

2018-156-BZ
CEQR #19-BSA-040Q

APPLICANT – Sheldon Lobel, P.C., for PSCH Cypress Avenue Housing Development Fund Corp. d/b/a WellLife Network Inc., owner.

SUBJECT – Application October 12, 2018 – Variance (§72-21) to permit the construction of a six-story plus cellar Use Group 2 residential building (WellLife Network Inc.) to provide 66 units of low-income affordable and supportive housing contrary to ZR §§ 23-142 (floor area and FAR), 23-142(g) (open space), 23-22 (density regulations), 23-45(a) (front yard), 23-451 (planting requirements), 23-631(d) (front height and setback), 23-632(b) (side setback) and 25-251 (parking). R5 zoning district.

PREMISES AFFECTED – 80-97 Cypress Avenue, Block(s) 3731/3732, Lot(s) 65,54, Borough of Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 22, 2019, acting on New Building Application No. 420664249, reads in pertinent part:

ZR 23-142 Proposed building is contrary to the maximum permitted floor area/FAR.

ZR 23-22 Proposed no. of dwelling units is contrary to the maximum permitted.

ZR 23-45(a) Proposed building is contrary to the minimum required front yard.

ZR 23-631(d) Proposed building is contrary to the required setback and maximum permitted height.

ZR 23-632(b) Proposed building is contrary to the minimum side setback.

ZR 25-251 Proposed building is contrary to the minimum required parking spaces.; and

WHEREAS, this is an application under ZR §§ 73-623, 73-03 and 72-21 to permit, in an R5 zoning district, the development of a five-story, with cellar, residential building that does not comply with zoning regulations for floor area, front yards, height and setbacks, side setbacks and parking, contrary to ZR §§ 23-142, 23-22, 23-45, 23-631, 23-632 and 25-251; and

WHEREAS, this application is filed on behalf of WellLife Network Inc. (the “Applicant”), a not-for-profit developer of affordable housing whose mission is to provide housing and shelter for low-income populations and those in need of supportive social services; and

WHEREAS, the Applicant has provided housing and support services to over 2,000 individuals in the City of New York and on Long Island; has operated its diverse affordable-housing programs for more than 36 years; and has also partnered with CSD Housing, LLC, a development consultant, to ensure the practicability and feasibility of developing the proposed building in accordance with the Applicant’s mission; and

WHEREAS, a public hearing was held on this application on March 26, 2019, after due notice by publication in *The City Record*, with continued hearing on June 11, 2019, and then to decision on July 23, 2019; and

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

WHEREAS, Community Board 5, Queens, recommends approval of this application; and

WHEREAS, residents of the surrounding area submitted testimony in support of this application and in opposition to this application, citing concerns with parking, the size of the proposed building, privacy for adjacent residences, crime, litter, overcrowding of schools, property values and neighborhood character; and

WHEREAS, the subject site is located on the northeast corner of Cypress Avenue and 59th Street, in an R5 zoning district, in Queens; and

WHEREAS, the subject site has approximately 218 feet of frontage along Cypress Avenue, 42 feet of frontage along 59th Street, 18,546 square feet of lot area and is occupied by an unfinished three-story building slated for demolition; and

WHEREAS, the Applicant proposes to develop a five-story, with cellar, residential building with 45,075 square feet of floor area (2.43 FAR); 66 dwelling units; front yards with depths of 17’-1” along the northern portion of 59th Street, 1’-0” along the eastern unbuilt portion of 59th Street and 10’-0” along Cypress Avenue; along Cypress Avenue, a street wall height of 37’-9” with a setback of 12’-6” and a building height of 47’-9”; along 59th Street, a street wall and building height of 47’-9” without setback; no side setback for the portion of the building above 33’-0”; and 13 off-street accessory parking spaces; and

