

**189-12-BZ**  
**CEQR #12-BSA-143K**

APPLICANT – Michael T. Sillerman, Kramer Levin et al., for the Wachtower Bible and Tract Society, Inc., owner; Bossert, LLC, lessees.

SUBJECT – Application June 12, 2012 – Variance (§72-21) to permit the conversion of an existing building into a transient hotel (UG 5), contrary to use regulations (§22-00), C1-3/R7-1, R6 zoning districts.

PREMISES AFFECTED – 98 Montague Street, east side of Hicks Street, between Montague and Remsen Streets, on block bounded by Hicks, Montague, Henry and Remsen Streets, Block 248, Lot 15, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

**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 Executive Zoning Specialist, dated May 30, 2012 acting on Department of Buildings Application No. 320374304, reads in pertinent part:

Proposed transient hotel use (UG 5) is not permitted in R6 (LH-1) lot portion; contrary to ZR 22-10.

Proposed transient hotel use (UG 5) is not permitted in C1-3/R7-1 (LH-1) lot portion; contrary to ZR 32-14; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R6 zoning district and partially within a C1-3 (R7-1) zoning district within the Special Limited Height (LH-1) District and the Brooklyn Heights Historic District, the modification and conversion of an existing building into a transient hotel (Use Group 5) with 280 rooms, accessory hotel use (Use Group 5), and commercial use (Use Group 6), which does not conform with use regulations pursuant to ZR §§ 22-10 and 32-14; and

WHEREAS, a public hearing was held on this application on September 11, 2012, after due notice by publication in the *City Record*, with continued hearings on October 23, 2012 and November 27, 2012, and then to decision on January 8, 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, Brooklyn, recommends approval of the application; and

WHEREAS, the Montague Street BID, Court/Livingston/Schermerhorn BID, the Brooklyn Chamber of Commerce, and certain community members and representatives of local businesses provided testimony in support of the proposal; and

WHEREAS, certain community members (including some represented by counsel) provided written and oral testimony in opposition to the proposal (the “Opposition”); their primary concerns are related to (1) increased vehicle traffic to the site; (2) potential for noise from the hotel and specifically the rooftop restaurant to be heard in nearby residential buildings; (3) the absence of a hardship associated with an as-of-right residential development; (4) the operation plan for the hotel and specifically the rooftop restaurant to minimize impact on nearby uses; and (5) the enforcement of the conditions imposed to improve the operation plan; and

WHEREAS, the existing building has 14 stories (the “Existing Building”) and is located on the block bounded by Montague Street, Hicks Street, Remsen Street, and Henry Street, occupying the entire blockfront of Hicks Street between Montague and Remsen streets; the northern half of the site is within a C1-3 (R7-1) zoning district, and the southern half is within an R6 zoning district, within the Special Limited Height (LH-1) District and the Brooklyn Heights Historic District; and

WHEREAS, the site has 200 feet of frontage on Hicks Street, 78 feet of frontage on each of Montague and Remsen streets, and a total lot area of 15,635 sq. ft.; and

WHEREAS, the applicant states that the C1-3 (R7-1) zoning district permits residential use with a maximum FAR of 3.44, subject to the height factor and open space regulations, and community facility floor area of up to 4.8 FAR; commercial use of up to 2.0 FAR is permitted, but in a building containing residences or community facility uses, commercial uses are permitted only on the first floor of the building; and

WHEREAS, the applicant states that the R6 zoning district permits residential use with a maximum 2.43 FAR, subject to the height factor and open space regulations, and community facility floor area of up to 4.8 FAR; and

WHEREAS, the entire site is located within a Special Limited Height (LH-1) District, which limits the height of new buildings to 50 feet, pursuant to ZR § 23-691; the Existing Building is a contributing building in the Brooklyn Heights Historic District; and

WHEREAS, the Existing Building has the following non-complying bulk conditions: (1) a floor area of 180,533 sq. ft. (11.55 FAR) (approximately 75,000 sq. ft. would be permitted for community facility uses); (2) a streetwall height of 147 feet (50 feet is the maximum permitted) and a total height of 172 feet (50 feet is the maximum permitted); and (3) does not provide a setback (a setback with a depth of 20 feet is required); and

