

**258-01-BZ**

**CEQR #02-BSA-022M**

APPLICANT - Sybil H. Pollet for Congregation Rodeph Sholom, owner.

SUBJECT - Application August 22, 2001 - under Z.R. §72-21 to permit the proposed expansion of the third and fourth floors and the addition of a floor within the envelope of the 23' high gymnasium, to be used for additional classroom space for an existing community facility (school), which creates non-compliance with respect to permitted obstructions in the rear yard and required rear yard equivalents, and is contrary to Z.R. §§24-33(b), 24-36, 24-382, and 54-31.

PREMISES AFFECTED - 168/70 West 79<sup>th</sup> Street, a/k/a 165/67 West 78<sup>th</sup> Street, bounded by Amsterdam and Columbus Avenues, Block 1150, Lots 59 and 5, Borough of Manhattan.

**COMMUNITY BOARD #7M**

APPEARANCES -

For Applicant: Sybil H. Pollet.

For Administration: Battalion Chief Phil Parr and John Scrofani, Fire Department.

**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 August 21, 2001 acting on Applc. No. 102975951 reads:

1. Proposed enlargement of first floor is contrary to ZR 24-33 (b), (permitted obstructions in rear yards are limited to one-story in height); and
2. Proposed enlargement of third and fourth floors is contrary to ZR 24-36 and 24-382 rear yard requirements.
3. Proposed enlargement increases the degree of non-compliance pursuant to ZR 54-31.

WHEREAS, a public hearing was held on this application on December 18, 2001, after due notice by publication in *The City Record* and laid over to January 29, 2002 and then to February 26, 2002 for decision; and

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

WHEREAS, this is an application under Z.R. §72-21, to permit the proposed expansion of the third and fourth floors and the addition of a floor within the envelope of the 23' high gymnasium, to be used for

additional classroom space for an existing community facility (school), which creates non-compliance with respect to permitted obstructions in the rear yard and required rear yard equivalents, and is contrary to Z.R. §§24-33(b), 24-36, 24-382, and 54-31; and

WHEREAS, the subject site is located between 78<sup>th</sup> and 79<sup>th</sup> Streets, bounded by Amsterdam and Columbus Avenues, with a total lot area of 8,785 square feet; and

WHEREAS, the applicant represents that the four brownstones which comprise the school were built prior to 1900 as a parochial school on 79<sup>th</sup> Street with residences for the nuns/teachers in the 78<sup>th</sup> Street buildings, and the structure that fills the rear yard and now houses the school's gym was built in about 1902; and

WHEREAS, in 1989, the Department of Buildings, in a reconsideration, allowed predecessor owner, a school, to install a twenty-three foot high one story gymnasium in place of an existing corridor in the rear yard to connect the 79<sup>th</sup> and 78<sup>th</sup> street buildings; and

WHEREAS, the evidence in the record indicates that the rear yard, as built, measures only 45 feet 8.5 inches and is not in compliance with the required rear yard equivalent of the zoning resolution; and

WHEREAS, the applicant represents that the existing floor area of the site is 38,009 square feet, and the proposed floor area would be 41,589 square feet which is still in compliance with what is permitted to be developed on the site; and

WHEREAS, the existing building is legally non-complying, having been erected prior to December 15, 1961, when the current zoning became effective; and

WHEREAS, the applicant states that there are unique physical conditions which create practical difficulties and unnecessary hardships in constructing a building in compliance with the underlying district regulations; and

WHEREAS, the applicant represents that the practical difficulties and unnecessary hardship arise from the impact of the applicable zoning restrictions on the subject lot, which was developed with the pre-existing building which became non-complying when the current zoning went into effect in December 1961; and

WHEREAS, the applicant contends that the zoning lot has a narrow and irregular through-lot configuration with 50 feet of frontage 79<sup>th</sup> Street and only 36 feet of frontage on 78<sup>th</sup> Street and; and

WHEREAS, evidence in the record indicates that the subject site is located in three separate zoning districts, R-10A, R8B, and C2-7A, which complicates utilization for school purposes; and

WHEREAS, the applicant represents that the current buildings are now inadequate for the efficient

operation of the institution and limit how the school might be altered to meet its programmatic needs in a

WHEREAS, this is a proposal to construct four small class rooms (totaling 1,954 square feet) as a two-floor addition to an existing 100-year-old two-story extension on the 79<sup>th</sup> Street side of the school, which would be built in a non-conforming rear yard; and

WHEREAS, the proposal also seeks to permit the construction of an in-fill floor, or mezzanine, within the envelope of the existing school gym which would house classrooms and a "boulevard" connecting the 78<sup>th</sup> and 79<sup>th</sup> Street buildings; and

WHEREAS, the applicant contends that under the current zoning regulations, the school needs a variance to permit it to create the additional classrooms and extracurricular space it requires, because all of the development options lie in the R10A portion of the lot on West 79<sup>th</sup> Street; and

