

STATEMENT OF FACTS AND FINDINGS

**214-218 West Houston Street
50-58 Downing Street
New York, NY
Block 528, Lots 12 and 27
BSA Cal. No. 83-05-BZII
January 14, 2025**

Preliminary Statement

Bryan Cave Leighton Paisner LLP submits this application pursuant to Sections 72-01 and 72-22 of the Zoning Resolution of the City of New York (the “Zoning Resolution” or “ZR”) to the New York City Board of Standards and Appeals (the “Board” or “BSA”) on behalf of Village Acquisition II, LLC (the “Applicant”), the owner of 214-218 West Houston Street (Block 528, Lot 12), operator of the West Village Rehabilitation and Nursing Center on Lot 12, and owner of 50-58 Downing Street in Manhattan (Block 528, Lot 27) (collectively, the “Site”), for a minor amendment to a previously granted variance (the “Variance”) that permitted the construction of a Use Group III residential health care facility on Lot 12 (the “Existing Building”). The Site consists of a through lot and two interior lots with frontage on West Houston and Downing Streets, between Varick and Bedford Streets in Manhattan Community District 2 in the West Village.

Village Care of New York (“Village Care”), a not-for-profit corporation and the former owner of Lot 12, constructed the Existing Building, which required modification of applicable height and setback, rear yard equivalent, and coverage regulations to meet Village Care’s programmatic needs. Now, the Applicant seeks a minor amendment to the Variance to allow a small enlargement of the Existing Building onto adjacent Lot 27 to accommodate 20 additional beds as well as much needed additional physical and occupational therapy space, which would not comply with applicable floor area ratio, height and setback, rear yard, and lot coverage regulations. The proposed enlargement is necessary because of changes in the nursing home regulatory regime, enhancements in industry best practices that have occurred in the twenty years since the Variance was granted in 2005, and the extreme demand for nursing home beds in Lower Manhattan that means that, for every patient currently offered care in the Existing Building, three potential patients must be turned away (totaling 3,465

people in need of rehabilitation and nursing home care that cannot be accommodated in the facility each year).

Background – BSA and CPC Jurisdiction

The Lot 12 portion of the Site has been under BSA jurisdiction since the 1930s. Historical records indicate a now-demolished one-story brick and concrete automobile parking garage had been constructed pursuant to a variance obtained in 1934 that permitted a garage for 15 motor vehicles to be located in a zone in which it was not permitted as-of-right. *See* BSA Cal. No. 304-30-BZ. The Board subsequently permitted the parking of trucks in the garage as well as cars. *See* BSA Cal. No. 116-33-BZ.

To facilitate construction of the Existing Building, on November 15, 2005, the Board granted Village Care a zoning variance pursuant to ZR § 72-21 to permit the construction of a six-story, 100-bed,¹ Use Group 3 residential health care facility in an R6 zoning district that does not comply with applicable district requirements for lot coverage, rear yard, and setback, contrary to ZR §§ 24-11, 24-382, and 24-522, on condition that the increase in floor area be permitted by a City Planning Commission (“CPC”) special permit. On April 5, 2006, the CPC granted (i) a special permit pursuant to ZR § 74-903 to permit the allowable community facility floor area ratio of ZR § 24-11 (maximum floor area and percentage of lot coverage) to apply to the Existing Building, and (ii) a certification pursuant to former ZR § 22-42 that none of the findings that were a precondition of designation under ZR § 74-903 existed in Manhattan Community District 2. *See* CPC Report No. C 060233 ZSM (April 5, 2006). Village Care subsequently constructed the Existing Building pursuant to these discretionary actions, and the Existing Building has been used as a Use Group III residential health care facility since its opening.

The Site

The Site is located at 214-218 Hudson Street and 50-58 Downing Street in Manhattan (Block 528, Lots 12 and 27) in an R6 zoning district with 12,281 sf of lot area. Lot 12 contains 11,253 sf of lot area and is irregularly shaped, consisting of two significantly different but adjoining trapezoids that

¹ By letter, dated April 27, 2007, the Board indicated that it had no objection to certain proposed changes to the approved plans, including an increase in the number of beds from 100 to 105 (the “Letter of Substantial Compliance”). A copy of the Letter of Substantial Compliance has been submitted with this application.