WHEREAS, in response to community concerns and at the Board’s request, the proposed site plan reflects a number of changes from its original design, including the following: a densely landscaped buffer area with tall trees and lower-lying bushes to the west of the proposed building to serve as a visual amenity to neighboring residents and to ensure residents’ privacy; a residential-style metal picket fence wrapping around the western portion of the subject site without gates; and street trees within the bed of 59th Street along the entire perimeter of the subject site; and

WHEREAS, the Applicant also modified the

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design of the subject building to comply with zoning regulations for open space and planting and to reduce the height of the building from six stories to five stories; and

WHEREAS, the Applicant represents that, at the subject site, floor area may not exceed 23,182 square feet (1.25 FAR) under ZR § 23-142; there may be no more than 31 dwelling units under ZR § 23-22; front yards must have minimum depths of 10 feet or, where the depth exceeds 10 feet, a minimum depth of 18 feet under ZR § 23-45; street wall heights may not exceed 30 feet with a minimum setback of 15 feet above the street wall and a maximum height above base plane of 40 feet under ZR § 23-631; there must be a side setback of at least 7'-4.5" at 33 feet above base plane under ZR § 23-632; and 28 accessory off-street parking spaces are required under ZR § 25-251; and

WHEREAS, [ZR § 73-623](#) provides:

For *developments* or *enlargements* of *Quality Housing buildings* in which at least 50 percent of the *dwelling units* are *income-restricted housing units*, or at least 50 percent of its total *floor area* is a *long-term care facility* or philanthropic or non-profit institution with sleeping accommodation, the Board of Standards and Appeals may modify the underlying *bulk* regulations, other than *floor area ratio*, provided that in no event shall such *building* height or the number of *stories* therein exceed those set forth in paragraph (b) of Section [23-664](#) (Modified height and setback regulations for certain Inclusionary Housing buildings or affordable independent residences for seniors), and provided that the Board finds that:

- (a) there are physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or topographical features that create practical difficulties in complying with the *bulk* regulations for *Quality Housing buildings* and would adversely affect the *building* configuration or site plan;
- (b) the practical difficulties of developing on the *zoning lot* have not been created by the owner or by a predecessor in title;
- (c) the proposed modifications will not unduly obstruct access of light and air to adjoining properties or *streets*;
- (d) the proposed scale and placement of the *development* or *enlargement* relates harmoniously with the surrounding area; and
- (e) the requested modification is the least amount necessary to relieve such

practical difficulties.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Applicant submitted evidence that 50 percent or more of the dwelling units in the proposed building constitute "income-restricted housing units" under the Zoning Resolution because 100 percent of said units are proposed as permanently income-restricted; and

WHEREAS, the Applicant further notes that the proposed building does not exceed total height or the number of stories set forth in ZR § 23-664(b); and

WHEREAS, the Applicant states that the subject site has an irregular shape that constrains floorplates and creates practical difficulties in complying with applicable bulk regulations for Quality Housing buildings; and

WHEREAS, in support of this contention, the Applicant submitted as-of-right drawings demonstrating that a complying building would have limited floorplates that would only support a total of 26 dwelling units and have an adversely affected site plan because of zoning regulations for front yards, height and setback, side setbacks and parking; and

WHEREAS, accordingly, the Board finds that the above physical conditions create practical difficulties in complying with applicable bulk regulations for Quality Housing buildings that adversely affect an as-of-right building's configuration or site plan; and

WHEREAS, the Applicant states that the above practical difficulties are not self-created; and

WHEREAS, the Board finds that the above practical difficulties inherent in developing the zoning lot have not been created by the owner or a predecessor in title; and

WHEREAS, the Applicant states that the proposed building will not unduly interfere with the provision of light and air to adjacent sites or streets; and

WHEREAS, the Applicant notes that the proposed building provides a landscaped buffer area with a depth of 20 feet along the western lot line and that the proposed site plan is arranged to place the massing of the proposed building closer to the unimproved portion of 59th Street with additional landscaping located along the eastern lot line in the form of a planting area as well as the provision of street trees; and

