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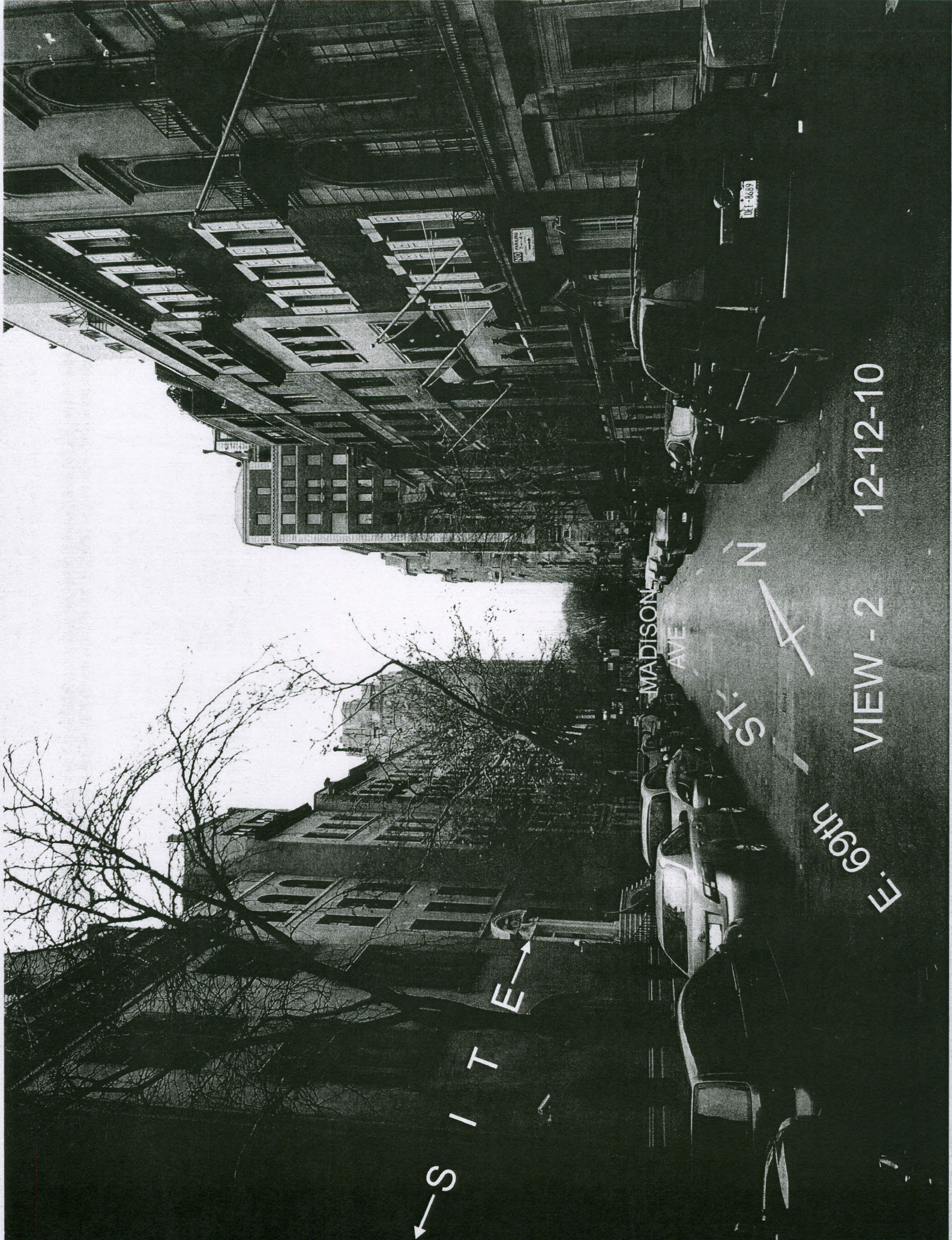
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42 E. 69th ST.  
NEW YORK, NY





