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BOARD OF STANDARDS AND APPEALS

MEETING OF: March 8, 2021
CALENDAR NO.: 2019-205-BZ
PREMISES: 485 Van Sinderen Avenue, Brooklyn
Block 3799, Lot 1

ACTION OF BOARD — Application granted on condition.

THE VOTE —

Affirmative: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Ottley-Brown, Commissioner Sheta, and
Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION —

The decision of the Department of Buildings dated October 21, 2020, acting on New Building Application No. 321387263, reads in pertinent part: “ZR 42-10 The proposed residential use (UG2) is not permitted in the M1-1 zoning district. ZR 43-12 The proposed FAR exceeds the maximum permitted FAR in the M1-1 zoning district contrary to ZR 43-12. ZR 43-43 The proposed building exceeds the maximum permitted base height, maximum permitted building height, and penetrates the sky exposure plane of 1 to 1, contrary to ZR 43-43. ZR 43-302 The proposed rear yard is contrary to ZR 43-302.”

This is an application for a variance under Z.R. § 72-21 to permit—in an M1-1 zoning district—the development of a nine-story residential building with 129 units of affordable independent residences for seniors that would not comply with zoning regulations for use (Z.R. § 42-10), floor area (Z.R. § 43-12), height and setback (Z.R. § 43-43), and rear yards (Z.R. § 43-302).

This application is brought by Community Counseling & Mediation (the “applicant”), a behavioral health organization and housing operator that has provided programs ranging from mental health services, youth-and-education empowerment programs, and affordable supportive housing since 1982.

A public hearing was held on this application on April 7, 2020, after due notice by publication in *The City Record*, with a continued hearing on December 15, 2020, and then to decision on March 8, 2021.

Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Sheta performed inspections of the Premises and surrounding neighborhood.

Community Board 5, Brooklyn, recommends approval of this application, and a local resident submitted testimony expressing privacy concerns.

I.

The Premises are located on a block bounded by Dumont Avenue to the north, Snediker Avenue to the east, Livonia Avenue to the south, and Van Sinderen Avenue to the west, in an M1-1 zoning district, in Brooklyn. They have approximately 260 feet of frontage along Van Sinderen Avenue, 100 feet of depth, 25,790 square feet of lot area, and are vacant.

II.

The applicant proposes to develop a nine-story residential building for use as affordable independent residences for seniors (Use Group 2) with 103,012 square feet of floor area (3.99 FAR), a street-wall height of 84'-4" that penetrates a 1:1 sky exposure plane, and a rear yard of 20'-0" (the "Proposed Building").

At the Premises, residential use is not allowed, *see* Z.R. § 42-10; floor area may not exceed 25,790 square feet (1.00 FAR), *see* Z.R. § 43-12; street wall height may not exceed 30'-0" with a setback of 20'-0" and a sky exposure plane of 1:1, *see* Z.R. § 43-43; and the rear yard must have a minimum depth of 30'-0", *see* Z.R. § 43-302.

Accordingly, the applicant requests the relief set forth herein.

III.

The Zoning Resolution vests the Board with wide discretion to "vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done," Z.R. § 72-21, and the Board acknowledges that the applicant, as a not-for-profit developer and operator of affordable and supportive housing, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of this application. As held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), a zoning board is to grant an educational or religious institution's application unless it can be shown to have an adverse effect on the health, safety, or welfare of the community. General concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such applications.

Having previously examined *Cornell's* origins, the Board has found that similar considerations apply to facilitate the development of projects that provide 100 percent affordable housing to low-income earners for the life of the building because there is a natural link between public policies aimed at protecting houses of worship and schools and those aimed at facilitating affordable-housing