WHEREAS, the Applicant notes that the subject site is adjacent to open cemeteries to the north, east and south that will not have light or air adversely affected by the proposed building; and

WHEREAS, the Board finds that the proposed modifications will not unduly obstruct access of light and air to adjoining properties or streets; and

WHEREAS, the Applicant states that the

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proposed building maintains a harmonious relationship with the surrounding area; and

WHEREAS, the Applicant notes that the proposed building is surrounded by cemeteries on three sides, that the unimproved portion of 59th Street serves as an additional buffer between the subject site and surrounding uses and that the landscaped area along the western lot line with decorative fencing ensures that the privacy of adjacent residences will be maintained while providing a visual amenity to residents of the surrounding area; and

WHEREAS, in support of this contention, the Applicant submitted a study of the surrounding area demonstrating that the height of the proposed building is consistent with the built character of residential buildings in the vicinity; and

WHEREAS, the Applicant also modified the design of the proposed building to remove the rooftop parapet, employing a decorative open railing to reduce the visual impact of the proposed building's height; and

WHEREAS, the Board finds that the proposed scale and placement of the proposed building relates harmoniously with the surrounding area; and

WHEREAS, the Applicant submits that the requested modifications are the least necessary to relieve the above practical difficulties; and

WHEREAS, in support of this contention, the Applicant submitted a study detailing its programmatic needs as a developer of affordable housing (the "Programmatic Needs Report") and drawings for an as-of-right building that reflect that the proposed modifications are the minimum necessary to afford relief; and

WHEREAS, in response to questions from the Board at hearing, the Applicant further submitted evidence that neither increasing the depth of the front yard along the unimproved portion of 59th Street nor providing additional sub-grade parking spaces would be feasible; and

WHEREAS, the Board finds that the requested modifications are the least necessary to relieve the above practical difficulties; and

WHEREAS, the Applicant submits that the beneficial use of the proposed building will outweigh any potential disadvantages to the community at large; and

WHEREAS, in support of this contention, the Applicant submitted a parking study demonstrating that the proposed building will have a peak parking demand of 13 spaces during the hours of 7:00 a.m. to 10:00 a.m. and 4:00 p.m. to 7:00 p.m., which will be accommodated by the 13 off-street accessory parking spaces proposed; and

WHEREAS, the Applicant further notes that, because of the distance of the subject building from

public transit, the Applicant proposes a shuttle to transport passengers to public transit that will operate with increased frequency during periods of peak demand and that will further provide access to overflow parking at a lot located at 450 Wyckoff Avenue, Brooklyn; and

WHEREAS, the Applicant submitted a draft restrictive declaration to be recorded against the subject property that provides, in pertinent part, that "[a] shuttle service will be provided from the Premises to public transportation, which will operate with peak and off-peak hours" to ensure the continued operation of the proposed shuttle service; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk and parking regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk and parking regulations will not interfere with any pending public improvement project; and

WHEREAS, 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," ZR § 72-21; and

WHEREAS, the Applicant states that there are unique physical conditions inherent in the subject site—namely its irregular shape—that create practical difficulties or unnecessary hardship in complying strictly with applicable bulk regulations by constraining the floorplates of an as-of-right building; and

WHEREAS, the Applicant submits that an as-of-right building would only accommodate 26 dwelling units for use as affordable housing, which would not meet the Applicant's programmatic needs; and

WHEREAS, in support of this contention, the Applicant provided the Programmatic Needs Report, detailing its programmatic needs as a developer of affordable housing; and

WHEREAS, the Programmatic Needs Report demonstrates that the Applicant must build a minimum of 66 units of affordable housing in a development with a total floor area of approximately 45,074 square feet (2.43 FAR) to meet its programmatic needs and satisfy public financing criteria and related regulatory and policy guidelines; and