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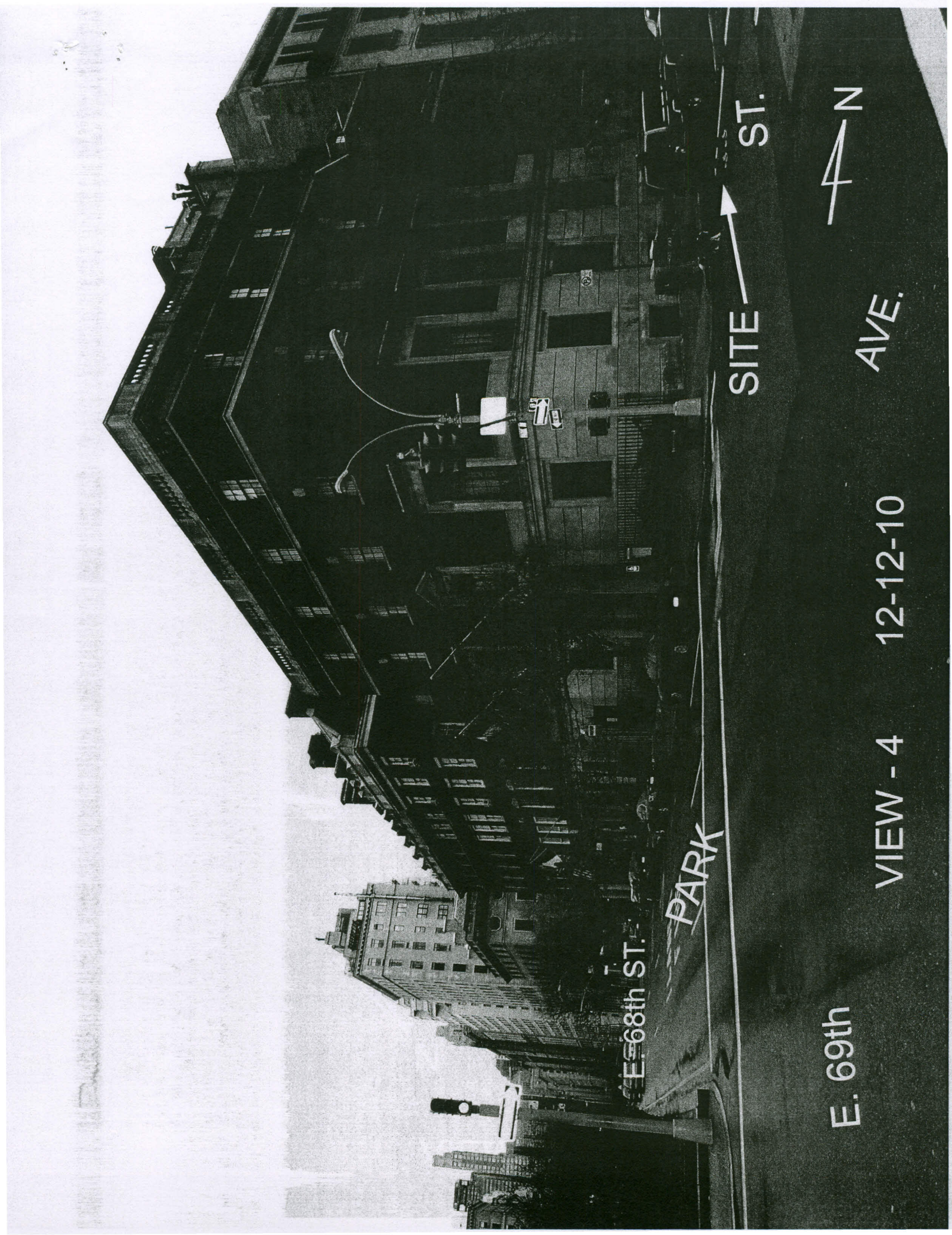
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VIEW - 4

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VIEW - 5

E. 68th

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**October 12, 2011**

**Variance Application**

**STATEMENT OF FACTS**

42 East 69<sup>th</sup> Street  
Block 1383, Lot 43  
Borough of the Manhattan

**Introduction**

This is an application made pursuant to Section 72-21 of the Zoning Resolution of the City of New York ("ZR" and "Zoning Resolution") for a variance to permit the enlargement and modernization of the Jewish National Fund ("JNF" or "Applicant"), a Use Group 4 community facility located at 42 East 69th Street, Block 1383, Lot 43, in the Borough of the Manhattan ("Premises"). A variance is sought of ZR §23-633, 24-11, 24-36, 24-552 and 24-591.

Since its inception in 1901, JNF has evolved into a global environmental leader. Since 1951, JNF has operated its headquarters at the Premises, establishing itself as an integral part of the local Upper East Side community. **However, JNF's existing building (the "Building") cannot satisfy JNF's programmatic need, in that it:**

- 1) cannot accommodate JNF's existing educational and fundraising activities;
- 2) contains inefficient, unsafe and unsecure spaces;
- 3) does not contain a means of egress which complies with the American with Disabilities Act ("ADA") accessibility requirements; and
- 4) does not contain a means of egress which complies with modern fire safety standards.