WHEREAS, the Board notes that the proposed building will maintain existing non-compliances; and

WHEREAS, the applicant proposes to restore and reconvert the Existing Building to Use Group 5 hotel use, with Use Group 6 restaurant use on the ground floor, and with limited accessory hotel signage; the existing floor area will be retained and converted to

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hotel use; and

WHEREAS, the first floor will be occupied by accessory hotel use, including meeting space limited to hotel guests, and a restaurant; the second through 13<sup>th</sup> floors will be occupied by guest rooms, and the partial 14<sup>th</sup> floor will be occupied by the rooftop restaurant; and

WHEREAS, the proposal reflects 280 hotel units, an approximately 2,884 square-foot restaurant on the ground floor, and a 2,953 square-foot accessory hotel restaurant and lounge in the 14<sup>th</sup> floor penthouse (the "Proposed Building"); and

WHEREAS, the Board notes that the use of the Existing Building includes four rent-stabilized units, which will remain; and

WHEREAS, the entrance to the hotel lobby would be located on Montague Street, and a complying restaurant space would also be entered from Montague Street; the existing loading entrance on Hicks Street would remain to service the hotel, and a conveyor belt system would be added to bring deliveries to the cellar and speed hotel deliveries; the height of the Proposed Building is approximately 172 feet, as at present, exclusive of mechanical space; and

WHEREAS, the applicant states that the current certificate of occupancy indicates community facility use, which is permitted in the subject zoning districts, although until 1997, the certificates of occupancy showed Use Group 5 transient hotel use, which was a pre-existing non-conforming use, and also Use Group 2 residential use; and

WHEREAS, the applicant adds that the latest Department of Housing Preservation & Development Multiple Dwelling Registration for the building shows 51 "Class A" units and 221 "Class B" units, which indicates that the building has been primarily used for transient occupancy; and

WHEREAS, the use of the Proposed Building as a hotel does not conform with the use regulations of the Zoning Resolution governing C1-3(R1-7) and R6 zoning districts, thus, the requested variance is required; 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 zoning district regulations: the building's historic use and configuration as a transient hotel and transient community facility accommodations; and

WHEREAS, as to the Existing Building, the applicant states that the original portion of the hotel was constructed in 1909 and as the Hotel Bossert, and has been used as a residence hall and Class "B" transient hotel throughout its history; and

WHEREAS, the building was built in two phases, with the first half (occupying the portion of the site within 100 feet of Montague Street) completed in 1909, and the latter half (toward Remsen Street) completed in 1912; and

WHEREAS, the applicant states that hotel was formerly occupied by the "Marine Roof," a two-level restaurant at the 14<sup>th</sup> floor; and

WHEREAS, the building deteriorated in the 1960s and 1970s, and was used as a single-room-occupancy hotel until it was acquired by the Jehovah's Witnesses in 1983; the Jehovah's Witnesses' restoration of the building earned a "Preservation Award" from the New York Landmarks Conservancy in 1991 and a Special Award for Architectural Excellence from the Brooklyn Heights Association in 1993; and

WHEREAS, the applicant asserts that Pre-1961 certificates of occupancy list the building as a Class "B" transient hotel containing guest rooms, a dining room, bar, lounge, ballroom, cabaret, and hotel support features; and

WHEREAS, certificates of occupancy in 1968, 1983, 1992, and 1995 showed both Use Group 2 "apartments" and also Use Group 5 "guest rooms" on each of the upper floors, with continued use of the lower floors for dining rooms, a lounge, and a kitchen; and

WHEREAS, most recently, the Watchtower Bible and Tract Society (the Jehovah's Witnesses) began to occupy the Existing Building in 1983, and converted it to community facility use in 1997; the Jehovah's Witnesses currently use the building for both long-term and short-term stays by their members; and

WHEREAS, the most recent certificate of occupancy for the building, which indicates "J-2 non-profit institution with sleeping accommodations," with both "apartments" and "guest rooms" on each of the upper floors; and