meet at an angle of 105 degrees on the west and 75 degrees on the east formed by the intersections of West Houston and Downing Streets with Varick Street, and are off-set from one another at the centerline of the block. The trapezoid fronting on West Houston Street has a frontage of 75 feet on West Houston Street and is 92.33 and 72.52 feet deep on its eastern and western sides, respectively. The trapezoid fronting on Downing Street has only 68.75 feet of frontage on Downing Street and is 82.25 feet and 63.78 feet deep on its eastern and western sides, respectively. Immediately to the west of the Existing Building, Lot 27 is a narrow and shallow undersized lot, with 16.5 feet of frontage along Downing Street, between 59.69 and 63.81 feet of depth, and 1,019 square feet of lot area. Because of its irregular shape, the Site consists of a through lot, which is 64 feet wide at the centerline of the block, and two interior lots, one fronting on Downing Street and one fronting on West Houston Street.

Existing Building and Operations

The Existing Building is a six-story, 52,877 sf (4.7 FAR) Use Group III long-term care facility with 105 beds, 84 percent lot coverage,² no rear yard, and a street wall height of 77'-3" feet without setback on either West Houston or Downing Streets. Patients' average length of stay is approximately 33 days, allowing the Existing Building to serve approximately 1,260 unique patients per year. As indicated above, the Existing Building faces deficiencies in meeting evolving regulatory and industry standards, including an inability to provide an adequately sized therapy suite and sufficient number of beds (125), all of which are essential aspects of quality patient care. In addition, the Existing Building cannot accommodate Lower Manhattan's need for additional rehabilitation and long-term care beds, which is described below.

According to U.S. News and World Report, the Existing Building is a medium-sized facility with a "High Performing" overall rating of 5 out of 5 for short-term rehabilitation. *See* "Best Nursing Homes: Village Care Rehabilitation and Nursing Center," *available at* <https://health.usnews.com/best-nursing-homes/area/ny/village-care-rehabilitation-and-nursing-center-335027>. The facility accepts both Medicare and Medicaid reimbursement. Generally, Medicare payments correspond with short-term care, while Medicaid payments reflect long-term nursing home care. With respect to short-term stays, approximately 69% of Village Care's residents are able to return home after discharge (compared

² Although the actual lot coverage of the Existing Building (84%) is as shown on the BSA-approved drawings, the zoning calculations submitted with the Variance application incorrectly excluded a portion of the Existing Building in the coverage calculations resulting in an error in the proposed lot coverage indicated on the approved plans (77%). *See* Drawing E-1.

to 46.3% in New York State as a whole), a metric indicating residents' successful rehabilitation. The Applicant's staff spends approximately 4 hours and 41 minutes with each resident per day (compared to 3 hours and 36 minutes in New York State as a whole), which translates to better outcomes and safety for residents, and its physical therapy staff spends an average of 10 minutes per resident per day (compared to 7 minutes in New York State as a whole). In order to continue this demonstrated commitment to high quality patient care and successful outcomes for its residents, the facility must be enlarged as proposed to address ever-increasing industry standards and operational constraints.

Underlying Zoning

The Site is zoned R6 and is not located within any Special Purpose District. *See* Zoning Map 12a. R6 zoning districts permit certain agricultural and open uses in Use Group I, all types of residential uses in Use Group II, and community facility uses in Use Group III, including the existing long-term care facility, and certain public service facilities and infrastructure in Use Group IV. *See* ZR § 22-10. While the maximum community facility FAR is 4.8 pursuant to ZR § 24-11, the maximum as-of-right FAR for nursing homes is 3.6. *See* ZR §§ 24-11 and 24-013(a)(3)(i). However, pursuant to ZR § 74-903, CPC may allow the maximum community facility FAR of 4.8 to apply to nursing homes that have secured certification by the appropriate governmental agency, as occurred in this case. *See* CPC Report No. C 060233 ZSM (April 5, 2006).

Neighborhood Context

The Site is located on the border of the Greenwich Village and SoHo neighborhoods of Manhattan. According to the New York City Department of City Planning's Population MapViewer,³ in the immediate area, there are approximately 15,000 people over the age of 65, and in the broader downtown area, from Chelsea to the Financial District, there are approximately 69,000 people over the age of 65. Manhattan also saw the third-largest increase in older adults of any county in the State between 2011 and 2021, with an increase of 71,267 people over the age of 65, and Manhattan's 85-plus population grew by 13% over the same timeframe, the third-highest increase in the state for a population that more often requires care in a residential health care facility or nursing home. *See* Center for an

³ Available at <https://www.nyc.gov/site/planning/planning-level/nyc-population/nyc-population.page>.