In order to remain on the Premises and satisfy these needs, JNF proposes to convert a portion of the Building into an ADA accessible means of egress which complies with modern fire code



standards, add 653 square feet of floor area on the fifth floor, and add 281 square feet of gross floor area in the cellar (the "Proposed Renovation").<sup>1</sup>

Due to the limitations of the Building, portions of the Proposed Renovation do not comply with the height, rear yard setback, and rear yard regulations of the Zoning Resolution and, therefore, a variance pursuant to Section 72-21 of the Zoning Resolution is required.<sup>2</sup> If granted, the Variance will satisfy JNF's programmatic needs and enable the not-for-profit organization to remain on the Premises, which has been its home for over 55 years.

### **The Premises**

The Premises is an interior lot located on the south side of East 69<sup>th</sup> Street, between Park Avenue and Madison Avenue in the Borough of Manhattan. The Premises has a total lot area of 5,020 square feet and is located in an R8B/LH-1A zoning district, within the Upper East Side Historic District. See Zoning Map 8c and New York City Landmarks Preservation Commission map of the Upper East Side Historic District. The Premises is improved with 18,153 square feet of floor area located within a five-story building with mezzanine (the "Main Portion") and a four-story Annex (the "Annex").

The Building serves as JNF's headquarters, supporting various administrative functions, as well as a gathering space for educational meetings of community leaders, local community groups, not-for-profit organizations, lectures, and various humanitarian events.

The Main Portion contains a lobby, gallery and boardroom on the first floor; a superintendent's office on the mezzanine; offices, a gallery, and conference rooms on the second floor; offices and a conference room on the third floor; and offices on the fourth and fifth floors.<sup>3</sup> The Main Portion also contains the only means of egress on the Premises, a non-ADA compliant elevator and stairwell.

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<sup>1</sup> The Applicant has submitted an application to the New York City Landmarks Preservation Commission for a Certificate of Appropriateness.

<sup>2</sup> An existing lot coverage variance, granted in 1962 under BSA Cal No. 323-62-BZ, will remain in effect.

<sup>3</sup> Certificate of Occupancy no. 60163, issued by the Department of Buildings on September 18, 1964, attached, permits a caretaker's apartment in the cellar.



The Annex contains offices on the first floor; an office and a conference room on the second floor; and offices on the third and fourth floors. Under BSA Cal No. 323-62-BZ, the Board granted a lot coverage variance which permitted construction of the Annex.

It is important to note that the floor levels of the Main Portion and the Annex are at different elevations and contain steps connecting one another at each level above the first floor.<sup>4</sup> Therefore, above the first floor, the Main Portion and the Annex are not accessible to one another by people with disabilities.

Both the Main Portion and the Annex are Class 3 non-fireproof construction and do not contain a means of egress which complies with modern fire code standards.

The Premises complies with the regulations of the Zoning Resolution with the exception of the following legal non-complying conditions:

- 15' ¼" rear yard, contrary to ZR §24-36 (30 feet is required);
- Building height of 81'11", contrary to ZR §§23-633 and 24-591 (60 foot maximum height);
- 75.5 percent lot coverage, contrary to ZR §24-11 (70 percent maximum).<sup>5</sup>

### **Previously Approved Variance**

On July 24, 1962 the Board granted a variance, pursuant to BSA Cal No. 323-62-BZ, to allow the construction of the Annex, a four-story and cellar extension on the Premises, which did not comply with the permitted lot coverage regulations.<sup>6</sup> See attached BSA Resolution.

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<sup>4</sup> The second floor of the Annex is located at the mezzanine level of the Main Portion, the third floor at the second floor of the Main Portion, and the fourth floor at the third floor of the Main Portion.

<sup>5</sup> Permitted by variance, under BSA Cal No. 323-62-BZ.

<sup>6</sup> On October 26, 1954, under BSA Cal No. 552-54-A, the Board granted an appeal from the Manhattan Borough Superintendent order that "1) an apartment more than 50 percent grade is not permitted. 5.1.1. B.C.; 2) proposal to use existing wood doors in stair enclosure not in accordance with 6.4.1.8.1 B.C.; 3) stairway should be continued to the roof with a bulkhead on the roof. 6.4.1.11. B.C.; 4) bldg. must be fireproof construction as per 4.2.1. B.C.; and 5) a two hour stair enclosure is required in accordance with 6.4.1.8.1. B.C."