WHEREAS, the applicant states that the Existing Building is configured with four narrow "fingers" extending off of its main hallway; the rooms located in these fingers have windows facing an inner court with pre-Multiple Dwelling Law ("MDL"), tenement-like dimensions, which does not meet modern standards for legal light and air, at some places with a width as narrow as 12 feet; and

WHEREAS, the Existing Building is currently arranged with 224 rooms, including several one- and two-bedroom suites; and

WHEREAS, the applicant asserts that given its current use and layout, with relatively small rooms and a noncomplying inner court, the building is best suited for transient hotel use; conversion to a complying residential use would require extensive demolition and rebuilding in the rear to create a complying inner court, which is highly visible at the building's eastern façade and would be subject to LPC's review and approval; and

WHEREAS, specifically, the applicant states that the construction of the building in two phases resulted in many redundancies in the building's systems, including four separate egress stairs, two passenger elevator shafts, and a very long hallway that shifts by

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approximately five feet at the junction between the first and the second building segments; thus, the Existing Building is uniquely inefficient, even by the standards of its time; and

WHEREAS, the consulting architect provided a statement which asserts that as a result of the historic conditions, development of the Existing Building for residential use, in compliance with the Zoning Resolution, would require substantial demolition and reconstruction in the rear of the building to create a complying inner court; and

WHEREAS, the architect states that conversion of this non-residential building to residential use may be done in accordance with Article 1, Chapter 5 of the Zoning Resolution, which substitutes MDL § 277 standards for light and air in place of the Zoning Resolution Article 2 requirements; however, the Existing Building's courts measure 12 to 13 feet in width, which do not meet the minimum width court dimension of 15 feet required by MDL § 277 for legal windows, so a complying court would need to be constructed for a complying residential scheme; and

WHEREAS, the architect concludes that the area in the rear of the building would constitute an inner court, as defined in the MDL, but does not have a minimum dimension of 15 feet for all of the windows facing the court; some windows face a court with a dimension of as little as 12 feet; thus, the Existing Building does not meet even the more liberal court standards of MDL § 277; and

WHEREAS, the applicant submitted a plan scheme for a complying residential building, which reflects that the "fingers" in the rear of the Existing Building would be cut back, and certain areas of the existing court would be filled in, to create a regularly shaped, rectangular inner court with dimensions of 30 feet by 78 feet; and

WHEREAS, the applicant notes that the Existing Building has floor plate widths of approximately 36 feet to 39 feet as compared to the 60-ft. width of the typical modern residential building with a double-loaded corridor, so the reconfiguration of the court and the additions to the floor slab would allow for a more efficient internal layout, although, the layout would still be less efficient than in a modern residential building; and

WHEREAS, the applicant submitted a report which describes the extensive structural work that would be required in order to create the complying court shown in the as-of-right residential scheme drawings; and

WHEREAS, the applicant asserts that the required work would include: (1) demolition of the existing masonry façade, cladding, windows and interior partitions in the area of the rear half of the building; (2) demolition of the portion of the building protruding into the new proposed court yard area, at floors 2-14 and the roof, including existing elevator shafts and general floor

framing; (3) installation of new floor framing plus concrete on metal deck within the "old/existing" light well area which would become new enclosed space, upon floors two through the roof; (4) construction of the new façade around the new proposed courtyard area; (5) upgrading the existing columns along the "old/existing" light well area, via the concrete encapsulation or plating with new steel; (6) upgrading of the portion of the existing columns which are within the existing building below the second floor; and (7) upgrading of the foundation supporting the columns as required for the new loads; and

WHEREAS, the applicant represents that the premium costs associated with the reconfiguration of the Existing Building to comply with minimum court regulations amount to \$4 million; and

WHEREAS, the applicant notes that the need to add kitchens to all of the rooms and reconfigure the bathrooms with new plumbing would further add to the cost of this work; and