WHEREAS, the applicant further contends that full as-of-right development on West 79<sup>th</sup> Street would negatively affect the school's programs, would result in an inappropriate distribution on the school's property, negatively impact the Upper West Side / Central Park West Historic District in which the school is situated and would be prohibitively expensive; and

WHEREAS, the applicant claims that the R10A district regulations on the 79<sup>th</sup> Street portion of the school would permit additional floors, but the vertical rather than horizontal expansion would result in disruptive, expensive and undesirable changes to the existing elevator; and

WHEREAS, the applicant represents that enlargement on 79<sup>th</sup> Street would result in an uneven distribution of children within the school building, undesirable congestion, and dangerous conditions should it be necessary to evacuate children; and

WHEREAS, therefore, the applicant contends that spreading students horizontally in a building would be more desirable; and

WHEREAS, the applicant represents that were it not for the rear yard requirements, which cannot be met without demolition of part of the school, enlargement of the third and forth floors would not otherwise violate any height or bulk regulations; and

WHEREAS, the applicant states that since only in a small portion of the zoning lot, 2' by 102'2", lay in a C2-7A district, in which a 135' high building is permitted, additional floors in the 78<sup>th</sup> Street buildings in an R8B district would not be possible because the maximum base height has already been exceeded, and

WHEREAS, evidence in the record indicates that the school facility is located in the Upper West Side/Central Park West Historic District; and

WHEREAS, therefore, the applicant represents that even if zoning regulations permitted construction

manner least disruptive to students, faculty, least costly and most practical; and on the street side, above the existing facility on either 78<sup>th</sup> or 79<sup>th</sup> Streets, rather than in the rear, such construction would negatively impact the protected exterior of the building; and

WHEREAS, the applicant states that these variances would allow the Congregation to relocate functions to create more space within the buildings, useable for educational programs, administrative functions and generally, to upgrade existing facilities; and

WHEREAS, the applicant further contends that there is no possibility of providing a similar space anywhere else within the existing building without affecting existing rooms or required facilities, and the proposed structure is the minimum addition required in order to fulfill the programmatic needs of the existing facility; and

WHEREAS, the applicant states that the proposed non-complying design is necessary in order to meet the programmatic needs of the school and congregation, as the subject premises does provide an adequate area to accommodate its students and community functions; and

WHEREAS, the applicant represents that these circumstances create a unique burden on the school, creating the need for an non-complying design that is better suited to its programmatic needs; and

WHEREAS, the applicant further represents that based upon the existing structures at the site, the history of the development of the zoning lot, the irregular and narrow width of the lot, its split zoning designations and historic district designation, there are unique physical conditions that create practical difficulties in building in strict conformity with the Zoning Resolution; and

WHEREAS, the Board finds that the applicant need not address Z.R. §72-21(b) since the applicant is a not-for-profit organization and the development will be in furtherance of its not-for-profit status; and

WHEREAS, Community Board 7 of Manhattan approved the portion of the application for a variance to allow the addition of approximately 1200 square feet of floor area by splitting the height of the existing gymnasium, thereby creating an additional floor and improving circulation between the applicant's properties on West 78<sup>th</sup> Street and West 79<sup>th</sup> Street; and

WHEREAS, the Landmarks Preservation Commission issued a Certificate of Appropriateness for the proposed plans; and

WHEREAS, the applicant represents that the proposed additions will minimal impact on any adjacent property, and will not alter the essential character of the neighborhood; and

WHEREAS, the Board finds that the proposed application will not alter the essential

character of the surrounding neighborhood, impair the use or development of adjacent properties nor be detrimental to the public welfare; and

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

WHEREAS, the Board finds that the variance is the minimum variance necessary to afford relief; 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 Board has conducted an environmental review of the proposed action and has carefully considered all relevant areas of environmental concern; and

WHEREAS, the evidence demonstrates no foreseeable significant environmental impacts that would require the preparation of an Environmental Impact Statement.

*Therefore, it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, under 6 NYCRR 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 *grants* a variation in the application of the Zoning Resolution, limited to the objections cited, to permit the proposed expansion of the third and fourth floors and the addition of a floor within the envelope of the 23' high gymnasium, to be used for additional classroom space for an existing community facility (school), which creates non-compliance with respect to permitted obstructions in the rear yard and required rear yard equivalents, and is contrary to Z.R. §§24-33(b), 24-36, 24-382, and 54-31, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 22, 2001"-(4) sheets and "November 1, 2001"-(11) sheets; and *on further condition*;

THAT the development comply with all Fire Department conditions;

THAT the development, as approved, is subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and

THAT a new certificate of occupancy be obtained within two years from the date of this resolution.

Adopted by the Board of Standards and Appeals, February 26, 2002.

