

58-11-BZ

CEQR #11-BSA-091M

APPLICANT – Friedman & Gotbaum, LLP, for The Trustees of The Spence School, Incorporated, owner. SUBJECT – Application May 4, 2011 – Variance (§72-21) to permit the expansion of a (UG 3) community facility (*The Spence School*) contrary to lot coverage (§24-11) and rear yard equivalent (§24-382). R8B zoning district.

PREMISES AFFECTED – 20-22 East 91st Street, South side of East 91st Street, 62.17 ft. westerly from the corner formed by the intersection of the southerly side of 91st Street & the westerly side of Madison Avenue. Block 1502, Lot 59 & 12, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Shelly Friedman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Manhattan Borough Commissioner, dated April 28, 2011, acting on Department of Buildings Application Nos. 103426892 and 120504418, read in pertinent part:

1. Proposed extension of building portion exceeding 23 feet above curb level in R8B district increases the degree of non-compliance with respect to lot coverage, contrary to ZR 24-11 and ZR 54-31.
2. Proposed extension of building portion exceeding 23 feet above curb level in R8B district increases degree of rear yard equivalent non-compliance for through lot portion, contrary to ZR 24-382 and ZR 54-31.
3. Proposed construction is contrary to plans approved by BSA Cal. No. 390-86-BZ; 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 R10 zoning district, within the Carnegie Hill Historic District, the proposed construction of a connection (the “Connector”) between the rear sides of two buildings on a through lot, that does not comply with zoning parameters for lot coverage and rear yard equivalent, contrary to ZR §§ 24-11, 24-382, and 54-31; and

WHEREAS, the application is brought on behalf of the Spence School (“Spence”), a non-profit educational institution; and

WHEREAS, a public hearing was held on this application on September 13, 2011, after due notice by publication in the *City Record*, and then to decision

October 25, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

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

WHEREAS, Carnegie Hill Neighbors provided testimony in opposition to the proposal based on concerns about the height of the Connector and its potential impact on the residents of 21 East 90th Street and 15 East 90th Street; and

WHEREAS, certain neighbors testified in opposition to the application; the primary opponents were the owners of the townhouse to the west of the site at 15 East 90th Street (the “Westerly Neighbors”), the cooperative apartment building at 21 East 90th Street (the “Easterly Neighbors”), and an individual shareholder of the cooperative apartment building (“Ms. Dietrich”); and

WHEREAS, the adjacent neighbors were all represented by counsel and will be referred to collectively, the “Neighbors” or the “Opposition”; and

WHEREAS, the Westerly Neighbors’ primary concerns are that: (1) Spence has not established a programmatic need for a the proposed height and the included program space is thus not warranted; (2) the request does not constitute the minimum variance; and (3) the proposal will negatively impact 15 East 90th Street’s right to privacy and access to light and air; the Westerly Neighbors also requested that the Board re-open the hearing when they discovered that Spence had recently purchased a building at 412 East 90th Street, which they deemed to be material new evidence; and

WHEREAS, the Easterly Neighbors’ primary concerns are that: (1) Spence cannot rely on its programmatic needs as a hardship but must rather establish the uniqueness finding set forth at ZR § 72-21(a); (2) Spence can accomplish its goals of a two-story connection without the requested zoning variance by an alternative connection or by constructing elsewhere on its site; (3) the height of the portion of the Connector that does not include the second-story passageway is not required to reach the same height as the passageway; (4) the second-story passageway is not required if Spence uses its East 90th Street entrance; (5) the proposal will substantially impair use of adjacent properties; (6) the proposal does not represent the minimum variance; and (7) the historic preservation purpose is unaffected by the Neighbors’ alternatives; and

WHEREAS, Ms. Dietrich’s primary concerns are that: (1) Spence has not substantiated that there is a hardship related to unique physical conditions of the site; (2) Spence has not established a programmatic

58-11-BZ

CEQR #11-BSA-091M

need for the portion of the Connector that does not contain the second-story passageway; (3) Spence has not addressed the impact the proposal will pose to its neighbors; and (4) Spence has not established that the proposal reflects the minimum variance; and

WHEREAS, the subject site consists of two zoning lots - Lot 12 and Lot 59 - which Spence proposes to merge into a single zoning lot (the "Zoning Lot"); thus, the zoning analysis assumed the merger of the two zoning lots; and