Objections 1, 2, 3 and 5 are no longer applicable to the Building. However, the Building will be classified as "non-fireproof construction" in filings with the DOB.



### **The Proposed Renovation**

**The Variance, if granted, will enable JNF to remain on the Premises, which has been its home for over 55 years.**

The Proposed Renovation will make the Building safe and secure, ADA accessible, fire code compliant, and will create a more productive and efficient space for JNF's current workforce.

The Proposed Renovation will convert the Annex into an ADA accessible means of egress, containing both new stairs and an elevator, in a one-story vertical enlargement of 1,800 square feet of zoning floor area, which will increase the height of the Annex by 36'6" for a total height of 77' 9¼". The reconstruction will result in an alignment of the Annex and the Main Portion's floor elevations, compliant with ADA requirements and modern fire safety standards.

The Proposed Renovation will also add 281 square feet of gross floor area in the rear of the cellar, which will enable JNF to locate all of its public service programs in the cellar, creating a safe and secure environment.<sup>7</sup>

Finally, the Proposed Renovation will consist of an enclosure of the Main Portion's fifth floor rear terrace, adding 653 square feet of zoning floor area to accommodate JNF's current workforce.

In addition to the Proposed Renovation of the Annex and the Main Portion, JNF proposes to refurbish the façade and upgrade the current mechanical plumbing, electrical and HVAC systems. The proposed work on the Building will be a minimum of L.E.E.D "Silver" certified.

### **Jewish National Fund**

Jewish National Fund is a not-for-profit organization which was founded in 1901. Since its inception, JNF has evolved into a global environmental leader. It has planted 240 million trees, built over 210 reservoirs and dams, developed over 250,000 acres of land, created more than

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<sup>7</sup> The use of the cellar area for all of JNF's public functions creates a safer environment.



1,000 parks, providing the infrastructure for over 1,000 communities. JNF has educated students around the world about Israel and the environment.

JNF working with academic and scientific institutions, both in Israel and abroad, funds research which grows fruit, tomatoes and peppers without soil, and makes the desert bloom. JNF also sponsors a network of regional agricultural research and development stations in Israel's peripheral regions where leading scientists and technicians work closely with local farmers, research institutes and universities to increase agricultural sustainability, profitability, and stability. The cutting-edge technologies developed at these stations keep Israeli farmers at the forefront of their field, providing them with innovative, cost efficient ways to grow produce under arid conditions and allowing them to compete in the global market. Breakthroughs include irrigating crops with recycled and brackish water; developing biological methods of combating harmful pests to minimize chemical use; and optimizing growth regime variables such as light, temperature, and humidity to cut costs and increase crop efficiency.

In the United States, JNF provides educational and informational programs to hundreds of schools and college campuses.

Such programs include:

- JNF Ambassadors – Designed to engage adult volunteers to provide a direct and meaningful link in providing schools a means to integrate JNF's core goals and missions.
- Caravan for Democracy – Designed to empower college students with concrete skills, advocacy training and the ability to respond to anti-Semitism in an intelligent and informed manner.
- Partner with the Alexander Muss High School – Designed to promote participation in an eight week fully accredited high school program which challenges students to encounter new ideas in infinite "out of the box" ways.
- Scholars for Peace in the Middle East – Founded by a group of college professors for colleagues, students, campus professionals and community members seeking unbiased information about the Middle East.



- Green Corps, Green Team and Project Green – Three environmental programs to engage, energize and educate middle school, high school and college students.
- YourPage for Teachers and Families – A webpage designed to provide educational tools on conservation.
- World Water Monitoring Day – Through a grant from the U.S. Forest Service, this day encourages schools throughout the U.S. to test their water sources and share such information with schools worldwide.
- Let it Rain – Students are educated in JNF Rainwater Harvesting Program, a means of reducing school's reliance on "conventional" water systems by 77 percent.
- Blue Box Bob – Parent and teacher volunteers visit students in grades pre-kindergarten through four, educating them on the history of Israel.
- New Leaf and Growing UP! - Educational materials for students grades one through four, stressing Jewish values and active responsibility.
- Plant Your Way to Israel – Designed to allow students to raise money toward a trip to Israel by raising funds for forestry projects in Israel.