WHEREAS, the applicant asserts that even with the noted reconfiguration of the Existing Building, inefficiencies in the layout would remain; specifically, the apartment units along the street-side perimeter of the building would be too narrow for well-designed, marketable apartment units and the inefficiency results in a reduction in the number of units from the existing 224 down to 137 in the as-of-right residential scheme; and

WHEREAS, the applicant has documented the additional costs associated with demolishing the interior portion of the building in order to provide the courtyard; and

WHEREAS, the Board notes that that the demolished floor area cannot be replaced as of right because the building would still be overbuilt and the heights of both wings of the existing building exceed the height limits set forth in the Limited Height District; and

WHEREAS, thus, the applicant asserts that the layout of the floors is more compatible with the proposed use and requires less significant modifications to accommodate the proposed use than would be required to accommodate a conforming residential use; and

WHEREAS, as noted, the applicant represents that the considerable costs associated with converting the building to a conforming residential use cannot be overcome because the building cannot feasibly accommodate residential units that would be marketable; and

WHEREAS, the applicant states that the configuration and history of development of the building are unique and create hardships that are not found on other sites in the neighborhood; 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 and compliance with the applicable zoning district regulations; and

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WHEREAS, the applicant assessed the financial feasibility of three scenarios: (1) the as-of-right residential scheme involving the conversion of the Existing Building to residential use with 137 units, in compliance with the use regulations of the C1-3 (R7-1) and R6 districts with a ground-floor restaurant, an accessory restaurant in the penthouse, and community facility spaces on the ground-floor and in the basement; (2) a lesser variance residential scheme, which would involve the conversion of the Existing Building to residential use, in compliance with the applicable use regulations, but without the demolition in the rear of the building to create a complying court; the lesser variance scheme requires a variance pursuant to MDL § 310 to allow residential units to have windows facing the existing noncomplying inner court; and (3) the Proposed Building, with 302 transient hotel rooms; and

WHEREAS, during the hearing process, and in response to the Board's and the Oppositions questions, the applicant clarified certain points including condominium valuation, the value of the four rent-regulated units, and hotel comparables; and

WHEREAS, ultimately, at the Board's direction, the applicant reduced the number of hotel rooms from 302 to 280 and explained that it could still achieve a reasonable rate of return by offsetting the reduction in rooms by an increase in premium suite-type units; and

WHEREAS, the applicant concluded that only the transient hotel scheme would result in a sufficient return; and

WHEREAS, the applicant revised the proposal to its current iteration as a 280-room transient hotel with accessory uses and has submitted evidence reflecting that it achieves a reasonable return; 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 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 notes that the Existing Building, designed for and used as a hotel and, later, a community facility, with transient sleeping accommodations, has not been used for conforming residential use; and

WHEREAS, the applicant represents that the immediate area is a mix of commercial, residential, and institutional uses; and

WHEREAS, the applicant states that the block on which the site is located is improved with retail and other buildings of between one and eight stories along Montague Street and four- to five-story brownstone buildings along Remsen Street; and

WHEREAS, the applicant notes that the proposed commercial use is permitted by underlying zoning district regulations; and

WHEREAS, the applicant states that Montague Street, where the hotel's entrance is located, is an active retail corridor, with mostly restaurants, cafes, clothing stores, and personal service establishments in one- to two-story retail buildings or four- to eight-story mixed residential and commercial buildings; immediately to the east of the site, on Montague Street, is a single-story supermarket building and the building to the east of the site on Remsen Street is a four-story, multi-family brownstone building; and

WHEREAS, the applicant represents that the building is among a diverse collection of brownstones, 6-12-story multi-family apartment building, retail, and institutional uses; the office district of Downtown Brooklyn and Borough Hall lies three blocks to the east of the site; the Proposed Building will continue to have its entrance on Montague Street, which is an active retail street between Hicks Street and Cadman Plaza; and

WHEREAS, the alterations necessary to reconvert the Proposed Building to hotel use are subject to approval by the LPC; and by letter dated September 7, 2012, LPC issued a Certificate of No Effect; and