WHEREAS, Lot 59 is located at 22 East 91st Street, on the south side of East 91st Street and Lot 12 is located at 17 East 90th Street, on the north side of East 90th Street, between Madison Avenue and Fifth Avenue; the two lots share a rear lot line for the width of Lot 12; and

WHEREAS, the East 91st Street building (the "Main Building") has been occupied by Spence since 1929 and is ten stories; Spence acquired the five-story East 90th Street building (the "New Building") in 2008 to support its programmatic needs; and

WHEREAS, the Main Building is partially within an R8B zoning district (western 70.3 percent) and partially within an R10 zoning district (eastern 29.7 percent) the New Building and the proposed Connector are located entirely within the R8B zoning district; and

WHEREAS, the site has a total lot area of 15,642 sq. ft. and is occupied by 79,742 sq. ft. of floor area with FAR of 4.38 and 7.29, in the R8B and R10 zoning districts, respectively; floor area of 98,408 sq. ft. and FAR of 5.1 and 10 are permitted across the site, by zoning district; and

WHEREAS, the Main Building was the subject of an April 7, 1987 variance which permitted waivers to lot coverage and rear yard regulations to permit the construction of a three-story and cellar wing on the eastern portion of the site (the "Osborne Wing"); the variance also permitted an increase in the extent of a pre-existing rear yard noncompliance by constructing the Osborne Wing with a 17-ft. rear yard, consistent with the Main Building's rear yard, pursuant to BSA Cal. No. 390-86-BZ; and

WHEREAS, the buildings have pre-existing non-complying bulk conditions including lot coverage, rear yard, height and setback, and building height, which are permitted due to the construction of the buildings prior to December 15, 1961 or by prior variance; and

WHEREAS, Spence proposes to construct the two-story Connector within the existing non-complying rear yard equivalent at the rear of the two buildings; and

WHEREAS, the Connector will have a footprint of 751 sq. ft. and a height of 29.75 feet; and

WHEREAS, the Connector will have two levels below grade and two levels above grade and provide space for academic use, physical education, mechanicals, and connections between the two

buildings; and

WHEREAS, the Connector will include a ground floor connection between the two buildings for the full 28 ft. width of the New Building; a 5.5 ft.-wide passageway connecting the buildings' second floors; and 1,031 sq. ft. of new zoning floor area (751 sq. ft. on the ground floor and 280 sq. ft. on the second floor passageway); and

WHEREAS, the proposal will result in lot coverage of 100 percent in the R8B zoning district and 90 percent in the R10 zoning district; and

WHEREAS, the proposal will increase the lot coverage in the R8B zoning district from 87.5 percent to 100 percent (70 percent is the maximum permitted) and maintain 90 percent in the R10 (where 70 percent is the maximum permitted); a lot coverage of 90 percent was permitted by the prior Board grant for the Main Building's Osborne Wing; and

WHEREAS, for a through lot, a rear yard equivalent with a minimum depth of 60 feet is required, the existing rear yard equivalent has a depth of 20 feet, and the proposal does not include any rear yard equivalent; and

WHEREAS, the Connector does not qualify as a complying permitted rear yard obstruction within the rear yard equivalent because its overall height is 6.75 feet more than the 23 ft. limit for such community facility permitted obstructions and because a portion of the proposed enlargement is two stories; and

WHEREAS, because of the aforementioned noncompliance, Spence seeks a variance; and

WHEREAS, the applicant represents that the waivers are sought to enable Spence to construct a facility that meets its programmatic needs; and

WHEREAS, Spence identifies the following primary programmatic needs: (1) a multi-level connector between the two buildings to allow the school to function as a whole; (2) a connection at the second floor to provide connection between the two buildings' academic centers; (3) a common platform for egress into and out of the Main Building; (4) an important commons space, befitting an educational institution and separate from the academic centers above; (5) a means to accommodate high volumes of trips between the two buildings; (6) a means to reduce travel time between the academic floors of the two buildings, which requires having no fewer than two floors directly connected between the two buildings and that at least one of those passageways occur between the academic floors of the Main Building (floors two through ten) and the closest academic floors of the New Building (floors two through five); and (7) a means to limit the travel/break time between classes to five minutes to support an efficient academic schedule; and

WHEREAS, in addition to the programmatic needs, the applicant also states that there are unique physical

