

**2-02-BZ**

**CEQR # 02-BSA-104X**

APPLICANT - Sheldon Lobel, P.C., for City of New York Economic Development, owner; Bronx Preparatory Charter School, lessee. SUBJECT - Application January 3, 2002 - under Z.R. §§72-21 and 73-19 to permit the proposed construction of a five story school, Use Group 3, located in an M1-4 zoning district, which requires a special permit as per §73-19 and a variance to waive certain rear yard requirements, which is contrary to §§42-13, 43-232 and 43-302.

PREMISES AFFECTED - 3872 Third Avenue, aka 532 East 172nd Street, southeast corner, Block 2929, Lots 8-18, 20 and 22, Borough of The Bronx.

**COMMUNITY BOARD #3BX**

**APPEARANCES -**

For Applicant: Lyra Altman.

**ACTION OF THE BOARD** - Application granted on condition.

**THE VOTE TO GRANT -**

Affirmative: Chairman Chin, Vice-Chair Babbar, Commissioner Korbey and Commissioner Caliendo...4

Negative: .....0

**THE RESOLUTION -**

WHEREAS, the decision of the Borough Commissioner, dated December 5, 2001 acting on N.B. Applic. No. 200102463, reads;

- “1. Proposed school in an M1-4 District requires a special permit from the Board of Standards and Appeals, pursuant to Section 73-19 Zoning Resolution.
- 2) The portion of the proposed building within 30 feet of the rear lot lines coinciding with the rear lot lines of lots in the adjoining residence district is contrary to Section 43-302, Zoning Resolution.
- 3) The portion of the proposed building above the first floor within the required rear yard is contrary to Section 43-23, Zoning Resolution.”; and

WHEREAS, a public hearing was held on this application on May 21, 2002 after due notice by publication in *The City Record*, and laid over to June 11, 2002 and then to June 18, 2002 for decision; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chairman James Chin, Commissioner Mitchell Korbey, and Commissioner Peter Caliendo; and

WHEREAS, this is an application under Z.R. §§72-21 and 73-19 to permit the proposed construction of a five story school, Use Group 3, located in an M1-4 zoning district, which requires a special permit as per §73-19 and a variance to waive certain rear yard requirements, which is contrary to §§42-13, 43-232 and 43-302; and

WHEREAS, by letter dated May 21, 2002, Community Board #3 has approved this application;

and

WHEREAS, evidence in the record indicates that the subject site is located on the east side of Third Avenue, extending 350 feet from the southeast corner of East 172<sup>nd</sup> Street and Third Avenue, and has a total lot area of 44,525 square feet; and

WHEREAS, the site is located withing an M1-4 zoning district and the easterly lot line of the site coincides with the district boundaries of an adjoining R6 zoning district; and

WHEREAS, the applicant states that while the site has been vacant since 1983, it was used almost exclusively for residential uses for the preponderance of the last century with only intermittent commercial uses after some of the residences were demolished ; and

WHEREAS, according to the applicant, the school will encompass grades 5-12 with a total population of 800 students; and

WHEREAS, the applicant represents that the school will operate from 7:30 AM -5:15 PM, 200 days a year and will employ a total staff of 79 people; and

WHEREAS, the applicant states that the entire rear lot line of the site coincides with a zoning district boundary of an adjoining R6 zoning district while the entire side lot line of the site coincides with a C1-2 overlay district; and

WHEREAS, evidence in the record indicates that the site is burdened with rock outcrops along the rear lot line; and

WHEREAS, the applicant represents that a waiver of the rear yard requirements is necessary in order to meet the programmatic needs of the school, allowing open recreation areas of adequate size adjacent to Third Avenue, as the area adjacent to the rear lot line is unsuitable due to the rock outcrops and the adjacent high multiple dwellings with shallow yards; and

WHEREAS, the applicant further represents that the variance will allow the construction of prismatic buildings of sufficient area to accommodate the number of students anticipated; and

WHEREAS, the applicant states that the dual zoning district adjacencies, the rock outcrops along the rear lot line, and the adjacent multiple dwellings with shallow yards create a practical difficulty and unnecessary hardship in constructing a complying building that meets the programmatic needs of the school; and

WHEREAS, in addition, where a non-profit community facility's programmatic needs create practical difficulties and unnecessary hardship in complying strictly with the Zoning Resolution, a variance should be granted unless it unarguably contravenes public health, safety or welfare or creates a severe detriment to the character of the neighborhood; and

