

260-14-BZ
CEQR #15-BSA-090M

APPLICANT – Goldman Harris LLC, for The Chapin School, Ltd., owner.

SUBJECT – Application October 17, 2014 – Variance (§72-21) to permit the construction of a three-story enlargement to the existing school, contrary to floor area, rear yard, height and setback requirements. (R8B/R10A) zoning districts.

PREMISES AFFECTED – 100 East End Avenue aka 106 East End Avenue, Block 1581, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #8M

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

Abstain: Commissioner Chanda.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 23, 2014, acting on Department of Buildings Application No. 122042048, reads in pertinent part:

1. ZR 24-11, 77-22 – Enlargement exceeds maximum permitted floor area on pre-existing zoning lot;
2. ZR 24-36 – Enlarged portion does not meet rear yard requirement in R8B district;
3. ZR 24-50, 24-522, 23-633 – 15’ setback is not provided above the maximum base height in R8B district;
4. ZR 24-50, 24-522, 23-633 – Proposed building exceeds max. building height of 75’ in R8B district;
5. ZR 24-50, 24-522, 23-633 – 15’ setback on East 84th Street not provided in R10A district;
6. ZR 24-50, 24-522, 23-633 – 10’ setback on East End Avenue not provided in R10A district;
7. ZR 23-663 – 10’ rear setback above max. base height from rear yard line not provided in R8B district; and

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 9, 2015, also acting on Department of Buildings Application No. 122042048, reads in pertinent part:

1. ZR 24-11 – The proposed building in a[n] R8B/R10A zoning district exceeds[s] the allowable lot coverage permitted contrary to ZR 24-11; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R8B zoning district and partially within an R10A zoning district, the enlargement of an existing school building (Use Group 3), which does not comply with zoning regulations for rear yard, height and setback, lot coverage and floor area,

contrary to ZR §§ 23-633, 24-11, 24-36, 24-50, 24-522 and 77-22; and

WHEREAS, a public hearing was held on this application on May 12, 2015, after due notice by publication in the *City Record*, with continued hearings on July 14, 2015, and September 1, 2015 and then to decision on October 16, 2015; and

WHEREAS, Community Board 8, Manhattan, recommends that the Board disapprove the instant application; and

WHEREAS, certain members of the community, including some members represented by counsel, testified at the hearing and provided testimony in opposition to the application (collectively, the “Opposition”), citing, *inter alia*, the following concerns: (1) that the purportedly as-of-right work the School performed during the pendency of this application was impermissible; (2) that the Board’s authorization of such work may result in “segmentation” such that the environmental impact of the Proposed Enlargement would not be properly analyzed; (3) that the School is not entitled to multiple variances; (4) that DEP’s noise sign-off does not address the proposed rooftop playground; (5) the visual impact of the proposed enlargement on the surrounding neighborhood; (6) the potential for shadows from the proposed enlargement to negatively impact Carl Schurz Park; (7) the negative impacts of the construction required to complete the proposed construction, including noise, vibration, dust, debris, and impediments to pedestrians; (8) that the proposed enlargement will alter the essential character of the neighborhood; (9) that the proposed enlargement will result in increased noise and traffic to the surrounding neighborhood; and

WHEREAS, this application is brought on behalf of the Chapin School (the “School”), a non-profit educational institution for girls founded in 1901; the School serves students from grades kindergarten through 12, and is organized into a “Lower School” (grades K-3), a “Middle School” (grades 4-7) and an “Upper School” (grades 8-12); and

WHEREAS, the applicant states that the School’s current enrollment is 751 students; the School employs 130 teachers and 84 additional staff members; and

WHEREAS, the School represents that the subject proposal is designed to serve the School’s current enrollment; and

WHEREAS, the subject site is comprised of a single zoning and tax lot (Block 1581, Lot 23); the site occupies the easterly portion of the block bounded by East End Avenue, East 84th Street, East 85th Street and York Avenue; the site has 102.17 feet of frontage along East End Avenue and 223 feet of frontage along East 84th Street, and 22,784 sq. ft. of lot area; the site is located partially within an R8B zoning district and partially within an R10A zoning district; the R10A portion of the site is mapped along East End Avenue to a depth of 100 feet; and