development. Specifically, the provision of affordable housing is in furtherance of the public health, safety, welfare, and morals and a fundamental interest of the State, as evidenced by a 1965 amendment to the New York State Constitution that authorized the legislature to provide for “low rent housing and nursing home accommodations for persons of low income as defined by law,” New York Constitution, article XVIII, § 1. Both the City and State of New York have long recognized the importance of accessibility to safe and high-quality affordable housing, as further evidenced by the New York State Tenement House Act of 1901, which banned the construction of dark and poorly ventilated tenement buildings and required that newly constructed tenement buildings be built with outward facing windows in every room, open courtyards, indoor toilets and fire safeguards; the Multiple Dwelling Law of 1929, which established proper housing standards requiring sufficient light, air, sanitation and protection from fire hazards essential to the public welfare; the New York City Housing Authority, created in 1934 to provide housing for low- and moderate-income residents and currently the largest public housing authority in North America; the Mitchell-Lama Housing Program, created by the New York State Legislature in 1955 to provide affordable rental and cooperative housing to moderate- and middle-income residents; and the Loft Law, an article of the Multiple Dwelling Law enacted in 1982 requiring residential conversions of commercial and manufacturing buildings to comply with minimum housing standards in order to ensure the health and safety of the buildings’ residential tenants. In the 1980s, the federal government expanded the availability and use of Section 8 Housing Choice Vouchers, utilized by very low-income families, the elderly and the disabled to acquire safe housing in the private housing market, and introduced the Low- Income Housing Tax Credit program, which gives state and local agencies authority to issue tax credits for costs associated with the acquisition, rehabilitation or construction of rental housing for low-income earners, while New York City Mayor Edward Koch’s administration initiated and enforced tax foreclosures on properties that were one year or more in tax arrears in an effort to increase public revenue after the fiscal crisis of 1977—an act that made the City of New York the largest owner of land in the City of New York with title to more than 100,000 vacant and partly occupied apartments—and eventually designated \$5.1 billion in city and federal funds to rebuild entire neighborhoods as part of Koch’s Ten-Year Affordable Housing Plan (1986-1996). In the 1990s, New York City Mayors David Dinkins and Rudolph Giuliani’s administrations extended the City’s commitment to Mayor Koch’s affordable housing plan, which led to the rehabilitation and development of over 180,000 units between 1987 and 2000. New York City Mayor Michael Bloomberg’s administration also made commitments to creating and preserving affordable housing with the New Housing Marketplace Plan (July 2003), which originally

committed \$3.4 billion to build and preserve 68,000 affordable housing units by 2008 but doubled its goal in February 2006 with \$7.5 billion dedicated to build and preserve 165,000 affordable housing units over the next ten years. In 2014, current New York City Mayor Bill de Blasio introduced the Housing New York, a five-borough ten-year plan aiming to create and preserve 200,000 affordable housing units by 2024 through, among other initiatives, encouraging the development of affordable housing on underutilized public and private sites, promoting housing for seniors and the formerly homeless and creating the Mandatory Inclusionary Housing program, which, per ZR § 24-92, was “established to promote the creation and preservation of housing for residents with varied incomes in redeveloping neighborhoods and to enhance neighborhood diversity and thus *to promote the general welfare,*” (emphasis added) and requires that a certain proportion of new housing developed in connection with certain zoning actions be permanently affordable. Despite these professed policy goals, the City of New York is in the midst of an affordable housing crisis due to, among other things, incredible population growth; a demand for low- and moderate-income affordable housing units that outpaces the supply of those units and, relatedly, a rise in residential rents that outpaces income growth; the steady decrease in the number of rent controlled and rent stabilized (collectively, “rent regulated”) units; and the aversion of residents located near proposed low-income affordable housing developments to such projects out of fear that such developments will decrease area property values and adversely affect the neighborhood’s quality of life, a response that often leads to the abandonment of those projects. The New York City Rent Guidelines Board, charged with establishing rent increases for the dwelling units subject to the Rent Stabilization Law, found that, since 1994, nearly 250,000 units of rental housing have been removed from rent regulation protection, resulting in a net loss of 16 percent of the total stock of rent regulated affordable housing units from 1994 to 2012; in addition, many buildings, for which the regulatory requirement to be available at affordable rents has expired, have opted out of affordability programs and opted, instead, to pursue market rate or homeownership options, leading to a loss of another 68,000 units of affordable housing from the four largest subsidy programs. Additionally, the crisis has disproportionately affected New York City’s senior residents, 60 years and older, a growing demographic that often relies on a fixed income and nearly one-third of which currently pay more than 50 percent of their income on housing. In furtherance of the submission that the provision of affordable housing for low-income earners is generally, like education and free exercise of religion, in furtherance of the public health, safety, welfare and morals, the Board notes that, when residents have to spend a large percentage of their income on housing, less money is available for those residents’ other basic living needs like food or healthcare, which can lead to negative