WHEREAS, primarily, however, the Applicant relies on an extension of the deference afforded educational and religious institutions under the law of the State of New York as to zoning, known as the *Cornell Doctrine*, that obviates the need for the Board to find "unique physical conditions," ZR § 72-21, to not-for-profit affordable developers seeking bulk waivers to facilitate the development of projects that

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provide 100 percent affordable housing to low-income earners for the life of the building; and

WHEREAS, *Cornell University v. Bagnardi*, 68 NY2d 583 (1986) holds that, while zoning boards retain discretion, educational or religious institutions' land use applications are generally to be granted unless they can be shown to have a net negative impact on the health, safety or welfare of the community, though general concerns about traffic and disruption of the residential character of the neighborhood, for instance, are insufficient grounds upon which to deny such applications; and

WHEREAS, the Applicant submitted a thorough analysis of the origins of the *Cornell* Doctrine demonstrating a natural link between public policies aimed at protecting houses of worship and schools and those aimed at facilitating the development of housing for low-income earners, people with disabilities and the formerly homeless; and

WHEREAS, in particular, the Applicant asserts that the provision of affordable housing, much like that of educational institutions and houses of worship, 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; and

WHEREAS, the Applicant submits that both New York City and State 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; and

WHEREAS, 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 within 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); and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, in spite of these professed policy goals, the Applicant asserts that 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

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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; and

WHEREAS, the Applicant notes that 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; and

WHEREAS, in furtherance of their 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 Applicant 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 people with disabilities; 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; and

WHEREAS, the Applicant submits that 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; and

WHEREAS, when such housing is provided by mission-based not-for-profit institutions, in particular, the Applicant avers that 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; and

WHEREAS, the Applicant submits that additional methods of facilitating the development of affordable housing for low-income residents, such as the proposed extension of the *Cornell* Doctrine herein, 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; and

WHEREAS, while the Board recognizes that the record does not reflect any instance in which New York State courts have declined to extend or apply the *Cornell* Doctrine to a 100 percent low-income affordable housing development, 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 not-for-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); and

WHEREAS, the Board additionally notes instances in which the Board, itself, has extended the *Cornell* Doctrine 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),

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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); and

WHEREAS, the Board notes that the purpose of the extension of the *Cornell* Doctrine in the context of facilitating the development of housing units affordable for extremely low-, very low- and low-income earners is that in the absence of the requested bulk waivers, the Applicant is unable to provide enough units to make the development financially viable and will ultimately create zero affordable housing units; mixed-income housing developments, in contrast, utilize market rate and moderate-income housing units to subsidize the low-income units, often obviating any need for government assistance in the form of financial subsidies or zoning relief; and

WHEREAS, thus, the Board finds that its cabining of the extension of the *Cornell* Doctrine to facilitate only the development of 100 percent low-income affordable housing for the life of the development will not create a slippery slope because the extension is so narrowly defined both in terms of the use for which it may be applied and the emergency the deference is meant to address—the crisis-level insufficiency of housing units in New York City that are actually affordable for low-income earners; and

WHEREAS, according to the Association for Neighborhood and Housing Development (“ANHD”), an umbrella organization of 100 not-for-profit affordable housing development groups serving New York City, in 2015, extremely low- to low-income earners (those earning 10-100 percent area median income (“AMI1”)) made up 67 percent of New York City’s population with extremely low-income earners (those earning 10-30 percent AMI) constituting 27 percent of New York City’s population overall, very low- to low-income earners (those earning 40-80 percent AMI) making up 30 percent of New York City’s population overall and low moderate-income earners (those earning 90-100 percent AMI) making up only approximately 9 percent of New York City’s population overall; and

WHEREAS, thus, extremely low- to low-income residents, 57 percent of New York City’s residents, suffer the most from the housing crisis and developments proposed to provide low-income affordable housing are most often subjected to strong opposition by existing residents, in much the same way that protectionist residents oppose houses of worship and educational facilities; and