WHEREAS, the site is currently occupied by a single building consisting of three segments ranging from six to eight stories (the “Building”); the easterly, eight-story portion of the Building, with frontage along East

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End Avenue, is known as the “Main Building,” and was constructed c. 1920; the westerly, six-story portion of the Building, the “Wing Building,” was constructed c. 1932, and was acquired by the School in 1969; the six-story middle portion of the Building, which connects the Main Building and the Wing Building, is known as the “Cross-Over Building,” and was constructed by the School between 1971 and 1997; and

WHEREAS, the Board has maintained jurisdiction over the site since 1969 when it approved a variance for a four-story enlargement to the Building; the School did not commence construction pursuant to the 1969 variance, and the 1969 variance lapsed; and

WHEREAS, in 1987, under BSA Cal. No. 498-87-BZ, the Board granted a variance to permit a three-story enlargement of the Wing Building, which did not comply with the zoning regulations for lot coverage and rear yards; the Board found that the waivers granted pursuant to such variance were the minimum relief necessary to meet the School’s need for additional Lower School classrooms and a gymnasium; and

WHEREAS, in 1996, under BSA Cal. No. 171-95-BZ, the Board granted a variance to permit a three-story enlargement of the Cross-Over Building, which did not comply with the zoning regulations for height and setback and lot coverage; the Board found that the waivers granted pursuant to such variance were the minimum relief necessary to meet the School’s need for a library, choral room and an additional gymnasium for the Middle School and Upper School; the Board noted that Gym 5 was required because the large space located on the first floor of the Cross-Over Building, which had been used for both dining and gym purposes, could no longer be used as such and would only be used as a dining facility; and

WHEREAS, in 2006, also under BSA Cal. No. 171-95-BZ, the Board amended the School’s 1996 variance to allow for the addition of three floors and a mezzanine to the Main Building in order to accommodate the School’s need for science laboratories, additional classroom space, a greenhouse, a black box theatre, and offices for the Middle School and Upper School; because the 2006 enlargement was as-of-right, no waivers were granted by the Board; and

WHEREAS, on July 15, 2015, the Board issued a letter of substantial compliance, which stated that certain work being performed at the cellar and first floor of the Building substantially complied with the BSA-approved plans included with the 2006 amendment to the 1996 variance; and

WHEREAS, in order to meet certain of its programmatic needs, discussed in greater detail below, the School proposes to enlarge the Building as follows (the “Proposed Enlargement”): (1) construct a three-story enlargement above the Main Building which will contain a regulation-sized gymnasium and school-wide assembly space, accessory gymnasium and athletic space, dedicated space for dance and music, and an outdoor play roof; (2) the addition of a structure extending over the Cross-Over and Wing Buildings to provide required egress from the

Building; and

WHEREAS, the applicant represents that the Proposed Enlargement will address the following of the School’s programmatic needs: (1) the need for a regulation-size gymnasium; (2) the need for a performing arts space; (3) the need for dedicated Science, Technology, Engineering and Mathematics (“STEM”) classrooms; (4) additional Upper School Classrooms; (5) Lower School dining space; and (6) an on-site health-care facility; and

WHEREAS, the applicant states that, in response to the Board’s comments at hearing, it has modified the Proposed Enlargement from that which was originally proposed; specifically, the applicant states that the School has minimized the encroachment into the R8B portion of the site by relocating an exterior stair tower that was initially located on the R8B portion of the site to be within that portion of the Building which is located in the R10A portion of the site, thereby reducing the height of the encroachment into the R8B portion of the site by approximately 28 percent and the overall volume of the encroachment by approximately 60 percent; the applicant states further that the length of the encroachment into the R8B portion of the site has been reduced by one foot; and