JNF has also supported the local New York community for over 55 years by utilizing the Building as a gathering space for educational meetings of community leaders, local community groups, not-for-profit organizations, lectures, and humanitarian fund raising events.

#### **The Requested Variance**

As shown on the BSA Zoning Analysis and plans, prepared by MHG Architects P.C., dated September 30, 2011 (the "Plans"), the Proposed Renovation of the Annex will not comply with the permitted height of ZR §24-591.

The enclosure of the fifth floor terrace will not comply with the 10 foot rear yard setback requirement of ZR §24-552, and will increase the degree of non-compliance with the rear yard requirements of ZR §24-36.



Also, the addition of 281 square feet in the cellar of the Main Portion will create a vertical one foot, seven inch penetration of the rear yard and will increase the degree of non-compliance with the rear yard requirements of ZR §24-36 and lot coverage requirements of ZR §24-11.

Although the footprint of the Annex will not change as a result of the Proposed Renovation, the vertical enlargement will technically increase the degree of non-compliance with the lot coverage requirements of ZR §24-11, which was previously approved by the Board pursuant to BSA Cal No. 323-62-BZ. Therefore, a variance of the lot coverage requirements of ZR §24-36 is also requested.

On, September 27, 2011, the Manhattan Borough Commissioner of the New York City Department of Buildings issued the following objections:

1.	ZR 24-33 ZR 24-36 ZR 54-31	Proposed construction in the rear yard at the level of the cellar is not a permitted obstruction in required rear yard pursuant to ZR 24-33 and therefore increases degree of existing non-compliance with rear yard requirements of ZR 24-36 contrary to ZR 54-31.
2.	ZR 24-11 ZR 54-31	Proposed construction in the rear yard at the level of the cellar increases degree of existing non-compliance with lot coverage requirements of ZR 24-11 contrary to ZR 54-31.
3.	ZR 24-11 ZR 24-36 ZR 23-633 ZR 24-552 ZR 24-591 ZR 54-31	Proposed enlargement increases degree of existing non-compliance with lot coverage requirements of ZR 24-11, rear yard requirements of ZR 24-36, maximum building height limitation of 75 feet of ZR 23-633, rear yard setback requirements of ZR 24-552 and special height limitations of ZR 24-591 in LH-1A District contrary to ZR 54-31.



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**Conclusion**

If granted, the variance will enable JNF to remain on the Premises, its home for over 55 years. Furthermore it will enable JNF to satisfy its programmatic need of creating an ADA accessible means of egress, which complies with modern fire standards, and creating an efficient and safe and secure environment to accommodate its current workforce.

Respectfully submitted,



Carole S. Slater



**ITEM H**

**October 12, 2011**

**Variance Application**

**STATEMENT OF FINDINGS**

42 East 69th Street

Block 1383, Lot 43

Borough of the Manhattan

For the reasons set forth below, there is substantial evidence in the record to support each of the required findings of ZR Section 72-21:

- (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 provision 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;*

The evidence submitted with this Application demonstrates that the existing Building cannot be renovated and enlarged to satisfy JNF's programmatic need of 1) accommodating JNF's current workforce and program functions; 2) creating an efficient and safe and secure environment; 3) providing an ADA accessible means of egress; and 4) complying with modern fire safety code standards, while complying strictly with the underlying R8B/LH1-A district bulk regulations. Furthermore, in granting a variance under BSA Cal. No. 323-62-BZ, the Board has previously held that the Premises contains unique conditions which create practical difficulties and unnecessary hardships in strictly complying with the bulk regulations of the Zoning Resolution.

The Board has consistently held that the programmatic needs of a not-for-profit owner, along with the limitations of an existing building are properly considered in connection with the unnecessary hardship required by ZR §72-21(a). See BSA Cal. No. 305-09-BZ (Boys and Girls Club's programmatic need of providing adequate administrative space, accommodating a basketball court and an increase in attendance, combined with the existing building's limitations and sub-surface conditions created an unnecessary hardship); and BSA Cal. No. 215-07-BZ



(YMCA's programmatic needs, which included a child care and summer camp, combined with the existing buildings limitations created an unnecessary hardship).

**The creation of ADA accessible means of egress**

Currently, the Building's stairs and elevator are not ADA compliant. In order to satisfy JNF's programmatic need of making its entire national headquarters and its spaces dedicated to educational, community and fund raising functions accessible to people with disabilities and the elderly, the Building must be renovated to contain a means of egress which complies with the ADA accessibility requirements.