WHEREAS, the applicant asserts that the Proposed Building will be operated in a very similar manner to the Existing Building, which, although it is classified on its certificate of occupancy as a community facility use, in practice operates very much like a typical transient hotel; and

WHEREAS, the applicant asserts that the Jehovah's Witnesses' use of the Existing Building includes many rooms used for short-term stays by their members who are visiting New York City from out of town and generally stay in the hotel for one to three nights; and

WHEREAS, the applicant states that although the Existing Building is currently configured with 224 rooms, with some one- and two-bedroom suites, the Jehovah's Witnesses have historically operated it to maximize occupancy, and have unrelated individuals in a single room, akin to a dormitory; and

WHEREAS, thus, the applicant asserts, the hotel has been operated, in practice, like a hotel with more than 224 rooms; and

WHEREAS, the applicant states that the Jehovah's Witnesses use the dining rooms on the ground floor and basement level as a commissary, to feed staff from many different facilities in the Brooklyn Heights neighborhood, accommodating several hundred people for lunch at the site, with meals prepared in the large commercial kitchen in the building's cellar; and

WHEREAS, the applicant asserts that the layout of the Proposed Building, with 280 rooms, results from breaking up the existing multi-room suites into individual rooms according to natural room partitions; and

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WHEREAS, the applicant asserts that this reconfiguration will effectively accommodate the same number of people who are currently accommodated by the Jehovah's Witnesses, but in a more traditional hotel layout, with individual, private rooms and bathrooms; and

WHEREAS, the applicant states that the Proposed Building will include a (1) ground-floor restaurant, entered from Montague Street, which will be an elegant, "white table cloth" restaurant and (2) a penthouse restaurant and lounge on the 14<sup>th</sup> floor of the building, with indoor and outdoor dining; and

WHEREAS, during the hearing process, the applicant provided several iterations of an operation plan to address the Opposition's concerns related to: (1) increased vehicle traffic to the site; (2) potential for noise from the hotel and specifically the rooftop restaurant to be heard in nearby residential buildings; (3) the absence of a hardship associated with an as-of-right residential development; (4) the operation plan for the hotel and specifically the rooftop restaurant to minimize impact on nearby uses; and (5) the enforcement of the conditions imposed to improve the operation plan; and

WHEREAS, as to traffic, the applicant states that its EAS analysis shows that there will be fewer than 50 incremental vehicle trips and fewer than 200 incremental pedestrian trips in any intersection in any peak hour as a result of the proposed project; therefore, a detailed traffic study is not warranted for CEQR purposes, as the additional traffic generated by the project would not exceed the applicable CEQR thresholds; and

WHEREAS, the applicant represents that the hotel will actively manage its taxi traffic and loading operations to avoid any potential traffic conflicts in the surrounding area; a hotel loading zone is designated in front of the hotel on Montague Street, which allows for efficient taxi drop-off and pick-ups; and

WHEREAS, in addition, the entire block of Hicks Street adjacent to the hotel, between Remsen and Montague streets, is designated as a loading zone, with no parking during daytime hours; this loading zone is adjacent to the hotel's dedicated loading entrance on Hicks Street; and

WHEREAS, the applicant states that it has developed a traffic management plan for the project, which includes the following elements: (1) taxis and cars will drop off in the hotel loading zone on Montague Street, which can accommodate two parked vehicles; (2) the hotel will contract with Quik Park to valet any private vehicles to the facility at 360 Furman Street, which is a 10-minute walk from the site; (3) the hotel loading zone on Hicks Street of 140-150 feet in length will accommodate several small trucks at any time; (4) it is anticipated that there will be mostly two small trucks at any given time for the deliveries to the hotel, which will be primarily food and beverage, some laundry, and private trash carting; and (5) take all

reasonable measures to limit deliveries to 7:00 a.m. – 10:00 a.m., and will consult with the Community Board concerning delivery hours and any related issues; and

WHEREAS, additionally, the applicant asserts that the planned modifications to the loading area in the Proposed Building will improve the hotel's loading operations; and