WHEREAS, the applicant states that the Proposed Enlargement requires waivers of zoning regulations applicable in both the R10A and R8B zoning districts in which the Building is located; and

WHEREAS, with respect to that portion of the Building which is located in the R10A zoning district, the applicant represents that the Proposed Enlargement does not comply with the bulk regulations for setbacks pursuant to ZR §§ 24-50, 24-522 and 23-633; specifically (1) a setback of 15 feet above the maximum base height of 150 feet is required in the R10A portion of the site fronting on East 84th Street, and no setback is provided; and (2) a front setback of 10 feet above the maximum base height of 150 feet is required in the R10A portion of the site, fronting on East End Avenue, a setback of 2.5 feet at a height of 116.69 feet is proposed; and

WHEREAS, with respect to that portion of the Building which is located in the R10A zoning district, the applicant represents that the Proposed Enlargement does not comply with the bulk regulations for floor area ratio (“FAR”) pursuant to ZR § 24-11; specifically the Proposed Enlargement exceeds the permitted floor area ratio in the R10A portion of the site in that the maximum permitted floor area is 102,170 sq. ft. and the Proposed Enlargement results in a total floor area of 102,813.35 sq. ft. within the R10A portion of the site; and

WHEREAS, with respect to that portion of the Building which is located in the R8B zoning district, the applicant represents that the Proposed Enlargement does not comply with the bulk regulations for setbacks pursuant to ZR §§ 24-50, 24-522, 23-633 and 23-663; specifically (1) within the R8B portion of the site, a setback of 15 feet above the maximum base height of 60 feet is required where the Building fronts on a narrow street,

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the applicant notes that there is no setback on such portion of the site and that the Proposed Enlargement will increase the degree of non-compliance with this requirement; and (2) a rear setback of 10 feet above the maximum base height of 60 feet is required in the R8B portion of the site, the applicant notes that there is no rear setback on such portion of the site and that the Proposed Enlargement will increase the degree of non-compliance with this requirement; and

WHEREAS, with respect to that portion of the Building which is located in the R8B zoning district, the applicant represents that the Proposed Enlargement does not comply with the bulk regulations for rear yards pursuant to ZR § 24-36; specifically the applicant states that there is an existing non-complying rear yard with a depth of 17 feet in that portion of the site which is located within the R8B zoning district, where a rear yard with a minimum depth of 30 feet is required; the applicant notes that the Proposed Enlargement will increase the degree of non-compliance with this requirement; and

WHEREAS, with respect to that portion of the Building which is located in the R8B zoning district, the applicant represents that the Proposed Enlargement does not comply with the bulk regulations for height pursuant to ZR § 23-633; specifically the applicant states a maximum building height of 75 feet is permitted within the subject R8B zoning district, and notes that the easternmost portion of the proposed 24'-1 1/2" westerly extension into the R8B zoning district (which extends 10'-10 1/2" into the R8B portion of the site) has a height of 180.08 feet (exclusive of the screen enclosure), and that the remainder of the westerly extension has a height of approximately 150 feet; and

WHEREAS, with respect to that portion of the Building which is located in the R8B zoning district, the applicant represents that the Proposed Enlargement does not comply with the bulk regulations for lot coverage pursuant to ZR § 24-11; specifically, the applicant states that the maximum lot coverage permitted in the R8B portion of the site is 70 percent (8,949 sq. ft.), and further states that the Proposed Enlargement exceeds this limitation at the sixth floor of the Cross-Over Building by approximately 97 sq. ft., with a proposed lot coverage of 9,046 sq. ft.; and

