

3-14-BZ

CEQR No.14-BSA-096M

APPLICANT – Friedman & Gotbaum LLP by Shelly Friedman, for Saint David School, owner.

SUBJECT – Application January 8, 2014 – Variance (§72-21) to permit the enlargement of a school (*Saint David's School*), contrary to lot coverage (§24-11, 24-12), floor area (§24-11), rear yard (§24-36), rear wall setback (§24-552b), base height (§24-522, 24-633), streetwall (§23-692c, 99-051b), maximum height (§99-054b), and enlargement to a non-complying building (§54-31) regulations. R8B/R10/C1-5MP zoning district.

PREMISES AFFECTED – 12-22 East 89th Street aka 1238 Madison Avenue, south side of East 89th St, west of the corner formed by the intersection of Madison Avenue and East 89th Street, Block 1500, Lot 62, Borough of Manhattan.

COMMUNITY BOARD # 8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 26, 2013, acting on Department of Buildings Application No. 121532608, reads in pertinent part:

1. ZR 24-11 & ZR 24-12: Proposed enlargement of a building in R8B and R10/C1-5(MP) zoning districts increases the extent of noncomplying lot coverage as per ZR 24-11 and ZR 24-12.
2. ZR 24-11: Proposed enlargement of a building in R8B zoning district exceeds the maximum permitted floor area as per ZR 24-11.
3. ZR 24-36: Proposed enlargement of a building in a rear yard in R8B and R10/C1-5(MP) zoning districts increases the extent of rear yard non-compliance over 23 feet above curb level as per ZR 24-36.
4. ZR 24-552(b): Proposed enlargement of a noncomplying rear wall without providing a rear wall setback on a building in R8B zoning district increases the extent of rear wall setback non-compliance as per ZR Sec. 24-552(b).
5. ZR 24-522 & 23-633: Proposed addition of penthouse to a building in R8B and R10/C1-5(MP) zoning districts exceeds permitted maximum base height of a street wall, front setback regulations and building height as per ZR 24-522(a) and ZR 23-633.
6. ZR 23-692(c): Proposed addition of a penthouse to a portion of a building with a street wall of less than 45 feet located in

an R10/C1-5(MP) district on a corner lot bounded by at least one wide street exceeds maximum permitted building height as per ZR Sec. 23-692(c).

7. ZR 99-051(b): Proposed addition of a penthouse to a portion of a building with frontage on a side street in a R10/C1-5(MP) district increases the extent of the noncomplying street wall and setback regulations as per ZR 99-051(b).
8. ZR 99-054(b): Proposed enlargement to a building in a R10/C1-5(MP) district increases the extent of noncomplying maximum building height as per ZR 99-054(b).
9. ZR 54-31: Proposed enlargement to a noncomplying building increases the extent of non-compliances and creates new non-compliance in both R10 and R8B district, contrary to ZR 54-31; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R10/C1-5 zoning district within the Special Madison Avenue Preservation District (MP) and partially within an R8B zoning district, within the Carnegie Hill Historic District, the proposed conversion and enlargement of two existing buildings, that does not comply with zoning parameters for rear yard, lot coverage, maximum base height and building height, front and rear setback and floor area, contrary to ZR §§ 24-11, 24-12, 24-36, 24-552, 23-633, 23-692, 99-051, 99-054, and 54-31; and

WHEREAS, the application is brought on behalf of the St. David's School (the "School"), a non-profit educational institution; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in the *City Record*, with a continued hearing on June 17, 2014, and then to decision on August 19, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by former 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 and CIVITAS provided testimony in support of the proposal; and

WHEREAS, certain neighbors provided testimony in support of the application; and

WHEREAS, certain neighbors testified in opposition to the application, including residents of the building at 19 East 88th Street who were represented by counsel; and

WHEREAS, those in opposition to the project are collectively, the "Opposition"; and

WHEREAS, the Opposition's primary concerns are that: (1) the School has read the case law on educational deference too broadly and that there are

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greater limitations on such uses, including that a unique condition be established; (2) the School has failed to establish programmatic needs; (3) the request does not constitute the minimum variance as the height could be reduced if a sub-cellar level were added to accommodate uses that increase the height; (4) the School has created its own hardship by setting a construction schedule only during summer months so as not to inconvenience school operations; (5) architectural and engineering analyses establish that alternative designs, including the inclusion of a sub-cellar level, are feasible; and (6) the School's light and noise from rooftop mechanicals will affect the adjacent residents; and