Urban Future, “Report: Keeping Pace with an Aging New York State” (January 2023), *available at* <https://nycfuture.org/research/keeping-pace-with-an-aging-new-york-state>.

Despite the demand for beds in Lower Manhattan, New York State Department of Health data from October 30, 2024⁴ indicates there are only three nursing home facilities in the area: the Existing Building at the Site (105 beds), New East Side Nursing Home at 25 Bialystoker Place (58 beds), and New Gouverneur Hospital SNF at 227 Madison Street (295 beds). In comparison, uptown, there are 3,707 beds across 10 nursing homes, with the southernmost located on East 71st Street. Notwithstanding that there are approximately 69,000 people over the age of 65 in Lower Manhattan, there are only a total of 458 nursing home beds—a mere 12 percent of the beds available uptown. This intense demand for beds in Lower Manhattan means that, because of the extremely limited availability of beds, for each patient admitted for care in the Existing Building, three potential patients (totaling 3,465 unique referrals per year) must be turned away .

Proposed Enlargement

The Proposed Building would be a 4.83 FAR (12,272 sf) six-story facility that would include demolition of the existing building on Lot 27 and its replacement with an enlargement of the Existing Building with a total of 6,402 sf of additional floor area. The Proposed Enlargement would have a shallow rear yard with of varying depth between 3’-10” and 10’-9” . As with the Existing Building, the Proposed Building would have a maximum height of 77’-3” without setback, and the 1,630 square foot landscaped courtyard located on the eastern side of the Existing Building would be maintained. As noted above and detailed below, the Proposed Enlargement would reflect the minimum variances necessary to construct a financially feasible number of additional beds (an increase of 20 beds, for a total of 125 beds). Based on patients’ average length of stay of 33 days, the Proposed Building would increase the number of patients served by approximately 19% (240 additional patients) for a total of approximately 1,500 unique patients per year. In addition, the Proposed Enlargement would result in an increase in rehabilitation therapy (including physical, occupational and speech therapy) space per patient from 18 sf in the Existing Building to 25 sf with the Proposed Enlargement. While this is on the low end of therapy space per patient found in similar facilities in New York City (as explained in the

⁴ See NYS Department of Health, “Nursing Home Weekly Bed Census” (data filtered by New York County), *available at* <https://health.data.ny.gov/Health/Nursing-Home-Weekly-Bed-Census-Last-Submission/izta-vnpq/data>.

letter dated March 27, 2024 from Joseph Pallante AIA, of Joseph Pallante Design, the project architect (the “Pallante Letter”)), this increase would significantly enhance the quality of the patient experience at the facility.

Regulatory Framework

Since the Variance was granted in 2005, the cost of complying with the myriad New York State Department of Health (“NYSDOH”) regulations applicable to nursing and rehabilitation facilities such as the Existing Building has increased as a result of additional operating requirements. For example, as of 2022, nursing home operators must spend 70% of their revenues on direct patient care costs, including 40% on staffing along with spending requirements related to laundry, housekeeping, nursing, and other patient-centric services. *See* N.Y. Public Health Law § 2828; *see also* Cody Keetch and Jean D. Macheno, “New Year, New Laws: An Overview of New Laws Impacting New York Nursing Homes in January 2022,” *The National Law Review* (Dec. 21, 2021), *available at* <https://natlawreview.com/article/new-year-new-laws-overview-new-laws-impacting-new-york-nursing-homes-january-2022>. Notwithstanding these required expenditures, Medicare and Medicaid reimbursement rates have not kept pace with the increasing costs of regulatory compliance. Accordingly, the number of beds must be increased to defray these increased costs.

The Proposed Enlargement’s 20 additional beds would right-size the facility to the current regulatory environment and improve its financial stability and ability to survive. For example, general compliance programs (including staff education and training, patient discharge planning, vaccination mandates, and waste disposal) now cost approximately \$500,000 per year, which is a fixed cost of \$4,761 per bed per year at 105 beds versus \$4,000 per year at 125 beds (a 16% decrease per bed). Moreover, new staffing regulations now require 3.5 nursing hours per patient per day, which is based on a standard nurse to patient ratio of 1:40. While the Existing Building provides a nurse to patient ratio of 1:21, which would be 1:25 with the Proposed Enlargement (still well above the standard 1:40 ratio), it is financially burdensome to comply with these regulations with so few beds over which to spread the cost. Given the small number of beds in the existing facility, the proposed increase in beds would improve the facility’s operational efficiency by more fully utilizing existing staff resources and allow regulatory costs to be spread across more beds, thereby improving the facility’s financial position and ability to comply with increasing regulatory requirements.