WHEREAS, with respect to the entire site, the applicant represents that the Proposed Enlargement does not comply with the bulk regulations for FAR, pursuant to ZR § 24-11; specifically, the applicant notes that pursuant to ZR § 24-11, a maximum FAR of 5.1 for community facility use is permitted in the subject R8B zoning district, and a maximum FAR of 10.0 for community facility is permitted in the subject R10A zoning district, and states that pursuant to ZR § 77-22, which allows for the proportional application of the aforesaid bulk regulations based on the lot area within each zoning district, an average FAR of 7.29 (166,261.7 sq. ft.) is permitted at the site; however, the applicant states that the Proposed Enlargement contains 175,541 sq. ft. of floor area (7.71 FAR), which exceeds the maximum permitted for the

site;1 and

WHEREAS, as discussed in hearing, the applicant notes that the Proposed Enlargement does not require a waiver of ZR § 24-35 (side yards) because the Proposed Enlargement cantilevers over the non-complying open area up to the northern side lot line; and

WHEREAS, because the Proposed Enlargement does not comply with the above-noted bulk regulations, the applicant seeks the requested variance pursuant to ZR § 72-21; and

WHEREAS, the applicant contends that, per ZR § 72-21(a), the history of development of the site and the fact that the site is located in two zoning districts are unique physical conditions, which, when coupled with the School's programmatic needs, creates practical difficulties and unnecessary hardship in developing the site in compliance with the zoning regulations; and

WHEREAS, the applicant notes that the School was built in segments over a period of nearly 100 years, and, as stated, that the site is split between two zoning lots; and

WHEREAS, specifically, with respect to the history of the development of the site and the obsolescence of the existing building, the applicant states that the floor plates of the Main Building and Wing Building, constructed in the 1920s and 1930s, cannot accommodate a regulation-sized gymnasium, the provision of which, the School maintains, is an important programmatic need, and that the existing Building cannot accommodate additional classrooms, STEM classrooms, a performance arts space or a dedicated nurse's office; and

WHEREAS, indeed, in addition to the constraints imposed by the existing structure, the applicant also asserts that the School requires the requested waivers to meet its programmatic needs; and

WHEREAS, the applicant states that the programmatic needs which will be addressed by the Proposed Enlargement are: (1) the need for a gymnasium that complies with National Federation of High School Associations ("NFHS") rules, which mandate, *inter alia*, that basketball games be played on a court that is, at minimum, 70' x 104' (a 50' x 84' playing surface with a 10' perimeter buffer), and which does not include spectator seating; (2) the need for improved performing arts spaces, including spaces for dance and vocal/instrument instruction; (3) additional Upper School classrooms; (4) STEM classrooms; (5) a health care facility; (6) improved dining facilities; and (7) outdoor play space; and

WHEREAS, with respect to the need for a gymnasium that complies with NFHS rules, the applicant

1 The applicant states that the R8B portion of the zoning lot generates 64,091.7 sq. ft. of floor area at 5.1 FAR, but that the Proposed Enlargement utilizes 72,727.5 sq. ft. of floor area in the R8B portion of the site, and that the R10A portion of the zoning lot generates 102,170 sq. ft. of floor area at 10.0 FAR, but that the Proposed Enlargement utilizes 102,813 sq. ft. of floor area in the R10A portion of the site.

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notes that the School has been prohibited from hosting league tournament games since 2008, and that non-tournament games require a waiver which, the School has been advised, will not be available in the future if the School cannot meet the minimum NFHS dimensions; and

WHEREAS, the applicant also states that athletic support facilities are a required component of a contemporary high school gymnasium and that such facilities must be located in close proximity to the gymnasium, including locker rooms, fitness rooms, athletics supply storage, and personnel and safety offices; and

WHEREAS, the applicant represents that none of the existing gymnasiums in the Building are large enough to comply with NFHS rules, that none of the existing gymnasiums can be enlarged to comply with NFHS rules, and that the School cannot locate a new NFHS compliant gymnasium elsewhere in the Building; specifically, the applicant notes that locating the gymnasium in the Cross-Over Building, rather than in an addition to the taller Main Building, would require additional zoning waivers and would result in a larger building in the midblock, rather than on the avenue, and that locating the gymnasium in the cellar is impracticable because there is no full cellar in the Building and providing one suitable for a complying gymnasium would require extensive excavation and structural modifications to the building; and