WHEREAS, the site consists of the Graham House (18-22 East 89th Street a/k/a 1236 Madison Avenue), a former residential hotel purchased by the School in 1972; and three townhouses (12, 14 and 16 East 89th Street) (the "Townhouses") presently housing the School; together, these four buildings constitute the School's East 89th Street Campus, identified as Lot 62; and

WHEREAS, the School proposes to (1) re-use and convert the Graham House to allow full integration into the East 89th Street Campus; (2) enlarge the townhouse at 16 East 89th Street (the "Townhouse"); and (3) renovate the interiors of the Townhouses; and

WHEREAS, the site is located on the southwest corner of East 89th Street and Madison Avenue, with a total lot area of 15,910 sq. ft., 213.83 feet of frontage on East 89th Street and 25.71 feet of frontage on Madison Avenue; and

WHEREAS, the site is located partially within an R10/C1-5 (MP) zoning district (4,446 sq. ft. or 28 percent) and partially within an R8B district (11,464 sq. ft. or 72 percent); and

WHEREAS, none of the four existing School buildings, built between 1890 and 1920, complies with the Zoning Resolution; specifically, with respect to floor area, FAR, lot coverage, rear yard, front and rear setback, base height and building height in the R8B portion of the zoning lot and with respect to the building height and front wall height and front setbacks in the R10 portion of the zoning lot; and

WHEREAS, further, approximately 33,912 sq. ft. (7.63 FAR) of the existing East 89th Street Campus' 94,105 sq. ft. of floor area is located in the R10/C1-5 (MP) portion of the zoning lot and 60,193 sq. ft. (5.25 FAR) is located in the R8B portion of the zoning lot; and

WHEREAS, the applicant has identified the following existing non-compliances in the R8B zoning district: (1) lot coverage in excess of the 70 percent permitted by ZR § 24-11; (2) floor area (60,193 sq. ft.) and FAR (5.25) in excess of the maximum permitted (58,466 sq. ft. and 5.1 FAR for community facilities by ZR § 24-11); (3) a noncomplying rear yard with a depth of 4.2 feet for the Graham House (a minimum rear yard depth of 30 feet is required above the first story

pursuant to ZR § 24-36; (4) a base height of 81.25 feet (the maximum permitted base height is 60 feet on East 89th Street, a narrow street, pursuant to ZR § 24-522(b), 23-633(b)); (5) the absence of a rear setback of ten feet above the maximum base height of 60 feet (ZR §§ 24-552(b), 23-633); (6) the absence of a rear setback of 15 feet above the maximum base height of 60 feet on East 89th Street, a narrow street (ZR § 23-633); and (7) a height of 81.25 feet (a maximum height of 75 feet is permitted (ZR §§ 24-522, 23-633); and

WHEREAS, the applicant has identified the following existing non-compliances in the R10/C1-5 (MP) zoning district: (1) lot coverage in excess of the 75 percent permitted by ZR § 24-11 within the corner lot portion of the zoning lot; (2) a side yard with a width of 1.5 feet (if a side yard is provided, it must have a width of at least eight feet, pursuant to ZR § 24-35); (3) the base height of 81.25 feet (a maximum base height of 60 feet is permitted on East 89th Street, a narrow street, beyond 50 feet of the intersection, pursuant to ZR § 99-051(b)); (4) the Graham House does not provide the required setback of 15 feet above the maximum base height of 60 feet on East 89th Street, a narrow street, and does not provide the required setback of ten feet from Madison Avenue, a wide street (ZR § 99-051(b)(3)); (5) the height of 81.25 feet exceeds the maximum height limitation of 80 feet for narrow buildings on Madison Avenue, a wide street, and within 70 feet of Madison Avenue on East 89th Street (Midblock Transition Portion), a narrow street (ZR §§ 99-053, 23-692; and (6) portions of the 81.25-ft. existing east wing of Graham House exceed the maximum building height defined by an inclined plane between 80 and 120 feet within the Midblock Transition Portion of Madison Avenue Preservation District (ZR § 99-054(b)); and