WHEREAS, 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 the provision of affordable housing; and

WHEREAS, the Board 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; and

WHEREAS, however, the Board finds unequivocally, that to prevent abuse—i.e., reliance on the *Cornell* Doctrine 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; and

WHEREAS, specifically, the Board states that the expansion of the *Cornell* Doctrine considered herein would not be 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; and

WHEREAS, in addition, the Board finds that the expansion of the *Cornell* Doctrine, for cases like this application is one way to respond to the clear housing emergency presently facing New York City; and

WHEREAS, in response to community concerns, the Board notes that the expansion of the *Cornell* Doctrine considered herein is intended to balance the need for affordable housing and the extreme shortage of units in New York City directed to households at or below 60 percent AMI with the potential impact of such developments on the surrounding community; and

WHEREAS, in this case the Applicant has a very long history of developing and managing 100 percent affordable housing for low-income New Yorkers and its primary focus as an institution is in providing and maintaining this kind of low-income housing; it is also important that under this application, the proposed housing will remain affordable for the life of the development, otherwise bulk variances would not be appropriate because they last for the life of the building; and

WHEREAS, therefore, for all of the reasons set forth herein, the Board finds that it is appropriate to extend the *Cornell* Doctrine to this application as proposed herein; and

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WHEREAS, because the Board finds that the Applicant, as a not-for-profit developer of 100 percent low-income affordable housing to be kept affordable to low-income earners for the life of the development, is entitled to deference similarly afforded to educational and religious institutions under the law of the State of New York as to zoning, the Applicant is able to rely on its programmatic needs in support of the subject variance application; and

WHEREAS, as with religious and educational institutions, not-for-profit entities that wish to avail themselves of this extension of the *Cornell* Doctrine to not-for-profit 100 percent low-income housing developments will be required to 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; and

WHEREAS, further, the Applicant has not demonstrated a practical difficulty or unnecessary hardship resulting from a unique physical condition at the site that could support the grant of additional waivers to support a programmatic preference that falls outside of the provision of affordable housing for low-income earners; and

WHEREAS, the Applicant states that the proposed building has been designed based on its experience in developing low-income affordable housing; and

WHEREAS, the Applicant asserts that an as-of-right development at the site, consisting of 26 units instead of the 66 proposed in this application, is untenable because buildings with such low low-income affordable unit counts are unlikely to be funded and, without such funding, built; additionally, by constructing more units, the Applicant is able to obtain government funding from additional sources and, thus, develop a 100 percent affordable supportive housing project for low-income earners at the site; and

WHEREAS, the Applicant's consultant asserts that the per unit cost of the as-of-right development at the site is exceptionally high and fails to meet the income-to-expense ratio that makes obtaining financing for the development—and thus, its eventual construction and operation—possible; and

WHEREAS, based on the above, the Board finds that because the subject proposal is a 100 percent low-income housing development that will remain affordable to low-income households for the life of the building, that the project is proposed to be developed by an experienced not-for-profit developer and because the waivers requested are directly related to the public

policy goal of the provision of 100 percent low-income housing units, the subject proposal is entitled to deference under the herein expanded *Cornell* Doctrine, hence no finding of unique physical conditions, practical difficulty or unnecessary hardship need be found; and

WHEREAS, the Applicant states that, because the Applicant is a not-for-profit organization and the variance is necessary to accommodate its mission to provide affordable housing, the Board need not find that there is no reasonable possibility that strict conformity with applicable zoning regulations would bring a reasonable return; and

WHEREAS, the Applicant submits that the proposed development would not affect neighborhood character or impair the use or development of adjacent properties; and

WHEREAS, in support of this contention, the Applicant provided a neighborhood character study demonstrating that the subject site is an irregularly shaped lot uniquely situated at the edge of the subject neighborhood with cemeteries located along three of its sides and that the height of the proposed development comports with other residential buildings in the surrounding area; and

