

1-15-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Manhattan Country School (contract vendee).

SUBJECT – Application January 2, 2015 – Variance (§72-21) proposed enlargement of an existing school structure to be used by the Manhattan Country School which will exceed permitted floor area and exceeds the maximum height. R8B zoning district.

PREMISES AFFECTED – 150 West 85th Street, southerly side of West 85th Street between Columbus Avenue and Amsterdam Avenue, Block 1215, Lot 53, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 26, 2015, acting on Department of Buildings Application No. 122142216, reads in pertinent part:

1. Proposed enlargement is not permitted – it creates new or increase existing degree of non-compliances ... contrary to requirements of ZR 54-31:
 - a. Increase of existing degree of zoning non-compliance for zoning floor area is proposed from 5.8 to 6.3 (contrary to ZR 24-11 – the maximum floor area ratio for a community facility use shall not exceed 4.0)
 - b. Creating of new zoning non-compliance for the maximum building height is proposed (contrary to ZR 24-522(b) and ZR 23-633 – the maximum building height shall not exceed 75 feet)
 - c. The exterior stair is not permitted obstruction in the required rear yard (ZR 24-33); and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site located within an R8B zoning district, the proposed enlargement of an existing building which does not comply with zoning regulations for floor area, height and setback and rear yard, contrary to ZR §§ 24-11, 24-522, 23-633, and 24-33; and

WHEREAS, a public hearing was held on this application on April 28, 2015, after due notice by publication in the *City Record*, with continued hearings on June 2, 2015, and then to decision on July 14, 2015; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair

Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Manhattan, recommended disapproval of the application; and

WHEREAS, certain members of the community, including members of the West 85th Street Block Association, testified at the hearing and provided testimony in opposition to the application (collectively, the “Opposition”), citing the following primary concerns:

- (1) the proposed increase in the height of the building;
- (2) the impact of the bulk of the proposed building on light and air;
- (3) the noise and traffic associated with the applicant’s use of the subject site;
- (4) the persistence of refuse and its attendant nuisances (odor, rodents, etc.) on the public sidewalks along West 85th Street and neighbors’ anticipation of increased refuse; and
- (5) the impact of the construction associated with the proposed enlargement; and

WHEREAS, this application is brought on behalf of the West 85th Street Owner LLC (the “Applicant”), and the subject building will be occupied by the Manhattan Country School (the “School”), a non-profit educational institution founded in 1966; and

WHEREAS, the Applicant represents that the School offers classes from pre-Kindergarten through 8th grade and is recognized as a model of both progressive education and socioeconomic and racial diversity;

WHEREAS, the Applicant states that the School currently operates in a five-story townhouse located at 7 East 96th Street, in Manhattan, an individually designated New York City landmark which, as such, is under the jurisdiction of the New York City Landmarks Preservation Commission; and

WHEREAS, the Applicant notes that the School’s existing facility contains approximately 18,000 sq. ft. of floor area and cannot accommodate more than one classroom per grade or support specialized classrooms for art and science and, as such, it is inadequate to meet the School’s programmatic needs; and

WHEREAS, the subject site is located within an R8B zoning district, with approximately 75 feet of frontage along the south side of West 85th Street, between Columbus Avenue and Amsterdam Avenue, and has approximately 6,564 sq. ft. of lot area; and

WHEREAS, the site is currently occupied by a four-story, three mezzanine building with a height equivalent to a seven-story building; it was initially constructed as a club house with four floors, three of which were double-height, and was enlarged in the 1980s to accommodate the Mannes College of Music; and

WHEREAS, the Applicant states that previous enlargement of the building included the splitting of two of the double-height floors, resulting in floor heights which are insufficient for a school; and

WHEREAS, the Applicant proposes to renovate the subject building to accommodate the School’s programmatic needs; and

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WHEREAS, specifically, the Applicant proposes to divide the double-height interior spaces into single-height spaces; create a 20'-6" by 23' cut out for an interior courtyard starting at the fourth floor of the building with skylights to the third floor; expand the sixth floor of the building and construct a penthouse; and extend the egress stair in the rear yard of the building; and

WHEREAS, the proposed enlargement will consist of 4,452 sq. ft. (5,394 sq. ft. will be added to the building but 942 sq. ft. of floor area will be removed); and