WHEREAS, the proposal triggers the following variance request: within the R8B zoning district: (1) lot coverage of 79.45 percent above the first floor for an interior zoning lot (70 percent is the maximum permitted); (2) a floor area of 63,493 sq. ft. (5.54 FAR) (58,466 sq. ft. (5.10 FAR) is the maximum permitted); (3) the absence of a rear yard (a rear yard with a minimum depth of 30 feet is required above the first story); (4) the absence of a rear setback of ten feet above the maximum rear wall height of 60 feet; (5) a setback with a depth of two feet from East 89th Street for the Penthouse (a setback with a depth of 15 feet from the front wall is required to be provided above a maximum front wall height of 60 feet, an increase in the height of Graham House's East 89th frontage by 11 feet and total height of the Graham House by 17.25 feet, an increase in the townhouse height by 11 feet (a maximum building height of 75 feet is permitted); and (6) proposed enlargement to the non-complying Graham House and Townhouse increases the extent of existing non-compliances, contrary to ZR § 54-31; and

WHEREAS, additionally, within the R10/C1-5 (MP) zoning district, the proposal triggers the following variance requests: (1) the elimination of the non-

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complying side yard and the existing rear yard in the design of the proposed West Replacement Wing will result in an increase of lot coverage non-compliance for the upper 12.66 feet volume of the second story (between 23 feet and 35.66 feet above grade); (2) the building height of narrow buildings is limited to 80 feet on Madison Avenue, a wide street, and within 70 feet of Madison Avenue on East 89th Street, a narrow street, within the Midblock Transition Portion of Madison Avenue Preservation District, maximum building height is defined by an inclined plane between 80 and 120 feet, the addition of the Penthouse will increase the degree of the existing building's non-compliance with the building height limitations and increase the extent of non-compliance with the height limitations for the enlargement of narrow buildings on both Madison Avenue, a wide street, and East 89th Street, a narrow street, and increase of the non-complying building height from 81.25 to 98.5 feet; (3) the Penthouse does not provide a set back with a depth of 15 feet and thus increases the extent of the front wall's existing non-compliance; (4) full lot coverage at the rear lot line rather than the 30 feet required, however the building out of the existing sub-standard side yard eliminates that existing non-compliance; and (5) proposed enlargement to the non-complying Graham House increases the extent of existing non-compliances, contrary to ZR § 54-31; and

WHEREAS, the School proposes to demolish all floors of Graham House while retaining and restoring the historically significant Madison Avenue and East 89th Street façades and only as much of the remaining walls, foundation and structure as necessary to maintain the façades' structural integrity; and

WHEREAS, the applicant states that the new construction will replace the demolished area by splitting it into two replacement wings, an East Replacement Wing and a West Replacement Wing; and

WHEREAS, the East Replacement Wing, which is six stories with a mezzanine and penthouse, represents the narrow rectangle of the reconstructed Graham House with a width equal to the zoning lot's 25.71 feet Madison Avenue frontage, with an East 89th Street frontage with a footprint of 1,928.25 sq. ft.; the West Replacement Wing, which is six stories with a mezzanine and penthouse, represents the remainder of Graham House, a 100.71-ft. by 63.83-ft. rectangle with a footprint of 6,428.32 sq. ft. and a 4.2-ft. rear yard above the second story; and

WHEREAS, additionally, the School proposes to add a penthouse to Graham House beginning (the "Penthouse") and a small enlargement to the townhouse (the "Townhouse Addition"); and

WHEREAS, further, the Townhouses will undergo interior renovations under the same permits and as part of the same zoning lot; and

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

WHEREAS, the applicant represents that the

waivers are sought to enable the School to construct a facility that meets its programmatic needs; and

WHEREAS, the School identifies the following primary programmatic needs: (1) to consolidate all buildings to the East 89th Street Campus by relocating the off-site physical education program; and (2) to overcome the practical administrative difficulties, including scheduling and space assignments, and programmatic hardships, including curriculum development and teaching, of the current facilities through a comprehensive conversion of Graham House and redevelopment of the Townhouses that will produce a single campus with sufficient facilities, necessary academic adjacencies and required interconnectivity between students and faculty; and