58-11-BZ

CEQR #11-BSA-091M

conditions inherent in the site, which contribute to a hardship in developing it in full compliance with zoning regulations; those conditions include: the narrow width of the New Building in relation to the Main Building; the historic nature of the buildings and the requirements of the Landmarks Preservation Commission (“LPC”); both buildings’ pre-existing zoning non-compliance; the varying floor elevations of the two buildings, which make it difficult to provide connectivity anywhere other than in the connecting rear yards (and by means less obtrusive than a sky bridge at upper floors); the zoning non-compliance that exists even if the second-floor passageway could be included within a height of 23 feet; and the height of the historically important windows on the New Building’s rear wall at 28.25 feet; and

WHEREAS, the applicant states that if a second-story connection were not required, the Connector could be limited to a maximum height of 23 feet and one story and thereby qualify as a permitted rear yard obstruction, thus eliminating the rear yard equivalent and lot coverage objections; and

WHEREAS, the applicant notes that both lots exceed the maximum permitted lot coverage and, even without any new construction, the Zoning Lot will not comply with lot coverage regulations; and

WHEREAS, the applicant states that, in essence, the application is to allow for an additional 6.75 feet of height for the Connector and to allow for the internal second-floor passageway; and

WHEREAS, the applicant states that the alternative, which would not trigger any new non-compliance would be a one-story connection in the rear yard that would not exceed 23 feet in height (and also the currently open area on the side yard of the East 90th Street site that is not within its rear yard could also be built up to the same limitations), but that such an alternative would lack a critical second floor connection and would fail to address Spence’s needs to provide an effective means for students and faculty to move between the upper academic floors of the two buildings; and

WHEREAS, the applicant asserts that a single ground floor connection cannot sufficiently ease the required travel times between classes and that an underground passageway would lengthen the route between buildings; and

WHEREAS, the applicant states that as a non-profit educational institution, the Board must grant deference to Spence and allow it to rely on its programmatic needs to form the basis for its waiver requests; the applicant cites to the decisions of New York State courts in support of its claim that the school warrants deference; and

WHEREAS, specifically, the applicant cites to Pine Knolls Alliance Church v. Zoning Board of Appeals of the Town of Moreau, 6 N.Y.3rd 407 (2005); the Pine Knolls court stated as follows:

In assessing a special permit application, zoning officials are to review the effect of the proposed expansion on the public’s health, safety, welfare or morals, concerns grounded in the exercise of police power, “with primary consideration given to the over-all impact on the public welfare” (Trustees of Union College, 91 N.Y.2d at 166). Applications may not be denied based on considerations irrelevant to these concerns.

We made clear in Cornell University that it is not the role of zoning officials to second-guess expansion needs of religious and educational institutions; and

WHEREAS, in analyzing the applicant’s waiver requests, the Board notes at the outset that Spence, as a nonprofit New York State chartered educational institution, may rely on its programmatic needs, which further its mission, as a basis for the requested waivers; and

WHEREAS, as noted by the applicant, under well-established precedents of the courts and this Board, applications for variances that are needed in order to meet the programmatic needs of non-profit institutions, particularly educational and religious institutions, are entitled to significant deference (see, e.g., Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986)); and

WHEREAS, the Board observes that such 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 Spence has adopted a strategic plan to renovate and reuse the two buildings in more effective ways and that the Connector is the necessary component to join the two buildings; and

WHEREAS, the applicant states that based on an extensive review of its facilities and operations, Spence determined that the most efficient and effective use of its educational programmatic space requires the Connector; and

WHEREAS, the applicant concludes that the lot coverage and rear yard relief is required to meet Spence’s programmatic needs and the design imperatives of the historic buildings; and

WHEREAS, the Board finds that the proposed Connector 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 of a Connector that will meet Spence’s articulated needs; and

WHEREAS, in sum, the Board concludes that the

58-11-BZ

CEQR #11-BSA-091M

applicant has fully explained and documented the need for the waivers to accommodate Spence's programmatic needs; and

WHEREAS, the Board also acknowledges the hardship associated with the physical constraints of the buildings, which are both nearly a century old, and developing the site with historic pre-existing bulk non-compliance; and the interest in preserving and respecting the buildings' historic fabric; and

WHEREAS, the Opposition argues that the applicant has failed to make the finding set forth at ZR § 72-21(a) because: (1) the site does not suffer a unique hardship and programmatic needs cannot be substituted as a basis for the requested waivers; and (2) there are negative impacts to the public welfare which are not outweighed by the proposal's benefits; and

