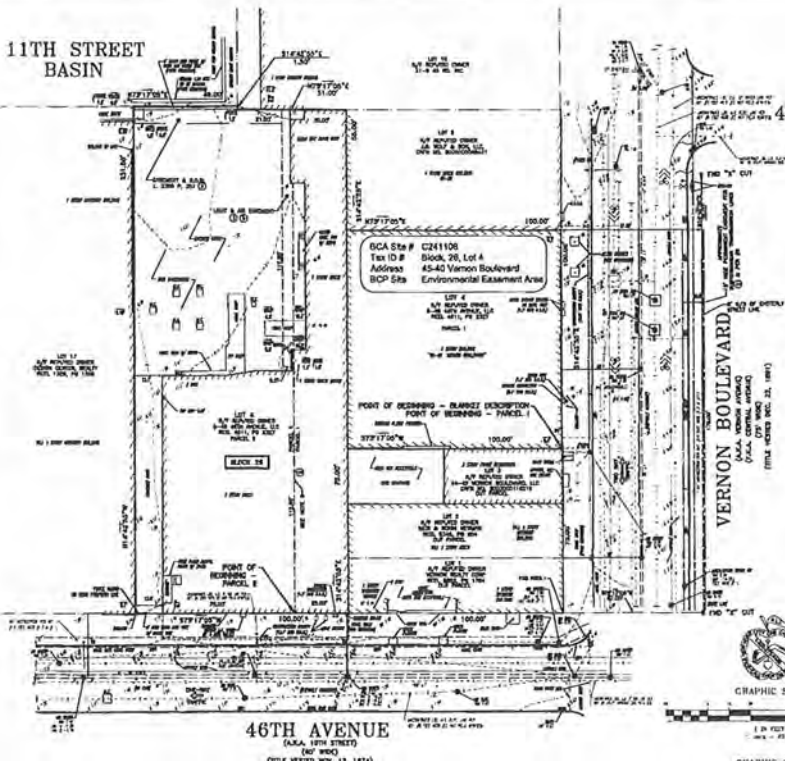
### SURVEY FIGURE





# 11TH STREET BASIN

## VERNON BOULEVARD, 45TH ROAD



- 1. THE PROPERTY SHOWN ON THIS PLAN IS A PORTION OF THE 11TH STREET BASIN, A PORTION OF THE 45TH ROAD, AND A PORTION OF THE 46TH AVENUE, ALL OF WHICH ARE OWNED BY THE CITY OF ALBANY, NEW YORK.
- 2. THE PROPERTY SHOWN ON THIS PLAN IS A PORTION OF THE 11TH STREET BASIN, A PORTION OF THE 45TH ROAD, AND A PORTION OF THE 46TH AVENUE, ALL OF WHICH ARE OWNED BY THE CITY OF ALBANY, NEW YORK.
- 3. THE PROPERTY SHOWN ON THIS PLAN IS A PORTION OF THE 11TH STREET BASIN, A PORTION OF THE 45TH ROAD, AND A PORTION OF THE 46TH AVENUE, ALL OF WHICH ARE OWNED BY THE CITY OF ALBANY, NEW YORK.
- 4. THE PROPERTY SHOWN ON THIS PLAN IS A PORTION OF THE 11TH STREET BASIN, A PORTION OF THE 45TH ROAD, AND A PORTION OF THE 46TH AVENUE, ALL OF WHICH ARE OWNED BY THE CITY OF ALBANY, NEW YORK.
- 5. THE PROPERTY SHOWN ON THIS PLAN IS A PORTION OF THE 11TH STREET BASIN, A PORTION OF THE 45TH ROAD, AND A PORTION OF THE 46TH AVENUE, ALL OF WHICH ARE OWNED BY THE CITY OF ALBANY, NEW YORK.
- 6. THE PROPERTY SHOWN ON THIS PLAN IS A PORTION OF THE 11TH STREET BASIN, A PORTION OF THE 45TH ROAD, AND A PORTION OF THE 46TH AVENUE, ALL OF WHICH ARE OWNED BY THE CITY OF ALBANY, NEW YORK.
- 7. THE PROPERTY SHOWN ON THIS PLAN IS A PORTION OF THE 11TH STREET BASIN, A PORTION OF THE 45TH ROAD, AND A PORTION OF THE 46TH AVENUE, ALL OF WHICH ARE OWNED BY THE CITY OF ALBANY, NEW YORK.
- 8. THE PROPERTY SHOWN ON THIS PLAN IS A PORTION OF THE 11TH STREET BASIN, A PORTION OF THE 45TH ROAD, AND A PORTION OF THE 46TH AVENUE, ALL OF WHICH ARE OWNED BY THE CITY OF ALBANY, NEW YORK.
- 9. THE PROPERTY SHOWN ON THIS PLAN IS A PORTION OF THE 11TH STREET BASIN, A PORTION OF THE 45TH ROAD, AND A PORTION OF THE 46TH AVENUE, ALL OF WHICH ARE OWNED BY THE CITY OF ALBANY, NEW YORK.
- 10. THE PROPERTY SHOWN ON THIS PLAN IS A PORTION OF THE 11TH STREET BASIN, A PORTION OF THE 45TH ROAD, AND A PORTION OF THE 46TH AVENUE, ALL OF WHICH ARE OWNED BY THE CITY OF ALBANY, NEW YORK.

1. THE PROPERTY SHOWN ON THIS PLAN IS A PORTION OF THE 11TH STREET BASIN, A PORTION OF THE 45TH ROAD, AND A PORTION OF THE 46TH AVENUE, ALL OF WHICH ARE OWNED BY THE CITY OF ALBANY, NEW YORK.