WHEREAS, the proposed building will have a total floor area of 39,539 sq. ft. (6.03 FAR) (the maximum permitted FAR is 4.0); a height of 85'-3 1/2" (a maximum building height of 75'-0" is permitted) and no setback (a 15'-0" setback is required at 60 feet thus the degree of noncompliance with this requirement will be increased); and an exterior stair which is not a permitted obstruction into the rear yard of the building; and

WHEREAS, because the proposed enlargement does not comply with the applicable bulk regulations in the subject zoning district, the applicant seeks the requested variance; and

WHEREAS, the Applicant states that the variance is necessary to meet the School's programmatic need to provide classroom space sufficient to fulfill the School's curriculum; provide adequate light and air to classrooms; create a communal space necessary to advance the School's mission; and provide for specialized spaces for the School's Science, Technology, Engineering, Art and Math program (the "STEAM program"), which will enable the School to remain with similar institutions; and

WHEREAS, the Applicant asserts that an as-of-right alteration of the building would not satisfy the School's programmatic needs; and

WHEREAS, specifically, the applicant states that the as-of-right configuration results in a building with 35,346 sq. ft. of floor area with inadequate classroom space, insufficient light and air and no pre-kindergarten or kindergarten classrooms; and

WHEREAS, the Applicant considered a lesser variance in which the floor area of the building was increased without enlarging the envelope of the building (the "Lesser Variance") and notes that the Lesser Variance does not meet the School's programmatic needs to have adequate light and air in the classrooms or a communal space in which students can participate in group activities; and

WHEREAS, thus, the Applicant contends that the requested waivers are both modest and essential to the School's ability to meet its programmatic needs; and

WHEREAS, the Board acknowledges that the School, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in *Cornell Univ. v Bagnardi*, 68 NY2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the School along with the existing constraints of the site create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the School is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that, pursuant to ZR § 72-21(c), the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the Applicant states that the use of the proposed building is permitted as-of-right in the subject zoning district and that the site has been used for community facility and school use since 1928;

WHEREAS, the Applicant notes that the proposed rooftop addition is set back from the street and has a sloping roof and states that, in response to opposition from neighbors, has been reduced to a height of 13'-6"; and

WHEREAS, the Applicant states that the rooftop enclosure for the play area at the rear of the proposed building's roof will be constructed of a wire mesh that will impede neither light nor air, and that such enclosure shall not be lighted at night; and

WHEREAS, accordingly, the Applicant asserts that the proposal will have no negative impacts on the surrounding neighborhood; and

WHEREAS, the Board agrees with the applicant that the proposal will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Applicant states that, per ZR § 72-21(d), the hardship was not self-created; and

WHEREAS, the Board finds that the hardship herein was not created by the School or the Applicant; and

WHEREAS, the Applicant represents that, consistent with ZR § 72-21(e), the requested waivers are the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, the Board notes that the Lesser Variance, in which the floor are of the existing building is

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increased without enlarging the envelope of the existing building, would not provide adequate light and air to the School's classrooms and would not meet the School's programmatic need for a courtyard space in which students can gather and work in groups; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School to fulfill its programmatic needs; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist dated January 2, 2015; and

Therefore it is Resolved, that the Board of Standards and Appeals issues Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R8B zoning district, the proposed enlargement of an existing building which does not comply with zoning regulations for floor area, height and setback and rear yard contrary to ZR §§ 24-11, 24-522, 23-633, and 24-33, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 9, 2015"—nineteen (19) sheets; and *on further condition*:

THAT the site shall be limited to a maximum floor area of 39,539 sq. ft. (6.03 FAR) and the total height of the building shall be limited to 85'-3 1/2", exclusive of bulkheads, parapets and play area enclosure, as illustrated on the BSA-approved plans;

THAT the penthouse shall be set back 11'-1" from the street wall; and

THAT any change in the use, occupancy, or operator of the School shall require the Board's approval;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by July 14, 2019;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 14, 2015.

**A true copy of resolution adopted by the Board of Standards and Appeals, July14, 2015.
Printed in Bulletin Nos. 28-30, Vol. 100.**

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