WHEREAS, in response to community concerns and questions from the Board, the Applicant also modified the design of the proposed development by reducing the building height and replacing the proposed rooftop parapets with open railings to reduce the vertical massing; and

WHEREAS, with respect to the Board's accessibility concerns regarding a ramp originally proposed at the rear entrance of the building, the Applicant submits that the above height reduction was enabled by placing the first story at grade to increase the accessibility of the building design without the need for a ramp, which in turn allowed further shifting of the building mass away from surrounding residences toward the unbuilt portion of 59th Street so as to decrease the building's visual bulk; and

WHEREAS, the Applicant further notes that the subject site's adjacency to the unbuilt portion of 59th Street provides additional spacing from surrounding uses; and

WHEREAS, the Applicant also proposes a densely landscaped buffer area with tall trees and lower-lying bushes to the west of the proposed building to serve as a visual amenity to neighboring residents and to ensure residents' privacy; a residential-style metal picket fence wrapping around the western portion of the subject site without gates; and street trees within the bed of 59th Street along the entire perimeter of the subject site; and

WHEREAS, in response to community concerns, the Applicant submits that the proposed site plan would allow the unbuilt portion of 59th Street to remain closed

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to address residents' traffic concerns, the parking study indicates that the parking demand will be accommodated on-site and will be further addressed by use of a shuttle service, residents of the proposed building will be members of the community and will not increase crime, fencing and landscaping will address privacy concerns and will be maintained to prevent any accumulation of litter, there are expected to be 10–15 families with school-age children residing in the building which would not result in overcrowding of schools in the area, productive use of the subject site is expected to enhance the community and attendant property values and the Applicant's experience as a non-profit developer of affordable housing demonstrate its support and commitment to the community; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; 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 submits that the above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the Applicant submitted evidence that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected in the Programmatic Needs Report; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; 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 CEQR No. 19BSA040Q, dated July 23, 2019; 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; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by correspondence dated July 24, 2018, the New York City Landmarks Preservation

Commission ("LPC") represents that the proposed project would not result in any adverse impacts on architectural or archaeological resources; and

WHEREAS, by correspondence dated December 4, 2018, LPC represents that the proposed project would not result in any adverse impacts with respect to shadows; and

WHEREAS, by letter dated May 10, 2019, the New York City Department of Environmental Protection ("DEP") states that the proposed project would not result in any potential for significant adverse impacts in regards to noise on condition that the proposed project's HVAC equipment comply with the New York City Noise Code, that a composite window-wall attenuation of 31 dBA be required for the south, west and east building facades and that an alternate means of ventilation be required and incorporated into building design and construction; 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 finds that the evidence in the record supports the findings required to be made under ZR §§ 73-623, 73-03 and 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 ZR §§ 73-623, 73-03 and 72-21 to *permit*, in an R5 zoning district, the development of a five-story, with cellar, residential building that does not comply with zoning regulations for floor area, front yards, height and setbacks, side setbacks and parking, contrary to ZR §§ 23-142, 23-22, 23-45, 23-631, 23-632 and 25-251; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked "Received July 23, 2019"-Fifteen (15) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 45,075 square feet of floor area (2.43 FAR); 66 dwelling units; front yards with minimum depths of 17'-1" along the northern portion of 59th Street, 1'-0" along the eastern unbuild portion of 59th Street and 10'-0" along Cypress Avenue; along Cypress Avenue, a maximum street wall height of 37'-9" with a setback of 12'-6" and a maximum building height of 47'-9"; along 59th Street, a maximum street wall and building height of 47'-9" without setback; no

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side setback for the portion of the building above 33'-0"; and 13 off-street accessory parking spaces, as illustrated on the Board-approved drawings;

THAT a restrictive declaration shall be recorded against the property prior to the issuance of the Board's resolution (City Register File No. 2019000250237) substantially conforming to the form and substance of the following:

THIS DECLARATION OF RESTRICTIVE COVENANTS (the "Declaration"), dated this ____ day of _____, 2019, is entered into by PSCH CYPRESS AVE. HOUSING DEVELOPMENT FUND CORP. (the "Declarant"), a New York not-for-profit corporation having an office at 22-44 119th Street, College Point, NY 11356.