WHEREAS, the applicant need not address Z.R. §72-21(b) since the applicant is a not-for-profit

organization and the development on this site will be in furtherance of its not-for-profit purposes; and

WHEREAS, the applicant represents that there currently exist other schools in the neighborhood, including one fronting on Third Avenue, one block north of the Premises; and

WHEREAS, evidence in the record indicates that the block on which the proposed school will be located is fully developed except for the subject site; and

WHEREAS, the applicant represents that the gym/auditorium has been designed and located to enable the community to easily access it during hours when the school is in operation and that it is anticipated that the space will be utilized as a meeting space, performance area or workshop for summer programs; and

WHEREAS, the applicant states that approximately 90% of students will arrive and depart from the school via public transportation or on foot; and

WHEREAS, the school will provide 16 parking spaces on the site which, in conjunction with available curbside parking, the applicant contends is sufficient for the 60% of the staff who will drive or car pool; and

WHEREAS, the applicant further represents that approximately 30% of the staff will use public transportation or walk to school while the remaining 10% will use taxis or car services; and

WHEREAS, therefore, the Board finds that the proposed action will not alter the essential character of the surrounding neighborhood or impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, evidence in the record demonstrates that this proposal is the minimum necessary to meet the programmatic needs of the school; and

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

WHEREAS, the applicant has demonstrated difficulty in obtaining land for the development of a school within the neighborhood to be served by the proposed school, and with an adequate size within districts where the school is permitted as-of-right, sufficient to meet the programmatic needs of the school; and

WHEREAS, therefore, Board finds that the requirements of §73-19 (a) are met; and

WHEREAS, the evidence in the record indicates that the proposed school is located within 400 feet of an R6 zoning district, where the school is permitted as-of-right, thus the requirements of §73-19 (b) are met; and

WHEREAS, the Board finds that adequate separation from noise, traffic and other adverse

effects of the surrounding non-residential district is achieved through the use of sound attenuating exterior wall and window construction, as well as substantial open areas along both street frontages, thus satisfying the requirements of §73-19 (c); and

WHEREAS, the applicant represents that an area has been designated for students to be dropped off and picked up by parents; and

WHEREAS, by letter dated June 5, 2002, the New York City Department of Transportation ("DOT"), has conducted a child and traffic safety review of the proposed school and has no objection the subject school at the proposed location provided the following conditions are met:

- 1) There shall be no school buses involved in dropping/picking up students at the school.
- 2) Parents' drop-off/pick-up area shall be in front of the school on Third Avenue.
- 3) A school crossing guard shall be stationed at the intersection of Third Avenue and East 172<sup>nd</sup> Street; and

WHEREAS, the DOT shall prepare safe routes for the school map and provide pavement markings and signs for the four intersections around the school when the school is built; and

WHEREAS, based on DOT's review, the Board finds that the movement of traffic through the streets on which the school will be located can be controlled so as to protect children going to and from the school, and thus the requirements of §73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §73-19; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has carefully considered all relevant areas of environmental concern including potential parking and traffic impacts; and

WHEREAS, the Board finds that the hazards or disadvantages to the community at large are outweighed by the advantages to be derived from the granting of this special permit and that the application minimizes any adverse effects on privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under §73-03; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has carefully considered all relevant areas of environmental concern; and

WHEREAS, the Board has determined that the proposed action, as modified, will not result in any significant environmental effects; and

WHEREAS, the evidence demonstrates no foreseeable significant environmental impacts that

would require the preparation of an Environmental Impact Statement; and

*Therefore, it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration under 6 N.Y.C.R.R. Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§72-21 and 73-19 to permit the proposed construction of a five story school, Use Group 3, located in an M1-4 zoning district, which requires a special permit as per §73-19 and a variance to waive certain rear yard requirements, which is contrary to §§42-13, 43-232 and 43-302; *on condition* that all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received February 27, 2002" - (11) sheets; and *on further condition*;

THAT fire protection measures shall be provided and maintained in accordance with the BSA-approved plans;

THAT the number of students shall not exceed 800;

THAT there shall be no school buses involved in dropping/picking up students at the school;

THAT a parents' drop-off/pick-up area shall be maintained in front of the school on Third Avenue.

THAT a school crossing guard shall be stationed at the intersection of Third Avenue and East 172<sup>nd</sup> Street;

THAT substantial construction shall be completed in accordance with Z.R. §72-23;

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

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

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

Adopted by the Board of Standards and Appeals, June 18, 2002.