health outcomes, particularly for seniors; the insufficient supply of low-income affordable housing also results in overcrowded housing and familial instability, necessitating frequent moves and increases in the rate of homelessness. providing low-income affordable housing units sufficient to meet the demand, thereby meeting residents' most basic need for shelter, enables residents to more actively participate in the local economy, acquire other life essentials like nutritious food and medicine, access more stable employment opportunities and altogether improves residents' quality of life. When such housing is provided by mission-based not-for-profit institutions these positive outcomes are more assured because of the developer's focus on the residents rather than financial profit and because the mission of the not-for-profit housing developer is to build, manage and maintain affordable housing and not package it for resale or for the building's future "upside" potential, as would be the goal for a for-profit developer. Additional methods of facilitating the development of affordable housing for low-income residents, such as the extension of *Cornell* previously found by the Board, are necessary to close the gap between the supply and demand for low-income affordable housing since, unlike market rate or mixed-income (market rate units combined with affordable units at varying degrees of affordability) housing development projects, low-income affordable housing can only be developed in reliance on government grants and subsidies and on adequate unit counts that facilitate economies of scale.

The Board notes instances in which New York State courts have applied the doctrine with the flexibility and factual specificity inherent in land use decisions including *Matter of Unitarian Universalist Church of Central Nassau v. Shorten*, 63 Misc 2d 978 (Sup Ct Nassau County 1970) (ruling that a day care center housed in an existing church, but operated by a separate non-profit corporation, was religious activity protected by the First Amendment because it shared a site with a house of worship and did not require a special permit, the application for which was denied, both because the Village zoning ordinance necessitating the special permit conflicted with and hindered State law and policy that favored the creation of facilities suitable for the care of pre-school and primary school aged children); *McGann v. Village of Old Westbury*, 186 Misc 2d 661 (Sup Ct Nassau County 2000) *affd* 293 AD2d 581 (2d Dept 2002) (off-site Roman Catholic cemetery constituted a "religious use" entitled to deference based on, among other things, evidence that cemeteries are places of worship in their own right in Roman Catholic theology); *East Hampton Library v. Zoning Board of Appeals of Village of East Hampton*, 31 Misc 3d 1231(A), 2011 NY Slip Op 50921(U) (Sup Ct Suffolk County 2011) (land use applications filed to facilitate a library operated by the University of the State of New York were entitled to educational deference both because the library was chartered by an institute of higher education and because it provided numerous instructional

programs, classes, lectures and lessons, which are all educational in nature). The Board additionally notes instances in which the Board, itself, has extended *Cornell* to permit the enlargement of hospitals associated with degree-granting educational institutions, including New York Presbyterian Hospital (BSA Cal. No. 325-12-BZ) (June 11, 2013), Mount Sinai Hospital (BSA Cal No. 170-13-BZ) (September 10, 2013), Memorial Hospital for Cancer and Allied Diseases (BSA Cal. No. 183-11-BZ) (June 19, 2012), and St. Barnabas Hospital (BSA Cal. No. 246-08-BZ) (May 19, 2009).

Based on the foregoing considerations, the Board recognizes the natural link between the public policy initiatives that have been put in place over decades by various levels of government aimed at supporting and defending religious and educational institutions and the development of buildings designed to facilitate those institutions' goals and that similar public policy initiatives have been aimed at housing the homeless and the underprivileged and encouraging affordable housing. The Board also acknowledges that the provision of affordable housing, especially low-income housing that is truly affordable, has been a major priority for New York City, State and federal administrations. However, to prevent abuse—i.e. reliance on *Cornell* to facilitate projects that include any amount of market-rate housing or less than 100 percent affordable housing for low-income persons for the life of the building—the extension of the doctrine must be restricted to (1) not-for-profit entities, (2) with an extensive history of developing and managing 100 percent low-income affordable housing, (3) for developments with restricted rents that are, in their entirety, targeted to extremely low-, very low- and low- income earners, (4) that will remain rent-restricted to such earners for the life of the development. The Board notes that this expansion of *Cornell* is not available for projects that will not remain 100-percent affordable for the life of the development (i.e., are only required to remain affordable subject to a termed regulatory agreement) or to for-profit developers where only a portion of the development will qualify as low-income affordable housing. As with religious and educational institutions, not-for-profit entities that wish to avail themselves of this *Cornell* extension to not-for-profit 100 percent low-income housing developments must demonstrate that the waivers requested are directly related to the public policy goal justifying the expansion and the entity's programmatic needs—to wit, the provision of 100-percent low-income housing units—and that the waivers requested are the minimum necessary to ensure a viable project that meets State and City requirements for subsidies.