As evidenced on the Plans, the only means of egress to the Building is located in the Main Portion. This entrance contains two steps and, therefore, a disabled person in a wheel chair or an elderly person, who has difficulty walking, must be carried up the two steps to the main lobby. Once in the main lobby, a disabled person must be carried another three steps to access the narrow non-ADA compliant elevator, in which the wheelchair must be folded and the disabled person supported. Therefore, an extreme unnecessary hardship exists for the disabled and the elderly to freely enter the Building, and access the cellar level and the upper floors of the Main Portion.

Furthermore, the stair landings of the Main Portion and the stair landings of the Annex above the first floor are at different elevations. Therefore, a disabled person cannot access the upper floors of the Annex without being assisted.

JNF holds many educational, community and fund raising functions for the community at large. However, due to the inability of disabled persons and the elderly to attend such functions, a large segment of the population is excluded from participation in not only JNF's educational, community and fund raising functions, but also from being employed by, or volunteering for, JNF.

Due to the fact that the Annex and the Main Portion stair landings are at different elevations, the current means of egress within the Main Portion cannot be renovated to provide an ADA accessible means of egress. Therefore, the only feasible means to provide ADA accessibility to



the Building is to reconstruct the Annex to contain an ADA compliant stairwell and an ADA compliant elevator. Since the Annex contains only four-stories, it must be vertically enlarged to access the fifth floor of the Main Portion. This necessary vertical enlargement will exceed the maximum 60 foot permitted height within the LH-1A district. See ZR §24-591.

**Improve circulation to create a more efficient space for JNF's workforce**

Since its inception JNF has seen substantial growth. In 1955, when JNF initially moved into the Main Portion, its annual revenues were \$3,159,290.00, with operating expenses of \$349,157.00. By 2009, JNF had grown to an organization with \$50,634,205.00 in annual revenues and operating expenses of \$44,000,150.00.

This growth is a direct result of regional offices opening up across the country, with JNF's headquarters located on the Premises coordinating and managing all national efforts, and a significant increase of educational and fundraising activities on the Premises.

In order to accommodate these efforts, JNF's use of the Building has changed since it first located its headquarters at the Premises in 1951. The current layout includes offices and small conference rooms in the Main Portion and other offices and small conference rooms within the Annex. This separation of uses creates confined and inefficient conditions for its staff and does not satisfy JNF's programmatic need of providing large conference room areas to accommodate its educational and fundraising functions. Furthermore, the different elevations of the stair landings, as described above, does not permit people with disabilities from being employed by, or volunteering for, JNF.

JNF has analyzed this unnecessary hardship and has concluded that by enclosing the fifth floor terrace with an additional 653 square feet of floor area and relocating and reconfiguring its offices and conference rooms, the Building can satisfy JNF's programmatic need of housing an efficient workspace, while accommodating JNF's educational and fundraising functions.<sup>8</sup>

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<sup>8</sup> The enclosure of the fifth floor terrace creates a non-compliance with ZR §24-552 and increases the degree of non-compliance with ZR §24-36.



### **Create a safe and secure environment**

JNF has been issued three grants from the United States Department of Homeland Security because it is a potential target of terrorist organizations.<sup>9</sup> Currently, many of JNF's public service programs are located on the upper floors of the Main Portion. This creates an insecure situation, where members of the public are free to access to JNF's offices and other areas which JNF desires to keep private and secure. To alleviate this insecure condition, JNF proposes to locate most of its public service programs in the cellar of the Main Portion, in isolation from the upper floors. In order to make the rear yard ADA accessible from the cellar, the roof of the cellar at the rear of the Main Portion must be vertically extended two feet, six inches into the rear yard. This two foot, six inch obstruction is not permitted and creates a non-compliance with ZR §24-36 and 24-11.

### **Bring the Building into compliance with modern fire safety codes**

Currently, the means of egress within the Main Portion, constructed in the 1920s, is considered Class 3 non-fireproof construction, and is not in compliance with modern fire safety code requirements.

The proposed reconstruction and enlargement of the Annex will bring JNF's means of egress into compliance with modern fire safety standards as follows:

- Create a complying service stair door width of greater than three feet.
- Create a complying service stair width of greater than three feet, eight inches.
- Provide two means of egress on all floors.
- Create an emergency recall system in new elevator.