WHEREAS, the applicant proposes the following additional measures: (1) dedicated staff of at least two door/bellman at the entrance to manage taxi and auto traffic, to do the following: (i) enforce double-parking prohibition, (ii) unload guest vehicles as promptly as practicable, (iii) take vehicles to the off-site parking garage as soon as the guest's luggage has been unloaded, and (iv) summon radio cars when needed by guests, using a dispatch system; (2) to provide additional staffing as required to prevent traffic congestion and adjust doormen and parking staff schedule daily based on guests' transportation data collected from advanced reservations; and (3) to develop projections of guest transportation needs for the days ahead by asking guests to identify their means of transportations in and out of the hotel; and

WHEREAS, the applicant also (1) proposes to maintain a "No Standing Hotel Loading Zone" regulation in front of the hotel on Montague Street, and a "No Standing Except Trucks" regulation on Hicks Street; (2) has requested that DOT extend the hotel loading zone on Montague Street for one additional space to the east, in an area that is currently a metered space so that the resulting loading zone will accommodate three vehicles; and (3) will not allow tour or charter buses to load or unload at the hotel; and

WHEREAS, the applicant notes that the Existing Building currently contains a small loading area at the ground-floor level, which leads directly to the building's freight elevator and the limited size of this loading area limits the ability to stage deliveries in this area; and

WHEREAS, the applicant states that it will install a conveyer belt system in this loading area to bring deliveries directly to the cellar as well as a trash compactor in the building to minimize waiting times for trash carting by reducing the volume of trash to be collected; and

WHEREAS, the applicant asserts that these improvements will speed the unloading of deliveries and loading of trash, and minimize truck waiting time along Hicks Street; and

WHEREAS, as to the use of the rooftop restaurant, the applicant proposes (1) that no music will be permitted on the outdoor terrace or in any other outdoor location; (2) indoor rooftop restaurant music will be developed with noise abatement measures and will be limited to 69 dbA at all times; (3) the proposed outdoor terrace measures a maximum of 11 feet by 159 feet; (4) maximum occupancy at any given time in the rooftop restaurant and on the terrace will not exceed 120 in total, of which not more than 40 at any given time may occupy the terrace; (5) no opening of the

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walls or windows of the rooftop restaurant, whether permanent or temporary, will be permitted; (6) the rooftop restaurant and terrace will include (i) vestibules at each exit point onto the terrace, (ii) soundproofing material on the exterior walls of the restaurant and walls of the terrace, (iii) sound-absorbing finishes for the exterior areas, and (iv) insulated glass; (7) the rooftop terrace will close at 10:00 pm on all nights (meaning that no patrons will be allowed on the terrace after this time, except on New Year's Eve); (8) the indoor rooftop restaurant will close by 11:00 pm on weekdays, and 12:00 am on Fridays and Saturdays; and (9) that no additional occupiable outdoor space shall be developed on any floor, including the 13<sup>th</sup> and 14<sup>th</sup> floors, except as may be required by code for egress from terrace; and

WHEREAS, the Board notes that restaurant closure means closure of the entire restaurant and not just the kitchen; and

WHEREAS, as to other event and restaurant space, the applicant states that (1) the meeting rooms on the ground floor and in the basement will be restricted to use by registered hotel guests, and may not be rented to or used by non-guests; (2) there are no event spaces in the hotel available for rental by non-hotel guests; (3) the applicant will not apply for a DCA Cabaret license or enter into any special events contracts with third-party booking agents advertising events to the public for any of the spaces in the hotel; (4) sound-absorbing interior finishes will be used for the meeting rooms and the ground-floor restaurant; (5) total capacity of ground-floor restaurant spaces will be 240 persons, which may be distributed between the Montague Street (C1-3) restaurant and the rear restaurant/lounge; (6) no rope lines, checkpoints, or check-in tents will be established at any time outside of the hotel; (7) the applicant agrees to use all reasonable measures to ensure that all people waiting to use the hotel facilities will be accommodated within the hotel building; and (8) the applicant will post a sign outside the hotel, near the Montague Street entrance, stating: "This is a residential neighborhood. Please respect our neighbors." and will instruct hotel staff to take all reasonable measures to reduce noise by patrons outside of the hotel and restaurants; and