A.

Consistent with Z.R. § 72-21, the applicant submits that there are unique physical conditions inherent in the Premises—namely, the

Premises' location on a narrow street with adjacency to an elevated subway line—that create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district.

First, the applicant notes that the Premises are beleaguered by their location on a narrow street adjacent to an elevated subway line as a further unique physical condition. Unlike other locations, Van Sinderen Avenue has one lane and a width of 15 feet along the Premises—a condition that only occurs for two blocks before widening. Along with the subway entrance and elevated tracks, this makes use of the Premises for modern manufacturing infeasible because of the inability to load and unload materials and products and the detrimental effects on vehicular and pedestrian traffic.

Next, the applicant states that this application is entitled to *Cornell* deference to accommodate the development of affordable housing. In support of this contention, the applicant submitted evidence that it is a not-for-profit entity with an extensive history of developing and managing 100 percent low-income affordable housing. Furthermore, the Proposed Building would be restricted to rents that are, in their entirety, targeted to extremely low-, very low-, and low-income earlier and will remain so for the life of the building—as evidenced by a restrictive declaration to be recorded against the Premises.

Furthermore, the Proposed Building is necessary to accommodate the applicant's programmatic needs. In support of this contention, the applicant furnished a report on its program (the "Programmatic Needs Report") that outlines the applicant's social services, youth and education empowerment programs, and supportive housing and details how the Proposed Building would alleviate deficiencies from pursuing an as-of-right development.

The applicant notes that the Proposed Building would provide 129 dwelling units to be used as affordable independent residences for seniors with one third set aside for homeless seniors and a superintendent's unit. The Proposed Building has been designed in such a way as to maximize efficiency with approximately 532 square feet and 561 square feet per one-bedroom apartment with full kitchens, bathrooms, and living and dining areas in accordance with Department of Housing Preservation and Development guidelines for the construction of affordable senior housing. The first floor would contain a community room, horticultural therapy room, supportive services for residents, a library, director's and staff offices with reception space, bike storage space, and two lobbies. On the ninth floor, there would also be a laundry facility, an outdoor seating and planting area, and a greenhouse.

The applicant represents that this application is necessary because strict compliance with applicable zoning regulations would not allow for any residential use, and the bulk waivers are necessary to

accommodate enough units to make the Proposed Building economically feasible. The applicant submits that the proposed unit count is the minimum necessary and provided a memorandum noting that the project will participate in the Department of Housing Preservation and Development's Senior Affordable Rental Apartments program along with low-income housing tax credits, loans, and Section 8 vouchers—subsidies based on unit count and the amount of eligible expenses.

The Department of Housing Preservation states, by letter dated February 20, 2020, that it has thus far favorably reviewed the applicant's request for capital funding toward development of the Proposed Building and recommends that the applicant seek ways to further develop a financing package and cost containment for the proposal, pursue funding for supportive services, continue to develop design drawings, and other due diligence items. Because the development of housing for homeless and low-income seniors is a priority, the Department of Housing Preservation and Development intends to provide development financing, subject to availability, for the Proposed Building if the proposal meets the guidelines and requirements of the Senior Affordable Rental Apartments Program and is approved by the Commissioner with loan terms and conditions that are acceptable to the City.

The Department of Housing Preservation corroborates the applicant's assertions about the Proposed Building's design, by letter dated December 10, 2020, noting that, based upon an initial review, the Proposed Building generally meets applicable design guidelines but is still subject to standard in-depth plan review during which additional design and code issues may be raised.

Accordingly, the Board finds that the above unique physical conditions and the applicant's programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district.

B.

Because the applicant is a not-for-profit organization, the applicant need not demonstrate that there is no reasonable possibility that developing the Premises in strict conformity with the Zoning Resolution would result in a reasonable return.

C.