Based on the foregoing, the programmatic needs of JNF, along with the limitations of the existing Building, creates an unnecessary hardship. The Board's required finding under Section 72-21 (a) of the Zoning Resolution is supported by the record underlying this application.

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<sup>9</sup> The three grants provided for 1) a security camera system; 2) the replacement of the second floor windows for blast mitigation; and 3) the replacement of the third floor windows for blast mitigation.



*(b) that because of such physical conditions there is no reasonable possibility that the development of 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 return from such zoning lot; this finding shall not be required for the granting of a variance to a non-profit organization;*

The Applicant is a not-for-profit and, therefore, the (b) finding under ZR 72-21 is not applicable. The Applicant's not-for-profit status is evidenced by the attached letter from the United States Internal Revenue Service Letter verifying its not-for-profit status.

*(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;*

The Premises is located in an R8B/LH-1A district, within the Upper East Side neighborhood of Manhattan. According to the 400 foot radius diagram, the surrounding area is primarily characterized by schools, offices and multiple dwellings, with many buildings containing ground floor retail use. Since 1951, JNF has located its Use Group 4 community facility national headquarters on the Premises, which is appropriately located within both the R8B district and the Premises' neighborhood. Since there is no change of use, the variance, if granted, will not alter the essential character of the neighborhood.

The Proposed Renovation will add a one story enlargement to the Annex. This enlargement will be below the existing height of the Main Portion, and will not block any legally required windows of the neighboring building located at 46 East 69<sup>th</sup> Street.

The proposed enclosure of the fifth floor terrace will align with the rear wall of the Main Portion and according to the Environmental Assessment Statement, prepared by ECO Systems, dated October 7, 2011, will not create any adverse affects on the properties in the surrounding area. Given the minor nature of the two foot, six inch vertical encroachment into the rear yard of the Premises, the appropriate use and development of the adjacent property will not be impaired and there will be no adverse affect on its access to light and air.



Based on the foregoing and the EAS, the Proposed Renovation will not alter the 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.

*(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*

The hardship claimed in support of the Application arises from the fact that JNF can better satisfy its programmatic needs by remaining at the Premises, its home for over 55 years. Since the existing zoning lot and Building are unable to satisfy this programmatic need, the hardship was not created by the owner or a predecessor in title.

*(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 order to create an ADA-accessible means of egress which complies with modern fire safety standards, the Annex must be enlarged to align with the floor elevations of the Main Portion. The proposed enclosure of the terrace on the fifth floor to create 653 square feet of much needed floor area is the minimum amount of floor area needed to create an efficient workspace, while accommodating its educational and fundraising activities. Finally, in order to create a safe and secure environment, JNF must locate its public functions in the cellar. The height of the existing cellar will be increased two foot, six inch vertical enlargement into the rear yard, which is the minimum amount needed to satisfy this programmatic need.

In developing a plan that would accommodate its needs, in addition to the Proposed Renovation, JNF considered several alternatives.

One alternative was an upgrade of the existing mechanical systems, while maintaining the current building envelope. It was determined that this approach would not satisfy JNF's



programmatic need of creating efficient, safe and secure program spaces; or a means of egress which complies with ADA accessibility requirements and modern fire safety standards.

Another alternative considered by JNF, was the incorporation of ADA accessibility and fire safety requirements within the existing building envelope. This alternative would require the construction of new elevator and stairway systems within the Building. The space necessary for this improvement would significantly reduce the available space to accommodate JNF's educational, fundraising and administrative program activities and, thus, was not feasible.

Therefore, the proposed renovation would be the minimum which would achieve its objectives of accommodating JNF's educational and fundraising activities; efficient, safe and secure spaces; egress which complies with modern fire safety standards; and, means of egress which complies with the American with Disabilities Act accessibility requirements.

Therefore, the Proposed Renovation seeks a minimum variance given the needs of the Applicant and the application supports a finding that the proposed bulk variance is the minimum necessary to afford relief.

Respectfully submitted,



Carole S. Slater



SLATER & BECKERMAN LLP

October 12, 2011

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cc: Honorable Scott Stringer, Manhattan Borough President  
Honorable Daniel R. Garodnick, Councilmember  
Honorable Derek Lee, R.A., Borough Commissioner, New York City Department of Buildings  
Jackie Ludorf, Chairperson, Manhattan Community Board No. 8  
Edith Hsu-Chen, Director, Manhattan Office, Department of City Planning  
Christopher Holme, Department of City Planning

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