WHEREAS, the applicant proposes the following additional conditions: (1) to make improvements to the HVAC systems, including central air, which will help to reduce noise in the surrounding area; (2) to establish a Community Liaison to respond to all community concerns; (3) to hold monthly meetings with community members through the Community Board; (4) to focus lighting away from neighboring buildings, and provide very soft and not obtrusively bright lighting; and (5) to limit the use the Remsen Street entrance to required egress; and

WHEREAS, the applicant notes that any noise levels generated by all units and ventilation systems provided are dictated by the Building Code, and as such

will operate within the maximum 45 dB (decibel) level prescribed by the Building Code; and

WHEREAS, the Board notes that the applicant and the Opposition had a series of conversations about the operation plan and that both parties appeared at the hearings on the matter; and

WHEREAS, the Board is pleased that the parties have come to a resolution on nearly all of the conditions that caused concern to the Opposition; and

WHEREAS, the Board notes that only the following issues remain unresolved, per the Opposition's requests: (1) no music be permitted within the rooftop restaurant, and no sound amplification system of any kind be installed or used in such space; (2) no parties or other loud events be permitted on the rooftop terrace; (3) no cabaret, dance, DJ or other loud event be permitted on the rooftop, whether indoors or on the outdoor terrace; (4) an 11:00 p.m. closure time for the indoor rooftop restaurant on all days; (5) to have its acoustic consultant review the plans for baffling and make recommendations; (6) that the hotel be limited to a maximum of 225 guest rooms in order to minimize adverse traffic impacts; and (7) that the variance not be effective until the applicant has entered into an agreement with the Casino Mansion Company (CMC), requiring it to observe all restrictions and allowing CMC to enforce such restrictions directly; and

WHEREAS, the Board finds that the applicant has committed to institute numerous measures to satisfy the Opposition's concerns; and

WHEREAS, the Board notes that the applicant will impose significant mitigation to prevent the sound from reaching nearby uses, which is supported by the applicant's acoustical consultant and is consistent with the measures employed in other similar cases; and

WHEREAS, accordingly, the Board finds the applicant's proposal satisfactorily addresses the Opposition's concerns related to the use of the rooftop and other noise; and

WHEREAS, the Board finds that the applicant similarly proposes significant mitigation measures to address the Opposition's concerns about traffic; and

WHEREAS, with regard to the Opposition's proposal that the applicant enter an agreement which would allow CMC to directly enforce any non-compliance with the conditions of the grant, the Board does not take a position as to the appropriateness of such a proposal, but notes that the Department of Buildings enforces the conditions of the Board's grants and that in the event of non-compliance, the Board may ultimately review the use and evaluate the compliance with its conditions; and

WHEREAS, the Board notes that the Opposition raised several supplemental issues concerning the applicant's methodology and other matters and that the applicant provided responses to clarify its analysis, which the Board accepts as rational and thorough; and

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WHEREAS, thus, the Board supports the applicant's proposed conditions, but notes that it finds 11:00 p.m. to be a more appropriate closure time for the restaurant during the week and it finds a limitation on the ground floor restaurant use to an occupancy of 240 to be more compatible with the surrounding area; and

WHEREAS, the Board agrees that the proposed use has been designed to minimize any effect on nearby conforming uses; and

WHEREAS, accordingly, 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, the applicant states that the practical difficulties and unnecessary hardships associated with the development of the Proposed Building result from the history of development of the Existing Building, its purpose-built character, and its incompatibility with a conforming use; 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 Existing Building; and

WHEREAS, the applicant asserts that the lesser variance residential scenario, which requires a waiver for inner court dimensions required pursuant to ZR § 15-112, for residential conversions, does not realize a reasonable rate of return; and

WHEREAS, further, the applicant asserts that the residential units would have diminished marketability due to the conditions associated with the insufficient court dimensions and other compromised layout conditions; and

WHEREAS, the Board notes that the applicant initially proposed 302 transient hotel rooms and certain other conditions related to the restaurant uses to overcome the hardship at the site; and