The applicant submits that the Proposed Building would not alter neighborhood character, impair adjacent properties, or be detrimental to the public welfare. In support of this contention, the applicant studied the surrounding area, finding a mixture of community-facility and residential land uses—including another affordable housing

development immediately adjacent to the Premises that the applicant administers. Although the Premises are located within the East New York Industrial Business Zone, the applicant notes that the Premises are located within a narrow portion of this industrial zone, while the vast majority of its acreage is in a larger swath to the north, and the Premises constitute a mere 0.563 percent of this industrial zone's 57 blocks. The applicant further submits that, based on its study, there are limited manufacturing uses located beyond the subject block but that there are four structures under construction as part of a Department of Housing Preservation and Development-sponsored project that will include affordable housing along with retail space and community facility space at the ground level.

With respect to the built environment, the record reflects the presence of an adjacent R6 zoning district, which would allow a building with massing and scale substantially similar to the Proposed Building, and that buildings in the surrounding area are also characterized by their medium density.

The Fire Department states, by correspondence dated May 15, 2020, that its Bureau of Operations and Bureau of Fire Prevention have reviewed the Proposed Building and that the Fire Code requires fire hydrants to be located within 250'-0" to the front entrance of a building but that, because of the Premises' midblock location, fire hydrants would be located approximately 290'-0" and 270'-0". Furthermore, access to the Proposed Building is hindered by the narrow roadway of Van Sinderen Avenue, which is 15'-0" and the elevated train platform which is 12'-8" above; however, the Fire Code requires that roads have an unobstructed width of at least 34'-0" and unobstructed vertical clearance of at least 14'-0". Access would further be impeded by nearby streets because of vertical obstructions from the elevated train structural framing. Because of the size and use of the Proposed Building, a multi-fire apparatus response would involve a total of fourteen fire apparatuses to respond to an emergency at the Premises, if required in the Incident Commander. However, these units would be unable to perform their operations. Lastly, because of the elevation to the top of the parapet, rooftop firefighter access would be impeded by the elevated train platform. Accordingly, the Fire Department objects to the original design for the Proposed Building.

In response to questions from the Board at hearing and the Fire Department's concerns, the applicant revised the drawings to reflect that the primary entrance and elevator core would be relocated further south with articulation in the massing of the Proposed Building, that the Proposed Building would be set back a minimum of 20'-0" from Van Sinderen Avenue, that there would be fencing with planting beds and hedge screening, and that this would be a 6'-0" open metal picket fence rather than a chain link fence.

The applicant further notes that, in order to meet the Fire Department's access plan for the Premises, the Proposed Building

features a setback from Van Sinderen Avenue, resulting in a rear-yard depths of 20'-0" and 25'-0", where the Premises abut single-family homes along Snediker Avenue. The applicant, however, submitted a rear-yard study indicating that the distance from the Proposed Building to these existing homes will be 65'-0" to provide adequate distance and that fencing along the rear lot line along with planting with hedge screening will provide adequate buffering and address any potential privacy concerns.

Based on its review of modifications the applicant made to address these concerns, the Fire Department now states, by letter dated November 13, 2020, that it has no objection to this application on condition: that the new building be set back from the Van Sinderen Avenue street line as indicated on the proposed drawings; that a new dedicated Fire Department connection furnishing water for the standpipe system to 485 Van Sinderen Avenue (Jean's Place) building from Snediker Avenue with proper signage; that direct access 24/7 from Snediker Avenue building (Beverly's Place), by means of a two-hour rated corridor with two 1-½ hour doors, to access the Proposed Building at 485 Van Sinderen Avenue courtyard and rear of building; that a permanent easement for emergency service access from Snediker Avenue through "Beverly's Place" multipurpose room; that a Group R-2 fire alarm system with one-way voice communication be installed along with a fire alarm annunciator also installed at the Snediker Avenue emergency service access; that the fire alarm panel be monitored by a Certificate of Fitness (F-53) holder; that signage on Snediker Avenue side of door indicate emergency access to 485 Van Sinderen Avenue; that a new fire hydrant be installed at the corner of Van Sinderen Avenue and Dumont Avenue; and that new "no standing" signs be installed along the north side of Dumont Avenue and the entire block length of Van Sinderen.

Accordingly, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the Premises are located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

D.

The applicant notes that the above unique physical conditions, including the location of the Premises adjacent to a narrow street with adjacency to an elevated subway line, present practical difficulties or unnecessary hardship and this application is necessary to accommodate the applicant's programmatic needs. This situation was not created by the applicant or a predecessor in title. Accordingly, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title.

E.