WHEREAS, with respect to the need for improved performing arts spaces, including spaces for dance and vocal/instrument instruction, the applicant states that the Proposed Enlargement will allow for dedicated spaces for vocal instruction, instrumental instruction, and Middle School and Upper School dance classes; and

WHEREAS, the applicant states that by devoting one floor of the Proposed Enlargement to such performing arts spaces, the School will be able to provide, in addition to music and dance studios, four practice rooms, offices, a music library and an instrument storage space; and

WHEREAS, the applicant states that the existing Building is a vertical urban campus, the major circulation core of which (“Stair B”) is located in the R10A portion of the Building; the applicant states further that this core, known as “Main Street” among students, serves to link all elements of the Middle School and Upper School, thus, locating the proposed gymnasium in the R10A portion of the site, with athletic support and performing arts spaces below, all accessible from Stair B, is critical to efficient student circulation and programmatic adjacency; and

WHEREAS, with respect to the need for additional Upper School classrooms, the applicant notes that the Upper School operates with a classroom utilization rate of approximately 95 percent, and that the Middle School operates with a classroom utilization rate of approximately 82 percent, and states that upon the construction of the proposed gymnasium, two of the School’s existing, inadequate, gymnasiums will be converted to other uses, including eight new Upper School Classrooms which will

be located in close proximity to existing Upper School classroom space; and

WHEREAS, similarly, with respect to the need for STEM classrooms, the applicant states that upon the construction of the proposed gymnasium, the School will be able to provide for STEM classrooms where one of the School’s existing, inadequate gymnasiums is currently located; and

WHEREAS, with respect to the need for a health care facility, the applicant states that the Proposed Enlargement will enable the School to provide a reconfigured health care facility in space now occupied by one of the gymnasiums that will be eliminated upon the construction of the proposed gymnasium, and that such facility is required as the School’s nurse station currently receives up to 50 visits per day, is not wheelchair accessible, lacks space for private conversation, and does not have an adequate examination room; and

WHEREAS, with respect to the need for improved dining facilities, the applicant states that the School is proceeding with its plans to provide a below-grade Lower School cafeteria on an as-of-right basis, and notes that the Board issued a letter of substantial compliance authorizing such work; and

WHEREAS, with respect to the need for outdoor play space, the applicant states that the Proposed Enlargement will enable the School to locate a rooftop play area immediately above the proposed gymnasium, rather than utilize Carl Schurz Park, which is located opposite the School on East End Avenue; and

WHEREAS, the applicant states that all of the waivers sought herein are tied to the School’s well-established programmatic needs, save those which are required in order to provide required egress at the Building; and

WHEREAS, the applicant represents that no increase in enrollment is anticipated or planned and that the Proposed Enlargement seeks to address the School’s current space deficiencies and is not intended to allow the School to increase its enrollment; and

WHEREAS, the applicant examined the feasibility of various as-of-right scenarios, including locating the proposed gymnasium in the R10A portion of the Building only (the applicant represents that the required dimensions and egress cannot be accommodated solely within the R10A district); locating the proposed gymnasium in the cellar (the applicant represents that reconstruction of major structural systems throughout the building would be required in order to locate an adequate gymnasium in the cellar, and the relocation of the utility trench below the Building would be extremely costly and detrimental to the operation of the Building); locating the gym at the bottom of the Proposed Enlargement and setting back from a point above the gym (the applicant represents that this alternative would require additional waivers from the Board and would also require the relocation of the School’s vertical circulation core); building over the Building’s existing eighth floor greenhouse (the applicant represents that accessing a newly created area above

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the greenhouse would require the relocation of the School's vertical circulation core); procuring an off-site location (the applicant represents that the School was unable to find a suitable off-site location after a search that lasted approximately 18 months, and states further that in order to accommodate the required gymnasium, four contiguous townhouses would have to be acquired and demolished, and also an off-site location presents logistical issues and is inconsistent with the School's policy of housing all of its programs within a single building); and