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of Queens, being known and designated as Block 3731, Lot 65 on the Tax Map of the City of New York, and more particularly described in Exhibit A annexed hereto and made a part hereof (the "Premises"); and

WHEREAS, Declarant has requested by application assigned BSA Cal. No. 2018-156-BZ (the "Application"), that the New York City Board of Standards and Appeals (the "Board") grant a special permit, under New York City Zoning Resolution ("ZR") § 73-623, and a variance, under ZR § 72-21, to permit the development of a new five-story building at the Premises with 66 supportive and affordable housing units, contrary to ZR §§ 23-142 (floor area and FAR), 23-22

(density), 23-45(a) (front yard), 23-631(d) (height and setback), 23-632(b) (side setback) and 25251 (parking) within the subject R5 zoning district (the "Proposed Development"); and

WHEREAS, the special permit requires at least 50 percent of the #dwelling units# (as defined in ZR § 12-10) in a development to be #income-restricted housing units#, which is defined in ZR § 12-10 as a #dwelling unit# that complies 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 a #supportive housing unit# within a #supportive housing project#, as both terms are defined in ZR § 23-911; and

WHEREAS, 100 percent (100%) of the dwelling units in the Proposed Development are proposed to qualify as #affordable housing units# consistent ZR § 23-911; 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 legally responsible for compliance with the following restrictions:

1. All #dwelling units# in the Proposed Development will either be very low- or 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 Area Median Income ("AMI");
3. Sixty percent (60%) of the #dwelling units# will be allocated as #supportive housing units#, and forty percent (40%) of the #dwelling units# will be allocated as #affordable housing units#;
4. All #dwelling units# in the Proposed Development will remain as #affordable housing units# for the life of the building;
5. A shuttle service will be provided from the Premises to public transportation, which will operate with peak and off-peak hours;
6. Except as otherwise set forth herein, this Declaration may not be modified, amended, or terminated without the prior written consent of the Board;
7. 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;

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8. Failure to comply with the terms of this declaration which remain uncured within thirty (30) days of Declarant's receipt of a 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
9. In the event that (a) the Declarant elects to abandon the Application, (b) the underlying zoning district is changed such that the relief provided by the Application is no longer required, or (c) the Premises becomes subject to a Regulatory Agreement with the New York City Department of Housing Preservation and Development or any other applicable agency of the City of New York or State of New York, 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.

IN WITNESS WHEREOF, Declarant has made and executed this Declaration as of the date hereinabove written.

THAT a shuttle service shall be provided from the subject site to public transportation that operates with peak and off-peak hours;

THAT landscaping shall be provided and maintained in top condition with vegetation replaced as necessary, as reflected in the Board-approved drawings;

THAT all dwelling units in the building shall be provided to tenants whose annual income is at or below sixty percent 60 percent of Area Median Income as affordable housing units for the life of the development, as set forth in the restrictive declaration;

THAT street trees shall be planted and maintained in close intervals along 59th Street, as reflected in the Board-approved drawings;

THAT HVAC equipment shall comply with the New York City Noise Code;

THAT a composite window-wall attenuation of 31 dBA shall be required for the south, west and east building facades;

A true copy of resolution adopted by the Board of Standards and Appeals, July 23, 2019.
Printed in Bulletin No. 31, Vol. 104.

Copies Sent
To Applicant
Fire Com'r.
Borough Com'r.

THAT an alternate means of ventilation shall be required and incorporated into building design and construction;

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 2018-156-BZ"), shall be obtained within four (4) years, by July 23, 2023;

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, July 23, 2019.