The applicant submits that the Proposed Building reflects the minimum variance necessary to afford relief within the intents and purposes of the Zoning Resolution. As reflected in the Programmatic Needs Report and discussed in detail above, an as-of-right development would not meet the applicant's programmatic needs because, among other things, no residential use would be allowed, and the building would not accommodate a sufficient number of affordable units to render a smaller development feasible.

Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

IV.

The Board has conducted an environmental review of the proposed action, which is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2, and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 20BSA017K.

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; natural resources; hazardous materials; infrastructure; solid waste and sanitation services; energy; transportation; air quality; greenhouse gas emissions; noise; public health; neighborhood character; or construction.

The Department of Environmental Protection, by letter dated January 7, 2020, states that, based on the results of mobile- and stationary-source Air Quality analysis performed pursuant to the City Environmental Quality Review Technical Manual, the proposed project would not result in any potential for significant adverse impacts with respect to air quality.

The Department of Environmental Protection, by letter dated February 5, 2020, states that the proposed project would not result in any potential for significant adverse impacts with respect to noise.

The Department of Parks and Recreation states, by correspondence dated March 10, 2020, that the proposed project would not result in any potential for significant adverse impacts with respect to shadows.

No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. Accordingly, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

V.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *issue* 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 Z.R. § 72-21 to *permit*—in an M1-1 zoning district—the development of a nine-story residential building with 129 units of affordable independent residences for seniors that would not comply with zoning regulations for use (Z.R. § 42-10), floor area (Z.R. § 43-12), height and setback (Z.R. § 43-43), and rear yards (Z.R. § 43-302); *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked “Received March 8, 2021”—seventeen (17) sheets; and *on further condition*:

THAT the maximum bulk parameters of the building shall be as follows: a maximum of 103,012 square feet of floor area (3.99 FAR), a maximum street-wall height of 84'-4" that penetrates a 1:1 sky exposure plane, and a rear yard with a minimum depth of 20'-0", as illustrated on the Board-approved drawings;

THAT the subject building shall be developed as 100 percent housing for seniors affordable for those in the 60 percent AMI and lower income range;

THAT this variance grant is exclusively for the benefit of the subject applicant, Community Counseling & Mediation;

THAT this variance grant may not be transferred to another developer without the express consent of the Board, which developer must also be an experienced not-for-profit low-income housing developer;

THAT the building, once constructed, shall remain affordable at the 60 percent AMI and lower income range for the life of the building;

THAT a composite window-wall attenuation is required as follows: 31 dba is required for north facade (along Dumont Avenue); 31 dba is required for east facade (along Snediker Avenue); 38 dba is required for south facade (along Livonia Avenue); 40 dba is required for west facade (along Van Sinderen Avenue); an alternate means of ventilation is required for all residential or administrative/office uses;

THAT the property shall participate in the Brownfield Cleanup Program;

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THAT issuance of building permits shall be conditioned on the issuance of a letter of acceptance into the NYSDEC Brownfield Cleanup Program and an executed Brownfield Cleanup Agreement;

THAT the remedial action work plan (RAWP) which would include a site-specific construction health & safety plan (CHASP) shall be prepared and shall be subject to NYSDEC review and approval;

THAT issuance of any certificate of occupancy shall be conditioned on the issuance of a certificate of completion from NYSDEC;

THAT if the project property does not complete the approved Brownfield Cleanup Program remedy and receive a certificate of completion, the applicant shall be required to return to BSA for an application amendment and shall submit testing results and a Remedial Action Plan for review and approval by DEP;

THAT the new building shall be set back from the Van Sinderen Avenue street line as indicated on the Board-approved drawings;

THAT there shall be a new dedicated Fire Department connection furnishing water for the standpipe system to 485 Van Sinderen Avenue (Jean's Place) building from Snediker Avenue with proper signage;

THAT there shall be direct access 24/7 from Snediker Avenue building (Beverly's Place), by means of a two-hour rated corridor with two 1-½ hour doors, to access the Proposed Building at 485 Van Sinderen Avenue courtyard and rear of building;

THAT there shall be a permanent easement for emergency service access from Snediker Avenue through "Beverly's Place" multipurpose room;

THAT a Group R-2 fire alarm system with one-way voice communication shall be installed along with a fire alarm annunciator also installed at the Snediker Avenue emergency service access;

THAT the fire alarm panel shall be monitored by a Certificate of Fitness (F-53) holder;

