

225-15-BZ

CEQR #16-BSA-A033M

APPLICANT – Friedman & Gotbaum LLP, for The Allen-Stevenson School, owner.

SUBJECT – Application September 25, 2015 – Variance (§72-21), with respect to height and setback regulations, to permit the enlargement of The Allen-Stevenson School, a nonprofit private kindergarten through Grade 9 school for boys. C1-8X, R8-B/LH-1A zoning district.

PREMISES AFFECTED – 126-134 East 78th Street (a/k/a 121-123 East 77th Street), Block 1412, Lot 58, 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, Commissioner Montanez and Commissioner Chanda.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 28, 2016, acting on DOB Application No. 121191842 reads in pertinent part:

1. ZR 23-662(a): Proposed enlargement within the R8B (LH-1A) portion of the zoning lot contrary to height and setback as per ZR Sec. 23-662(a);
2. ZR 24-591: Proposed enlargement within the R8B (LH-1A) portion of the zoning lot contrary to height limitations as per ZR Sec. 24-591; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site partially within an R8B (LH-1A) zoning district and partially within a C1-8X zoning district and in the Upper East Side Historic District, the enlargement of an existing school facility that does not comply with the height and set back regulations of ZR §§ 23-662(a) and 24-591; and

WHEREAS, this application is filed on behalf of the Allen-Stevenson School (the “School”), a nonprofit private school for boys in Kindergarten through 9th grade; and

WHEREAS, a public hearing was held on this application on August 2, 2016, after due notice by publication in *The City Record*, and then to decision on August 16, 2016; and

WHEREAS, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is a partial through-block lot with frontages on East 78th Street and East 77th Street located between Lexington Avenue and

Park Avenue, partially within an R8B (LH-1A) zoning district and partially within a C1-8X zoning district, in the Upper East Side Historic District, in Manhattan; and

WHEREAS, the site has approximately 89 feet of frontage along East 78th Street, 50 feet of frontage along East 77th Street, 14,053 sq. ft. of lot area and is occupied by four buildings: a five-story building fronting East 78th Street (130-134 East 78th Street, the “Main Building”), a six-story building fronting East 77th Street (the “Annex,” which is fully connected to the Main Building), a five-story townhouse (128 East 78th Street, the “East Townhouse”) and a four-story townhouse (126 East 78th Street, the “West Townhouse”); and

WHEREAS, the Main Building and Annex are fully within a C1-8X zoning District, the East Townhouse is partially within a C1-8X zoning district and partially within an R8B (LH-1A) zoning district and the West Townhouse is wholly located within an R8B (LH-1A) zoning district; and

WHEREAS, the Main Building, East Townhouse and West Townhouse (collectively, the “Townhouses”) are all fully within the Upper East Side Historic District; and

WHEREAS, the applicant proposes to expand all four of the buildings on the site in order to fully integrate the Townhouses with the Main Building, increase the height of the Townhouses and permit all of the buildings fronting on East 78th Street to share the same alignment, floor elevations and floor-to-floor heights; and

WHEREAS, specifically, the applicant proposes to (1) add additional floors to the Main Building and Annex, increasing the height of the Main Building from 80’-9” to 112’-10” and increasing the height of the Annex from 77’-1” to 114’-10” and (2) increase the height of both the East Townhouse and the West Townhouse from 63’-8” and 54’-4”, respectively, to a level height of 66 feet measured to the top of their roofs and 84’-7” measured to the top of a greenhouse that is proposed to sit atop their roofs; and

WHEREAS, these modifications will result in an increase of 15,049 sq. ft. of floor area in the portion of the site located in a C1-8X zoning district and an increase of 929 sq. ft. of floor area in the portion of the site located in an R8B (LH-1A) zoning district (a total of a 15,978 sq. ft. increase in floor area), which the applicant submits is permitted on the site as-of-right; and

WHEREAS, the applicant represents that the proposed modifications in height to the Main Building and Annex are also as-of-right and that the subject application is with regards to proposed modifications to the Townhouses only; and

WHEREAS, the Townhouses, with base heights of 43’-9” and setbacks of 5’-7” above base height, are currently noncompliant with ZR § 23-662, which requires a minimum base height of 55 feet and setbacks

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of 15 feet; and

WHEREAS, in addition, at a total height of 63'-8", the East Townhouse currently exceeds the maximum height of 60 feet permitted in an R8B (LH-1A) zoning district pursuant to ZR § 24-5911; and

WHEREAS, accordingly, the applicant seeks a waiver of ZR § 23-662 in order to maintain the Townhouses' base heights of 43'-9" and their 5'-7" setbacks above base height contrary to the requirements of that section as well as a waiver of ZR § 24-591 to permit an increase to the Townhouses' building heights to 84'-7", as measured to the top of the greenhouse², contrary to the maximum height permitted therein; and

WHEREAS, the School states that the variance sought is necessary to meet its programmatic needs at the site, on which it has operated since 1924; specifically, it allows the School to provide a regulation-sized gymnasium, science and engineering labs, a visual arts center and greenhouse for its current enrollment of approximately 400 students; and

WHEREAS, the applicant represents that the requested waivers of ZR §§ 23-662 and 24-591 are the only means available for the School to provide these much needed facilities onsite, reconfigure and consolidate all of the School's functions into a single unified campus, create the appropriate academic adjacencies and provide improved systems of egress and ADA access; and