Furthermore, industry best practices are constantly evolving in order to reflect better understanding of methods that enhance quality of care and improve patient outcomes. For example,

while current operations generally meet or exceed regulatory minimum targets for therapeutic services, the Existing Building's rehabilitation therapy spaces are overburdened, providing just 18 sf per patient. As explained in the Pallante Letter, this is less than half of the 37 sf average per patient provided in four similar facilities in New York City for which data is available. As a result, the Existing Building's residents must use public corridors outside of the Existing Building's therapy suite in order to receive certain physical and occupational therapy services, such as ambulating programs. Clearly this situation is not acceptable for high-quality care since such spaces are not equipped for therapy services and do not provide the level of privacy residents may desire or require.

The Proposed Enlargement Meets the Zoning Resolution's Variance Findings

Pursuant to ZR § 72-21, the Board made "each and every one of the [required] findings" in granting the Variance, and the minor amendment proposed herein is entirely consistent with each finding.

(a) that there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular zoning lot; and that, as a result of such unique physical conditions, practical difficulties or unnecessary hardship arise in complying strictly with the use or bulk provisions of the Resolution; and that the alleged practical difficulties or unnecessary hardship are not due to circumstances created generally by the strict application of such provisions in the neighborhood or district in which the zoning lot is located;

In granting the Variance, the Board found that the following constituted unique physical conditions that created unnecessary hardship complying with the Zoning Resolution: "(1) the lot has an irregular shape; (2) the through lot portion of the lot is shallow; and (3) a complying building would not meet the programmatic needs of the Nursing Home." The Board further found that the Existing Building was "necessary in order to meet the programmatic needs of the Nursing Home."

Here, the Proposed Enlargement would not affect this finding since the modest increase in lot area -- 1,109 sf (approximately 8%) -- would not eliminate or exacerbate the Site's irregular geometry, and with the addition of Lot 27, the Site remains similarly shallow. Furthermore, an as-of-right enlargement would only result in a net addition of four beds, which would not meet the Applicant's programmatic need for an increase of 20 additional beds in light of the State's strict regulatory regime

detailed above, In addition, it would only permit a 658 sf increase in the facility's therapy space, as compared to 1067 sf with the Proposed Enlargement.

(b) that because of such physical conditions there is no reasonable possibility that a development, enlargement, extension, alteration or change of use on the zoning lot in strict conformity with the provisions of this Resolution will bring a reasonable return, and that the grant of a variance is therefore necessary to enable the owner to realize a reasonable return from such zoning lot; this finding shall not be required for the granting of a variance to a non-profit organization;

Because the operator of the Existing Building was previously a non-profit organization, this finding was not required in order for the Board to grant the Variance. As the Applicant is not a non-profit organization, included herewith is a Financial Feasibility Study prepared by Barbara J. Cohen (the "Financial Feasibility Study"). The Financial Feasibility Study considers two development scenarios: an as-of-right enlargement to the Existing Building and the Proposed Enlargement. The as-of-right scenario would result in a five-story community-facility enlargement to the Existing Building with an additional 3,340 gross square feet of floor space, resulting in a total FAR 4.57, 658 sf of additional therapy space, and a net addition of 4 beds. *See As-of-Right Plans*. Based on a capitalization approach to valuation, the Financial Feasibility Study concludes that an as-of-right enlargement would not result in a reasonable return because the total project cost (\$39,716,092) would exceed the total project value (\$27,819,630) by \$11,896,462, resulting in a projected annual loss of 17.1%. In contrast, the Proposed Enlargement would result in a modest return because the total project value (\$41,643,474) would slightly exceed the total project cost (\$41,098,899) by \$544,574, resulting in a projected annual return of 0.7%.