WHEREAS, accordingly, the applicant states that the Proposed Enlargement most effectively meets the School's 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, as noted by the applicant, under well-established precedents of the courts and this Board, an application for a variance that is needed in order to meet the programmatic needs of a non-profit educational institution is entitled to significant deference and shall be permitted unless the application can be shown to have an adverse effect upon the health, safety, or welfare of the community (*see, e.g., Cornell University v Bagnardi*, 68 NY2d 583 (1986)); and

WHEREAS, the Board acknowledges that, as set forth in *Cornell*, general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the Board observes that *Cornell* deference has been afforded to comparable institutions in numerous other Board decisions, certain of which were cited by the applicant in its submissions; and

WHEREAS, the applicant states that based on an extensive review of its facility and operations, the proposal is the most efficient and effective use of its educational programmatic space, and the applicant concludes that the bulk relief requested is necessary to meet the School's programmatic needs; and

WHEREAS, the Board finds that the proposal has been designed to be consistent and compatible with adjacent uses and with the scale and character of the surrounding neighborhood and is, therefore, consistent with the standard established by the decision in *Cornell*; and

WHEREAS, the Board concurs that the waivers will facilitate construction that will meet the School's articulated needs; and

WHEREAS, in sum, the Board concludes that the applicant has fully explained and documented the need for the waivers to accommodate the School's programmatic needs; and

WHEREAS, based upon the above, the Board finds that, consistent with ZR § 72-21(a), 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 educational institution and the variance is needed to further its educational 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 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, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the Proposed Enlargement is consistent with the scale and character of the neighborhood and is compatible with nearby uses; and

WHEREAS, in support of this statement, the applicant submitted a height study which states that the height of the Proposed Enlargement is not inconsistent with other tall buildings in the subject R8B zoning district, and notes that the horizontal encroachment into such district is limited and is no more than necessary to accommodate the minimum dimensions of the proposed gymnasium and to provide required egress; and

WHEREAS, the applicant also states that the Proposed Enlargement, including the rooftop play area, will be built below the maximum height permitted in the subject R10A zoning district; and

WHEREAS, the applicant provided a shadow study in support of its statement that the increased height of the Building will not have an adverse impact on Carl Schurz Park; and

WHEREAS, the applicant submitted a noise analysis in support of its statement that the proposed rooftop play area will have no adverse impact on the surrounding neighborhood, and has agreed to a number of sound and light attenuation measures which are included as conditions of this approval; and

WHEREAS, accordingly, the Board finds that this action 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 that no development that would meet the programmatic needs of the School could occur given the history of development of the site; and

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

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

WHEREAS, the Board notes that it reviewed numerous written submissions, held numerous hearings, and accepted testimony from the applicant,

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representatives from the School, the Opposition, counsel for the Opposition, and surrounding neighbors regarding the Proposed Enlargement, the requested waivers, and the potential impacts on neighborhood character and surrounding uses; the Board concludes that the School has modified the Proposed Enlargement to accommodate such concerns or provided detailed, programmatic needs-based reasons why it could not do so; and

WHEREAS, the Board notes that the as-of-right work complained of by the Opposition was authorized by DOB, and notes further that such work was deemed by the Board to be in substantial compliance with applicable BSA-approved plans; and

WHEREAS, with respect to the Opposition's concerns about segmentation, the Board notes that segmentation, the division of the environmental review of an action so that various activities, or stages of a development, are analyzed independently of each other in order to avoid a determination of significance, is not implicated where, as here, the as-of-right work the Opposition claims was excluded from the environmental review of the subject proposal was, indeed, considered as part of the project EAS; and

WHEREAS, with respect to the Board's authority to grant, and the School's entitlement to seek, additional variances, the Board notes that the Opposition's concerns are misplaced; the Board has granted multiple variances, and amended multiple variances, to meet the changing programmatic needs of educational institutions in New York City; and

WHEREAS, notwithstanding the foregoing, the Board notes that the School does not have plans to enlarge the Building again in the future, and the Board is concerned that any future enlargement may exceed an appropriate building height and floor area for the neighborhood; and