WHEREAS, as to the absence of uniqueness, the Opposition contends that the applicant cannot satisfy the finding set forth at ZR § 72-21(a) because the Zoning Lot is not subject to a unique physical condition which creates a hardship; and

WHEREAS, the Opposition also argues that Spence is not entitled to the deference accorded educational institutions seeking variances to zoning requirements under Cornell because the negative impacts of the proposal outweigh the public benefits and that the deference is only extended to proposals for new buildings and not proposals to enlarge existing buildings; and

WHEREAS, the Board finds that the applicant's submissions, which include statements, plans, and other evidence, provide the required specificity concerning its programmatic space requirements, establish that the requested variances are necessary to satisfy its programmatic needs consistent with Cornell, and that the Opposition has failed to establish that any potential negative impacts either meet the threshold set forth by the courts or outweigh the benefits; and

WHEREAS, in Cornell, the New York Court of Appeals adopted the presumptive benefit standard that had formerly been applied to proposals for religious institutions, finding that municipalities have an affirmative duty to accommodate the expansion needs of educational institutions; and

WHEREAS, the Board finds that the Opposition misapplies the guiding case law and that it cites to other case law that the Board easily distinguishes; and

WHEREAS, as to the guiding case law on educational deference, the Board disagrees with the Opposition and finds that the courts place the burden on opponents of a project to rebut the presumption that an educational institution's proposal is beneficial unless it is established to have an adverse effect upon the health, safety, or welfare of the community; the Board notes that courts specifically state that general concerns about traffic and disruption of the residential character of a

neighborhood are insufficient basis for denying a request (see Westchester Reform Temple v. Brown, 22 N.Y.2d 488 (1968), Cornell, and Pine Knolls); and

WHEREAS, the Board also does not find any basis for the Opposition's assertion that Spence must adopt an alternative in light of the fact that the Board finds Spence's programmatic need for the requested waivers to be credible; and

WHEREAS, the Board notes that where a nonprofit organization has established the need to place its program in a particular location, it is not appropriate for a zoning board to second-guess that decision (see Guggenheim Neighbors v. Bd. of Estimate, June 10, 1988, N.Y. Sup. Ct., Index No. 29290/87), see also Jewish Recons. Syn. of No. Shore v. Roslyn Harbor, 38 N.Y.2d 283 (1975)); and

WHEREAS, furthermore, a zoning board may not wholly reject a request by an educational institution, but must instead seek to accommodate the planned use; (see Albany Prep. Charter Sch. v. City of Albany, 31 A.D.3rd 870 (3rd Dep't 2006); Trustees of Union Col. v. Schenectady City Cnl., 91 N.Y.2d 161 (1997)); and

WHEREAS, the Board disagrees with the Opposition and does not find that the case law limits deference for non-profit educational institutions' programmatic needs to only new institutions and not existing ones seeking to enlarge existing buildings to accommodate their programmatic needs; and

WHEREAS, the Board finds that the Opposition's position is contrary to the decisions of New York State courts and contrary to the Board's many variances for educational institutions which have either been upheld by New York State courts or remain unchallenged; and

WHEREAS, the Board distinguishes other cases that the Opposition cites including Nassau Children's House v. Bd. of Zoning Appeals of Mineola, 77 A.D.2d 898 (1980), which involved a proposal for a children's home that did not meet the findings of a special permit, rather than a zoning variance and East Hampton Lib. v. Zoning Bd. of Appeals of East Hampton, 2011 N.Y. Slip Op 50921(U), May 17, 2011 (Sup. Ct. Suffolk Cty.), which involved the determination that Cornell and the presumption of public benefit required for deference does extend to libraries; the Board agrees with the court in both cases that special permits and variances require different levels of analysis since special permits are specifically contemplated within the zoning framework and variances are not; and

WHEREAS, in sum, the Board has reviewed the Opposition's submissions, as well as the applicant's responses, and finds that the Opposition has failed to rebut the applicant's substantiated programmatic need for the proposed Connector or to offer evidence, much less establish, that the proposed Connector will negatively impact the health, safety, or welfare of the surrounding community in the sense the courts