WHEREAS, specifically, the requested waivers permit (1) the alignment of the floors of the Townhouses with the Main Building to create program adjacencies, including one between the new visual arts centers proposed on the fifth floor of the Townhouses with the existing art studio and woodshop on the fifth floor of the Main Building; (2) a floor-to-floor height of the fifth floor in the Townhouses appropriate for the visual arts center proposed therein; (3) the alignment of the rooftops of the East Townhouse and the West Townhouse to accommodate the 380 sq. ft. footprint of the proposed greenhouse; (4) consolidation of egress to street level from the new gymnasium, proposed as an additional floor of the Main Building, with egress from the roof of the Townhouses; and (5) ADA access throughout the entire campus, including to the rooftop greenhouse; and

WHEREAS, the applicant represents that, without the requested waivers, the School will suffer significant and unnecessary practical hardships in meeting its

1 The West Townhouse, at a height of 54'-4", is currently compliant with ZR § 24-591.

2 Though the applicant may seek certification of the proposed rooftop greenhouse as a permitted obstruction pursuant to ZR § 75-01, the height of the greenhouse has, alternatively, been included in the applicant's variance requests.

mission, to wit, the School would have to forego direct connectivity between the new gymnasium level of the Main Building and the rooftop of the Townhouses, ADA access to the proposed greenhouse would be unavailable and the School would have to either completely sacrifice the proposed expansions to its visual arts or science and engineering labs space or significantly diminish both proposed program expansions in order to accommodate them in the sub-optimal, existing Townhouses; and

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

WHEREAS, specifically, as held in *Cornell University 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 on the above, the Board finds that the programmatic needs of the school and the constraints of the existing buildings create unnecessary hardship and practical difficulty in developing the premises in compliance with the applicable zoning regulations; and

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

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

WHEREAS, the applicant notes that, without reference to the proposed greenhouse, the height of the East Townhouse to the roof will be increased by only 28 inches and the final height of the West Townhouse to the roof will exceed the maximum height allowed in the zoning district by only six feet; and

WHEREAS, the applicant also represents that the greenhouse, which adds 18'-7" to the total heights of each of the Townhouses, is sufficiently small and set back from the street so as to not be visible from the public way; and

WHEREAS, the applicant submits that because the subject proposal maintains the existing facades of the Townhouses, it does not disturb the residential typology of the street or alter the essential character of adjacent buildings; and

WHEREAS, with regards to a proposed rooftop play area atop the Main Building, the applicant states that the Main Building has had a rooftop play area in

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one form or another since 1965 and that the new proposed rooftop play area will be 30 feet higher than the current rooftop play area and, thus, lead to a reduction in the current noise levels experienced at the street level and at surrounding low-rise buildings; and

WHEREAS, with regards to concerns regarding light emanating from the site at night, the applicant proposes to utilize programmable shades on the gymnasium windows, greenhouse and skylights in the visual arts center located in the Townhouses; and

WHEREAS, finally, the School represents that the proposal is not related to an increase in the School's enrollment and, thus, there will be no increase in activity on the site as a result; and

WHEREAS, the New York City Landmarks Preservation Commission ("LPC") issued Certificate of Appropriateness #18-3459, expiring January 13, 2021, in connection with the proposed work at the subject site on the Main Building, the Townhouses; and

WHEREAS, the Board agrees with the School that the proposal will not alter the essential character of the surrounding neighborhood, not impair the use or development of adjacent properties, and not be detrimental to the public welfare; and

WHEREAS, the School 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; and

WHEREAS, the School represents that, consistent with ZR § 72-21(e), the proposal represents the minimum variance needed to accommodate its programmatic needs; and

WHEREAS, accordingly, the Board finds that this proposal 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 I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 16-BSA-A033M, dated June 8, 2016; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood

Character; and Construction; and

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

WHEREAS, DEP reviewed and accepted the April 2016 Remedial Action Plan and Construction Health and Safety Plan; and

WHEREAS, by letter dated May 13, 2016, DEP requested that a Remedial Closure Report, certified by a Professional Engineer (P.E.) and indicating that all remedial requirements have been properly implemented, be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, DEP also reviewed and accepted the Noise and Air Quality Chapters in the EAS and backup materials and determined that the proposed project would not result in any potential for significant adverse impacts with regards to Noise or Air Quality; 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 Type I Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, 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 (LH-1A) zoning district and partially within a C1-8X zoning district and in the Upper East Side Historic District, the enlargement of an existing school facility that does not comply with the height and set back regulations of ZR §§ 23-662(a) and 24-591; *on condition* that any and all work shall substantially conform to the drawings as they apply to the objections above noted, filed with this application marked "Received August 5, 2016"-Twenty-Three (23) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the East Townhouse (128 East 78th Street): a maximum base height of 43'-9", a minimum base setback of 5'-7" and a maximum building height of 84'-7" as measured to the top of the greenhouse, as shown on the BSA-approved plans;

THAT the following shall be the bulk parameters of the West Townhouse (126 East 78th Street): a maximum base height of 43'-9", a minimum base setback of 5'-7" and a maximum building height of 84'-7" as measured to the top of the greenhouse, as shown on the BSA-approved plans;

THAT programmable shades shall be installed on

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all greenhouse windows, proposed skylights and windows to the proposed gym atop the Main Building;

THAT the programmable shades shall be in the down position 2 hours after nightfall and lifted no earlier than 7:00 a.m., daily;

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

THAT substantial construction shall be completed pursuant to ZR § 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);

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, August 16, 2016.

A true copy of resolution adopted by the Board of Standards and Appeals, August 16, 2016.

Printed in Bulletin Nos. 33-34, Vol. 101.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