WHEREAS, the Board notes that the current proposal reflects fewer units than the original proposal and many conditions to increase compatibility with nearby conforming uses; and

WHEREAS, accordingly, the Board finds 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; 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 Sections 617.2 and 617.6 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. 12BSA143K, dated September 21, 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, 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 partially within an R6 zoning district and partially within a C1-3 (R7-1) zoning district within the Special Limited Height (LH-1) District and the Brooklyn Heights Historic District, the modification and conversion of an existing building into a transient hotel (Use Group 5) with 280 rooms and accessory hotel use (Use Group 5) and commercial use (Use Group 6), which does not conform with use regulations pursuant to ZR §§ 22-10 and 32-14, *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 7, 2013" – twenty-four (24) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the Proposed Building: 14 stories, a wall height of 147 feet, and a total height of 172 feet; a total floor area of 180,533 sq. ft. (11.55 FAR); transient hotel floor area of 177,649 sq. ft.; commercial floor area of 2,884 sq. ft.; and a maximum of 280 hotel rooms (including suites);

14<sup>th</sup> Floor Restaurant and Terrace

THAT no music, amplified or unamplified, and no sound amplification system of any kind will be permitted on the outdoor terrace;

THAT the 14<sup>th</sup> floor restaurant and terrace will contain sound attenuation measures as shown on the approved plans and indoor music will be limited to 69 dbA at all times;

THAT the maximum occupancy at any given time both in the 14<sup>th</sup> floor restaurant and on the terrace will comply with Building Code occupancy regulations and not exceed 120 persons in total, of which not more than 40 patrons at any given time may occupy the terrace;

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THAT the 14<sup>th</sup> floor restaurant will close by 11:00 p.m. on weekdays, and by 12:00 a.m. on Fridays and Saturdays (i.e., no patrons will be allowed in the restaurant after these times);

THAT the 14<sup>th</sup> floor terrace will close at 10:00 p.m. on all nights (i.e., no patrons will be allowed on the terrace after this time), except that the 14<sup>th</sup> floor terrace may remain open beyond 10:00 p.m. on New Year's Eve;

Ground Floor Restaurant and Meeting Rooms

THAT the meeting rooms on the ground floor and in the basement will be restricted to use by registered hotel guests, and may not be rented to or used by non-hotel guests;

THAT the meeting rooms and the ground-floor restaurant will contain sound attenuation measures as shown on the approved plans;

THAT the capacity of both ground-floor restaurant spaces shall be limited to a combined total of 240 persons;

Pedestrian and Vehicular Traffic

THAT the hotel will provide 75 to 100 spaces dedicated for use by the hotel at the parking garage at 360 Furman Street, which will be available for parking 24 hours a day, seven days a week;

THAT at least two dedicated staff at the hotel entrance will manage taxi and other vehicle traffic, including enforcing double-parking prohibition, unloading guest vehicles, taking vehicles to the off-site parking garage, and summoning radio cars when needed by guests, using a dispatch system;

THAT no rope lines, checkpoints, or check-in tents will be permitted at any time outside of the hotel;

THAT no tour or charter buses will be permitted to load or unload in front of the hotel;

THAT deliveries will be limited to hours between 7:00 a.m. and 7:00 p.m.;

THAT the Remsen Street entrance will only be used for required egress;

Other Conditions

THAT no cabaret license will be issued for any space in the hotel;

THAT no occupancy will be permitted in any other outdoor space, other than the 14<sup>th</sup> floor terrace except as may be required by code for egress from terrace;

THAT a sign will be posted outside the hotel, near the Montague Street entrance, stating: "This is a residential neighborhood. Please respect our neighbors";

THAT any exterior lighting will at all times be directed away from neighboring buildings;

THAT the all of the above conditions will be listed

on the 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) only;

THAT the approved plans will 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 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 8, 2013.

**A true copy of resolution adopted by the Board of Standards and Appeals, January 8, 2013.**

**Printed in Bulletin Nos. 1-2, Vol. 98.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**