58-11-BZ
CEQR #11-BSA-091M

envison; and

WHEREAS, accordingly, the Board finds that the applicant has sufficiently established that Spence's programmatic needs create an unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since Spence is a nonprofit institution and each of the required waivers are associated with its educational use and are sought to further its non-profit 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 waivers of lot coverage and rear yard equivalent will not alter the essential neighborhood character, impair the use or development of adjacent property, nor be detrimental to the public welfare; and

WHEREAS, the applicant represents that the proposed Connector is compatible with nearby uses in that the area is characterized by a close urban context in which there are no standard-sized open spaces; specifically, the applicant notes that none of the midblock tax lots provide complying rear yards and that all are paved below grade, serving as terraces for basement floors or as lightwells; and

WHEREAS, the applicant notes that the entire shared property line to the east is occupied by a non-complying portion of the New Building which is windowless and has a height of 18.25 feet, which will be demolished and replaced with the east elevation of the Connector, which will have an initial height of 25 feet (6.75 feet in excess of the existing brick wall) and will provide some degree of transparency; and

WHEREAS, the applicant notes that the zoning contemplates and allows an encroachment at the rear yard to a height of 23 feet for schools and, thus the Opposition should anticipate such a permitted obstruction to a height of 6.75 feet less than the 29.75 ft. height of the proposed Connector; and

WHEREAS, the applicant represents that the proposed Connector is compatible with the scale and bulk of the surrounding area; and

WHEREAS, because the site is within the Carnegie Hill Historic District and the New Building is an individual landmark, the applicant obtained approval for the Connector from the Landmarks Preservation Commission ("LPC") by Certificates of Appropriateness issued January 5, 2011; and

WHEREAS, in its approval, LPC noted that it found that there is no central green space within the interior of the block and, therefore the Connector will not result in the loss of any green space, will enable the elimination of the visible stair and elevator bulkhead at the roof, will not result in the destruction of any significant architectural features, nor will it overwhelm any significant

architectural features of the building or detract from the streetscape of the historic district; and

WHEREAS, as to the use, the applicant notes that the school has occupied the Main Building for 82 years and that the Main Building will continue to provide the only entrance to the school; in response to neighbors' concerns, Spence has agreed to restrict use of the New Building's entrance to emergency egress, therefore the traffic flow will not be affected; and

WHEREAS, the applicant states that the proposed facility will result in no significant impacts to traffic or parking in the area because the current well-established number of students and faculty using the buildings will be maintained; and

WHEREAS, the applicant notes that the surrounding area includes many institutions including the Jewish Museum, the Cooper-Hewitt Museum of Design, the Covent of the Sacred Heart, the Day School, St. David's School, Trevor Day School, Dalton School, Nightingale-Bamford School, and the Church of the Heavenly Rest and its Parish House; and

WHEREAS, further, the applicant notes that the Cooper-Hewitt Museum, including its grounds and accessory buildings on East 90th Street, which shares Spence's western and a portion of its southern lot lines, occupies 54.87 percent of the block; and

WHEREAS, the Opposition contends that the Connector is incompatible with the adjacent uses and that there are alternatives which do not reach a height above 23 feet; and

WHEREAS, in response to the Board's and the Opposition's questions about the viability of alternatives, the applicant explained that the alternative, which reduced the height of the portion of the Connector not occupied by the second-story passageway would require the bifurcation of the two historic windows and that it would not be possible to construct a ceiling between the two historic windows on the New Building as there would not be sufficient space to construct the ceiling in the space between the two windows; and

WHEREAS, the Board notes that the Opposition proposed a series of conditions to be included if the Board chose to grant the variance and that Spence agrees to the vast majority of the conditions; and

WHEREAS, the Board notes that subsequent to discussions with the Opposition, Spence and the Opposition have both acknowledged agreements regarding the Connector's conditions including those related to the limited use of the East 90th Street entrance, interior and exterior sound and lighting limitations, the preferred glass material, the translucency of the glass, the height of a masonry wall along the western property line, access to 15 East 90th Street during the construction of a portion of the Connector, and other site improvements not related to

58-11-BZ
CEQR #11-BSA-091M

the Connector; and

WHEREAS, the conditions include that the lower portion of the western wall will be masonry to a height of 20'-8" unless the Westerly Neighbors provide permission to access their property while the requested glass is installed in which case the masonry would only be to a height of 13'-9", with glass above; the approved plans note that the wall will be masonry unless the Westerly Neighbors grant permission to access their site as required to install the greater extent of glass; and