Furthermore, even if the value of the Proposed Building were to exceed these projections, as explained in the Statement of Facts, the nursing home industry is heavily regulated, especially with respect to finances. As of 2022, nursing home operators are required to return all profits exceeding 5% to the State of New York and facilities must spend 70% of revenues on direct patient care costs, including 40% on staffing along with other spending requirements related to laundry, housekeeping, nursing, and other patient-centric services. *See* N.Y. Public Health Law § 2828; *see also* Cody Keetch and Jean D. Macheno, "New Year, New Laws: An Overview of New Laws Impacting New York Nursing Homes in January 2022," *The National Law Review* (Dec. 21, 2021), *available at* <https://natlawreview.com/article/new-year-new-laws-overview-new-laws-impacting-new-york-nursing-homes-january-2022>.

Accordingly, there is ample evidence for the Board to find that granting a minor amendment to the Variance to permit the Proposed Enlargement is necessary in order for the Applicant to realize a reasonable rate of return.

(c) that the variance, if granted, will not alter the essential character of the neighborhood or district in which the zoning lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare;

In granting the Variance, the Board found that it would not affect neighborhood character or negatively affect adjacent property. In making this finding, the Board noted that the Existing Building had been designed to minimize potential impacts on Downing Street such that the Existing Building's service entrance and loading dock would be accessed from West Houston Street, that there would be no change to parking regulations on Downing Street, no curb cuts proposed on Downing Street, and the Existing Building's main entrance would be on West Houston Street with only emergency egress on Downing Street. The Board also considered whether there would be adverse traffic impacts and further noted that "the proposed treatment of the building and its façade on Downing Street will enhance the streetscape and elevation on Downing Street, even without inclusion of [a] canopy."

Similarly, the minor amendment to facilitate the Proposed Enlargement would not adversely affect neighborhood character. As demonstrated by the Environmental Assessment Statement ("EAS") there would be no potential for adverse impacts with respect to traffic, noise, shadows, or air quality. *See EAS at 5–6.* The Proposed Development would also minimize any potential detrimental effects on the character of Downing Street because no changes are proposed to the main entrance, the Proposed Enlargement would be the same height as the Existing Building, and there would be no access to Downing Street from the Proposed Enlargement.

Furthermore, as noted in the EAS, the Site is located within the State/National Register's South Village Historic District.⁵ Although not required to prevent potential adverse impacts with respect to historic resources (*see EAS Historic Resources discussion*), the Proposed Enlargement would, to the extent feasible, incorporate into its façade historic materials from the existing building on Lot 27, and the proposed façade treatment would be responsive to the State/National Register's South Village

⁵ The Site is not located within the Greenwich Village Historic District Extension II designated by the New York City Landmarks Preservation Commission ("LPC"), which directly abuts the Site to the east. While Greenwich Village Society for Historic Preservation's proposal to create a South Village historic district included the Site, LPC declined to include it. Accordingly, Lot 27 is not subject to LPC jurisdiction.

Historic District. Accordingly, just as the Existing Building features a façade treatment that “enhance[s] the streetscape and elevation on Downing Street” (as the Board noted in granting the Variance), the Proposed Enlargement would do so too.

Accordingly, a minor amendment to the Variance to facilitate the Proposed Enlargement would not alter neighborhood character or impair the appropriate use or development of adjacent properties.

(d) that the practical difficulties or unnecessary hardship claimed as a ground for a variance have not been created by the owner or by a predecessor in title; however, where all other required findings are made, the purchase of a zoning lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship; and

In granting the Variance, the Board found that “the hardship herein was not created by the owner or a predecessor in title,” and nothing proposed herein affects the Board’s finding since neither the Applicant nor its predecessor in title created the above hardship.

(e) that within the intent and purposes of this Resolution, the variance, if granted, is the minimum variance necessary to afford relief; and to this end, the Board may permit a lesser variance than that applied for.

In granting the Variance, the Board found that the proposal was the “minimum necessary to afford the Nursing Home relief.” As detailed above, the Financial Feasibility Study demonstrates that the Proposed Enlargement would result in a modest annual return of approximately 0.7%, and, in any event, the State regulatory regime pursuant to which the Applicant operates caps profits at no more than 5% per year. *See* N.Y. Public Health Law § 2828; *see also* Cody Keetch and Jean D. Macheno, “New Year, New Laws: An Overview of New Laws Impacting New York Nursing Homes in January 2022,” *The National Law Review* (Dec. 21, 2021), *available at* <https://natlawreview.com/article/new-year-new-laws-overview-new-laws-impacting-new-york-nursing-homes-january-2022>. Accordingly, the minor amendment to the Variance to facilitate the Proposed Enlargement is the minimum necessary to afford relief.