2. THE PROPERTY SHOWN ON THIS PLAN IS A PORTION OF THE 11TH STREET BASIN, A PORTION OF THE 45TH ROAD, AND A PORTION OF THE 46TH AVENUE, ALL OF WHICH ARE OWNED BY THE CITY OF ALBANY, NEW YORK.

3. THE PROPERTY SHOWN ON THIS PLAN IS A PORTION OF THE 11TH STREET BASIN, A PORTION OF THE 45TH ROAD, AND A PORTION OF THE 46TH AVENUE, ALL OF WHICH ARE OWNED BY THE CITY OF ALBANY, NEW YORK.

4. THE PROPERTY SHOWN ON THIS PLAN IS A PORTION OF THE 11TH STREET BASIN, A PORTION OF THE 45TH ROAD, AND A PORTION OF THE 46TH AVENUE, ALL OF WHICH ARE OWNED BY THE CITY OF ALBANY, NEW YORK.

5. THE PROPERTY SHOWN ON THIS PLAN IS A PORTION OF THE 11TH STREET BASIN, A PORTION OF THE 45TH ROAD, AND A PORTION OF THE 46TH AVENUE, ALL OF WHICH ARE OWNED BY THE CITY OF ALBANY, NEW YORK.

6. THE PROPERTY SHOWN ON THIS PLAN IS A PORTION OF THE 11TH STREET BASIN, A PORTION OF THE 45TH ROAD, AND A PORTION OF THE 46TH AVENUE, ALL OF WHICH ARE OWNED BY THE CITY OF ALBANY, NEW YORK.

7. THE PROPERTY SHOWN ON THIS PLAN IS A PORTION OF THE 11TH STREET BASIN, A PORTION OF THE 45TH ROAD, AND A PORTION OF THE 46TH AVENUE, ALL OF WHICH ARE OWNED BY THE CITY OF ALBANY, NEW YORK.

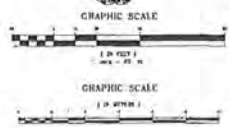
8. THE PROPERTY SHOWN ON THIS PLAN IS A PORTION OF THE 11TH STREET BASIN, A PORTION OF THE 45TH ROAD, AND A PORTION OF THE 46TH AVENUE, ALL OF WHICH ARE OWNED BY THE CITY OF ALBANY, NEW YORK.

9. THE PROPERTY SHOWN ON THIS PLAN IS A PORTION OF THE 11TH STREET BASIN, A PORTION OF THE 45TH ROAD, AND A PORTION OF THE 46TH AVENUE, ALL OF WHICH ARE OWNED BY THE CITY OF ALBANY, NEW YORK.

10. THE PROPERTY SHOWN ON THIS PLAN IS A PORTION OF THE 11TH STREET BASIN, A PORTION OF THE 45TH ROAD, AND A PORTION OF THE 46TH AVENUE, ALL OF WHICH ARE OWNED BY THE CITY OF ALBANY, NEW YORK.

### 46TH AVENUE

(TITLE VERIFIED NOV. 15, 1974)



LEGEND	SYMBOL	DESCRIPTION
1. 11TH STREET BASIN	1. 11TH STREET BASIN	1. 11TH STREET BASIN
2. 45TH ROAD	2. 45TH ROAD	2. 45TH ROAD
3. 46TH AVENUE	3. 46TH AVENUE	3. 46TH AVENUE
4. VERNON BOULEVARD	4. VERNON BOULEVARD	4. VERNON BOULEVARD
5. 45TH ROAD	5. 45TH ROAD	5. 45TH ROAD
6. 46TH AVENUE	6. 46TH AVENUE	6. 46TH AVENUE
7. VERNON BOULEVARD	7. VERNON BOULEVARD	7. VERNON BOULEVARD
8. 45TH ROAD	8. 45TH ROAD	8. 45TH ROAD
9. 46TH AVENUE	9. 46TH AVENUE	9. 46TH AVENUE
10. VERNON BOULEVARD	10. VERNON BOULEVARD	10. VERNON BOULEVARD

THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL EASEMENT HELD BY THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PURSUANT TO TITLE 36 OF ARTICLE 71 OF THE NEW YORK ENVIRONMENTAL CONSERVATION LAW. THE ENGINEERING AND INSTITUTIONAL CONTROLS FOR THE EASEMENT ARE SET FORTH IN MORE DETAIL IN THE SITE MANAGEMENT PLAN (SMP). A COPY OF THE SMP MUST BE OBTAINED BY ANY PARTY WITH AN INTEREST IN THE PROPERTY. THE SMP MAY BE OBTAINED FROM THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, DIVISION OF ENVIRONMENTAL REMEDIATION, SITE CONTROL SECTION, 635 BROADWAY, ALBANY, NY 12243 OR AT DERWEG@W.DEC.STATE.NY.US.

**CONTROL POINT ASSOCIATES, INC.**

1100 ALBANY STREET, SUITE 100  
ALBANY, NEW YORK 12243  
TEL: 518/486-1100

**PROJECT NAME**

ANABLE BEACH, INC.  
LOT 4, BLOCK 28, 4540 VERNON BOULEVARD  
LONG ISLAND CITY,  
QUEENSBORO & COUNTY OF QUEENS  
CITY & STATE OF NEW YORK

**DRAWING TITLE**

ALTAZEM LAND TITLE SURVEY

**DATE**

11/15/74

**BY**

JAMES C. WOOD

**SCALE**

1" = 100'

**PROJECT NO.**

V-001.01