WHEREAS, the Board notes that the School, through counsel, has stated that it does not plan to increase its enrollment; thus, the Board finds that the Building, with the Proposed Enlargement, will meet the School's programmatic needs and allow for flexibility in the future to accommodate any new programmatic needs which may arise, such that additional enlargements, barring unforeseen circumstances, would not be warranted; and

WHEREAS, based on the foregoing, the Board finds that the requested relief, subject to the conditions set forth below, 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 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. 15-BSA-090M, dated September 16, 2015; and

WHEREAS, the EAS documents that the operation of the School would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials; and

WHEREAS, DEP reviewed and accepted the Remedial Action Plan and Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, DEP reviewed and accepted the Noise Chapter in the Environmental Assessment Statement, the Noise Memorandum, and backup materials and determined that the proposed project would not result in any potential for significant adverse impacts with regards to Noise; and

WHEREAS, the New York City Department of Parks and Recreation reviewed and accepted the Shadows Chapter in the Environmental Assessment Statement and stated "that the shading would not likely rise to the significant impact threshold"; 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.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration 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 partially within an R8B zoning district and partially within an R10A zoning district, the enlargement of an existing school building (Use Group 3), which does not comply with zoning regulations for rear yard, height and setback, lot coverage and floor area, contrary to ZR §§ 23-633, 24-11, 24-36, 24-50, 24-522 and 77-22, *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 October 16, 2015"—twenty-four (24) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the Proposed Enlargement: a maximum floor area of 175,540.5 sq. ft. (7.71 FAR), 72,727.5 sq. ft. of floor area in the R8B portion of the site and 102,813 sq. ft. of floor

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area in the R10A portion of the site; in the R10A portion of the site, a maximum building height of 210'-0", with a maximum height of 186'-0" to the roof (exclusive of bulkhead and screen enclosure); in the R8B portion of the site, a maximum height of 180'-1" to the roof (exclusive of screen enclosure) for that portion of the Building which extends 10'-10 1/2" westerly into the R8B zoning district, a maximum height of 150'-0" to the roof for the remainder of the 24'-1 1/2" westerly extension of the Building into the R8B zoning district, and a maximum building height of 75'-0" for the remainder of that portion of the Building which is located in the R8B zoning district, with a maximum height to roof of 95'-6"; no setback above the maximum base height in the R10A portion of the site fronting on East 84th Street; a front setback of 2'-6" above the maximum base height of 116'-8 1/2" feet in the R10A portion of the site fronting on East End Avenue; no setback above the maximum base height of 60 feet in the R8B portion of the site which fronts on a narrow street; no rear setback in the R8B portion of the site; a rear yard with a depth of 17'-0" in the R8B portion of the site; a lot coverage of 9,046 sq. ft. in the R8B portion of the site above the 5th floor and 10,475 sq. ft. in the R10A portion of the site; all as illustrated on the BSA-approved plans;

THAT any change in the use, occupancy, internal configuration of space, or operator of the School shall require review and approval by the Board;

THAT the use of the play roof shall be limited to the hours between sunrise and sunset;

THAT there shall be no lighting on the play roof, save that which is required by the Building Code for emergency egress, or other applicable state or municipal laws and rules;

THAT there shall not be any permanent sound amplification equipment installed on the play roof;

THAT no electronic amplification will be allowed at the play roof at any time;

THAT the School shall maintain a sidewalk shed at the subject site in order to reduce noise and improve pedestrian safety during any construction performed pursuant to this variance;

THAT the School shall employ a facilities manager to ensure that the subject site is well-maintained and that open pedestrian areas remain free of construction materials and debris;

THAT DOB will not issue a Certificate of Occupancy prior to DEP's approval of the Remedial Closure Report;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies

A true copy of resolution adopted by the Board of Standards and Appeals, October 16, 2015.

Printed in Bulletin No. 42, Vol. 100.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

by October 16, 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;

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, October 16, 2015.