THAT signage on Snediker Avenue side of door shall indicate emergency access to 485 Van Sinderen Avenue;

THAT a new fire hydrant shall be installed at the corner of Van Sinderen Avenue and Dumont Avenue;

THAT new "no standing" signs shall be installed along the north side of Dumont Avenue and the entire block length of Van Sinderen;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (BSA Cal. No. 2019-205-BZ) with references to the restrictive declarations recorded in the Office of the City Register, entitled "FDNY Emergency Services Access Agreement" (City Register File No. 2021000186198) and entitled "Declaration of Restrictive Covenants" (City Register File No. 2021000186197), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York

resulting from an outbreak of novel coronavirus disease, by December 3, 2025;

THAT a restrictive declaration, entitled “FDNY Emergency Services Access Agreement,” shall be recorded against the property in the Office of the City Register (City Register File No. 2021000186198) substantially conforming to the form and substance of the following:

THIS FDNY EMERGENCY SERVICES ACCESS AGREEMENT (this “Agreement”) is made as of the ___ day of _____, 2021 by and between BEVERLYS PLACE HOUSING DEVELOPMENT FUND CORPORATION a New York not-for-profit corporation having an office at 25 Elm Place, 2nd Floor, Brooklyn, NY 11201 (“Grantor”), and JEANS PLACE HOUSING DEVELOPMENT FUND CORPORATION, a New York not-for-profit corporation having an office at 25 Elm Place, 2nd Floor, Brooklyn, NY 11201 (“Grantee”).

RECITALS

WHEREAS, Grantor is the owner in fee of certain land, with the improvements thereon, in the County of Kings, City and State of New York, generally known by the street address 404 Snediker Avenue, Brooklyn, New York, designated as Lot 26 in Block 3799 on the Tax Map of the City of New York, County of Kings (the “Tax Map”) and more particularly described on Exhibit A annexed hereto (said land being herein called “Parcel A;” said improvements, together with any future replacements thereof and/or new building(s) permitted on Parcel A, being herein collectively called the “Grantor Building”);

WHEREAS, Grantee is the owner in fee of certain land, with the building and improvements thereon, in the County of Kings, City and State of New York, generally known by the street address as 485-515 Van Sinderen Ave., Brooklyn, New York, designated as Lot 1 in Block 3799 on the Tax Map and more particularly described in Exhibit B annexed hereto (said land being herein called the “Parcel B;” said building and improvements, together with any future replacements thereof permitted in accordance with this Agreement, being herein collectively called the “Grantee Building”);

WHEREAS, Grantee has requested by application under BSA Calendar No. 2019- 205-BZ (the “Application”), that the New York City Board of Standards and Appeals (the “Board”) grant a variance under ZR § 72-21 (the “Variance”), to permit the development of a nine-story building at the Premises with 129 units of affordable housing (the “Affordable Units”), contrary to ZR §§ 42-10 (use), 43-12 (FAR), 43-43 (height and setback), and 43-302 (required rear yard along district boundary) within the subject M1-1 zoning district (the “Proposed Development”); and

WHEREAS, the Board has asked the New York City Fire Department (“FDNY”) to review Grantee’s plans for the Proposed Development, and FDNY has conditioned its recommendation that the Board approve the Proposed Development upon the establishment and recording of a permanent easement for the benefit of FDNY firefighting and emergency services personnel, allowing access from Snediker Avenue to the Grantor Building

through a portion of the Grantee Building (“FDNY emergency services access”).

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Grantor hereby grants the following easement to Grantee:

1. Grantor hereby grants to Grantee, and its heirs, successors and assigns, a permanent and perpetual easement in, on, through and over the portion of the Grantor Building shown on Exhibit C hereto and described in Exhibit D hereto, solely for the purpose of providing FDNY emergency services access to the Grantee Building;

2. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;

3. This Agreement may not be amended or terminated without the prior written consent of the FDNY;

4. Failure to comply with the terms of this Agreement may result in the revocation of a building permit or certificate of occupancy by the Department of Buildings, as well as any other authorization or waiver for the Grantee Building granted by the Board, including but not limited to, the Variance; and

5. FDNY, as the third-party beneficiary of this Agreement, shall have the authority to enforce the provisions of this Agreement in any manner authorized by law, rule, or regulation.