WHEREAS, the Board has noted certain conditions in its decision, other conditions are reflected on the plans, and the remainder of the conditions not reflected on the plans or in this decision are the subject of private agreements, are not enforceable by the Board, and may be resolved in another forum; and

WHEREAS, based upon the above, the Board finds that the subject variances will not alter the essential character of the surrounding neighborhood, impair the appropriate use and development of adjacent property, or be detrimental to the public welfare; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is created by its programmatic needs in connection with the physical constraints of the two buildings built in the 1920s, which have pre-existing non-complying bulk conditions which constrain any development; and

WHEREAS, the Board notes that neither the purchase of property nor the need by an educational institution to expand its facilities is recognized as a self-created hardship under New York law; and

WHEREAS, the applicant concludes, and the Board agrees, that the practical difficulties and unnecessary hardship that necessitate this application have not been created by Spence or a predecessor in title; and

WHEREAS, the applicant asserts that the second-floor passageway with a width of 5.5 feet is the minimum size passageway that can accommodate the programmatic needs and that the height of 29.75 is the minimum necessary to provide headroom, enclose the second-floor passageway, and respect the Main Building's historic windows; and

WHEREAS, the applicant states that the requested waivers of lot coverage and rear yard equivalent represent the minimum variance necessary to allow Spence to meet its programmatic needs; and

WHEREAS, the Board therefore finds that the requested waivers of lot coverage and rear yard equivalent represent the minimum variance necessary to allow Spence to meet its programmatic needs; and

WHEREAS, accordingly, based upon its review of the record and its site visits, the Board finds that the applicant has provided sufficient evidence to support

each of the findings required for the requested variances; and

WHEREAS, as to the Opposition's request that the Board re-open the hearing to address the information that Spence has recently purchased 412 East 90th Street, the Board notes that any proposed use of the new site does not extinguish the programmatic needs of Spence in the Main Building or the New Building specifically because the new site will be used for larger gatherings as opposed to the more routine physical education space proposed within the renovated Main Building and New Building; and

WHEREAS, the Board reviewed the applicant's response regarding the proposed use of the new site as a field house and agrees that its existence does not implicate any of the findings related to the Main Building and the New Building's program and, thus, the Board found there was no basis to re-open the hearing to consider the new site; and

WHEREAS, the project is classified as a Type I action pursuant to Section 617.12 and 617.4 of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has identified and considered relevant areas of environmental concern about the project documented in the Final Environmental Assessment Statement (EAS) CEQR No.11BSA091M, dated July 26, 2011; 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 and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; 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; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration 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 zoning district and partially within an R10 zoning district, within the Carnegie Hill Historic District the proposed construction of a connection between the rear

58-11-BZ

CEQR #11-BSA-091M

sides of two buildings on a through lot, that does not comply with zoning parameters for lot coverage and rear yard equivalent, contrary to ZR §§ 24-11, 24-382, and 54-31; *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 26, 2011" – fourteen (14) sheets; "Received September 20, 2011" – one (1) sheet and "Received October 21, 2011" – four (4) sheets and *on further condition*:

THAT the proposed building shall have the following parameters: (1) floor area of 53,019.63 sq. ft. (R8B zoning district) and 27,783.84 sq. ft. (R10 zoning district); (2) an FAR of 4.47 (R8B zoning district) and 7.29 (R10 zoning district), (3) a lot coverage of 100 percent (R8B zoning district) and 90 percent (R10 zoning district); and (4) the Connector with a maximum height of 29.75 feet, as depicted on the Board-approved plans;

THAT the use of the New Building's East 90th Street entrance (at 17 East 90th Street) shall be limited to emergency purposes;

THAT there shall be no exterior lighting or sound amplification in the rear yards of 17 East 90th Street or 22 East 91st Street;

THAT no interior lights shall be directed towards 21 East 90th Street or 15 East 90th Street and any lighting (other than emergency lighting) shall be turned off after 9:30 p.m., daily, when not required, and shall be triggered thereafter only by motion sensors;

THAT the site shall be maintained in good condition, free of debris;

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;

THAT construction will be substantially completed in accordance with the requirements of ZR § 72-23; 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)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 25, 2011.

**A true copy of resolution adopted by the Board of Standards and Appeals, October 25, 2011.
Printed in Bulletin No. 44, Vol. 96.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.