6. This Agreement shall be recorded by Grantee and Grantor at the city register’s (county clerk’s) office against Parcel A and Parcel B and the cross-reference number and title of this Agreement shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to buildings located on Parcel A and Parcel B and in any deed for the conveyance thereof.

THAT a restrictive declaration, entitled “Declaration of Restrictive Covenants,” shall be recorded against the property in the Office of the City Register (City Register File No. 2021000186197) substantially conforming to the form and substance of the following:

THIS DECLARATION OF RESTRICTIVE COVENANTS (the “Declaration”), dated this ____ day of _____, 2020, is made by JEAN’S PLACE HOUSING DEVELOPMENT FUND CORPORATION (the “Declarant”), a New York not-for-profit corporation having an office at 25 Elm Place, 2nd Floor, Brooklyn, NY 11201.

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of Brooklyn, being known and designated as Block 3799, Lot 1 on the Tax Map of the City of New York for Kings County, as more particularly described in Exhibit A annexed hereto and made a part hereof (the “Premises”); and

WHEREAS, the Declarant has requested by application under BSA Calendar No. 2019-205-BZ (the “Application”), that the New York City Board of Standards and Appeals (the “Board”) grant a variance under ZR § 72-21 (the “Variance”), to permit the development of a nine-story building at the Premises with 129 units

2019-205-BZ

of affordable housing (the “Affordable Units”), contrary to ZR §§ 42-10 (use), 43-12 (FAR), 43-43 (height and setback), and 43-302 (required rear yard along district boundary) within the subject M1-1 zoning district (the “Proposed Development”); and

WHEREAS, the Board has conditioned its issuance of the Variance on the Declarant declaring that the Affordable Units shall be income-restricted housing units as defined in ZR §12-10 and restricting the rent charged for the Affordable Units to a maximum of 60% the area median income for New York City (“AMI”) for the life of the Proposed Development; and

WHEREAS, ZR §12-10 defines income-restricted housing units as dwelling units that comply with the definition of affordable housing unit set forth in ZR § 23-911 (General definitions), or any other dwelling unit with a legally binding restriction limiting rents to be affordable to households with incomes at or below 80 percent of the income index, as defined in ZR§ 23-911 and as prescribed by a City, State or Federal agency, law, regulation or regulatory agreement, for a period of not less than 30 years; and

WHEREAS, pursuant to ZR § 23-911, an affordable housing unit includes a dwelling unit that is used for class A occupancy as defined in the Multiple Dwelling Law and that is or will be restricted, pursuant to a regulatory agreement, to occupancy by certain households; and

WHEREAS, 100 percent (100%) of the Affordable Units in the Proposed Development will qualify as affordable housing units under ZR § 23-911 and shall be rented to households with incomes at or below sixty percent (60%) of AMI; and

WHEREAS, the Board requires the Declarant to execute and record in the Office of the City Register of the City of New York this Declaration prior to obtaining building permits for the Premises.

NOW THEREFORE, in consideration of the Board’s approval of the Application, Declarant does hereby declare that the Declarant and its successors and/or assigns shall be responsible for compliance with the following restrictions:

1. All dwelling units in the Proposed Development will be low-income affordable housing units;
2. All dwelling units in the Proposed Development will be provided to tenants whose annual income is at or below sixty percent (60%) of AMI;
3. All dwelling units in the Proposed Development will remain as affordable housing units for the life of the building;
4. Except as otherwise set forth herein, this Declaration may not be modified, amended, or terminated without the prior written consent of the Board;
5. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the Declarant and its heirs, legal representatives, successors and assigns;
6. Failure to comply with the terms of this Declaration, which remain uncured within thirty (30) days of Declarant’s receipt of a written notice to comply may result in the revocation of a building permit or Certificate of Occupancy, as well as any other

authorization or waiver granted by the Board, including but not limited to, the Application; and

7. In the event that (a) the Declarant elects to abandon the Application or (b) the underlying zoning district is changed such that the relief provided by the Application is no longer required, this Declaration may be cancelled by the recordation of a Notice of Cancellation at the City Register's Office against the Premises, and upon the filing of such Notice of Cancellation, this Declaration shall automatically cease, extinguish, and be void and of no further force or effect.

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

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 plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 8, 2021.

CERTIFICATION

***This copy of the Resolution
dated March 8, 2021
is hereby filed by
the Board of Standards and Appeals
dated June 3, 2021***



***Carlo Costanza
Executive Director***