WHEREAS, the School notes the specific needs associated with the requested bulk waivers: (1) filling in the deep non-complying court which bisects the Graham House and the non-complying side yard allows for a viable footprint which eliminates unnecessary travel corridors, and provides space and adjacencies that address the School's educational requirements; (2) 3,300 sq. ft. of additional floor area in the R8B portion of the site allows the School to fill in the deep court on each floor and to relocate program space from areas of the Townhouses not formerly included in floor area calculation; (3) the proposed relocation of the rear wall at the ground and second floors to the south property line is required to successfully lay out the auditorium that will be located on the second floor; (4) the increase in the extent of the existing rear yard noncompliance caused by increasing the height of the existing rear wall by 17.25 feet is necessary to support the volume required for the gymnasium proposed on the sixth and penthouse floors; (5) the continuation and increase of the current rear wall setback non-compliance within the R8B portion of the zoning lot is necessary to support the volume required for the gymnasium, the ceiling height of which would be significantly impacted by the resulting complying internal setback; and (6) the two penthouses provide essential ancillary physical education functions adjacent to the large gymnasium, providing training spaces and storage space, they are essential to the physical education program and their location adjacent to gymnasium and lockers is important to the educational time management goals of the School; and

WHEREAS, the School also identifies the following physical conditions of the lot and existing buildings which lead to a hardship: (1) the irregularly-shaped zoning lot is split over two zoning districts, is subject to both corner and interior lot regulations and is further subject to special purpose district regulations which produce conflicting bulk restrictions incompatible with the use of the zoning lot for educational purposes; and (2) the existing buildings have existing non-compliance which would not allow for any enlargement without increasing the degree of non-compliance;

WHEREAS, further, the School notes its location within the Carnegie Hill Historic District, which requires Landmarks Preservation Commission approval which included the requirement to preserve historic architectural

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elements and led to the increase in the extent of non-compliance in order to accomplish its programmatic objectives; and

WHEREAS, the applicant analyzed two as-of-right alternatives: (1) the rebuilding of Graham House from within without generating new bulk non-compliance or increasing the degree of existing non-compliance and (2) the reduction in the building envelope to comply with building height, lot coverage, and rear yard requirements; and

WHEREAS, as to the first alternative, the applicant states that due to the interlocking current non-compliances regarding height and setback, yards and lot coverage in both the R10/C1-5 and R8B portions of the zoning lot, and the FAR and floor area non-compliances in the R8B portion, the resulting building therefore substantially duplicates the existing footprint and massing; and

WHEREAS, the applicant states that the retention of the deep court above the first floor requires extensive corridors to circumnavigate the court on all floors and the footprints of the existing court and the corridors that must be provided to pass around it represent the floor area lost for School use; and

WHEREAS, the applicant asserts that this is not simply a matter of shrinking rooms and spaces from the plan as proposed, it is the elimination of important new program spaces altogether whose minimal footprints cannot be located within the as-of-right alternative, which cannot accommodate both the auditorium and the large gymnasium and, thus, will require continuation of the scheduling and administrative burdens associated with converting space functions continuously throughout the day; and

WHEREAS, the first alternative also cannot provide for critical adjacencies among the classrooms, division homerooms, school-wide functions, administrative services and faculty offices and results in reduction or elimination of academic and support space on each floor; and

WHEREAS, the applicant asserts that the second alternative would require combining the auditorium and gymnasium into a single space which compounds the current scheduling conflicts that exceed the School's ability to accommodate all needs within even an extended eight to ten-hour school day; and

WHEREAS, finally, the applicant notes that the proposal is influenced by the substantial amount of rock under the current Graham House building; and

WHEREAS, the applicant submitted engineering reports with soil borings that confirm the existence of rock as shallow as 1.75 feet below the Graham House cellar slab; and

WHEREAS, the applicant states that the impractical construction means and methods that the School would need to excavate below Graham House caused the School at a very early stage in its planning to abandon any thought of excavation as a matter of programmatic necessity due to cost and increased

construction time; and

WHEREAS, the applicant states that as a non-profit educational institution, the Board must grant deference to the School 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 the School, 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 the School has adopted a strategic plan to renovate and reuse its buildings in more effective ways; and

WHEREAS, the applicant states that based on an extensive review of its facilities and operations, the School concluded that the proposal was the most efficient and effective use of its educational programmatic space; and

WHEREAS, the applicant concludes that bulk relief is required to meet the School's programmatic needs and the design imperatives of the historic buildings; 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;

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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, the Board also acknowledges the hardship associated with the physical constraints of the buildings, which are approximately 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 the School 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

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

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 the School must adopt an alternative in light of the fact that the Board finds the School'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 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, 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 proposal or to offer evidence, much less establish, that it will negatively impact the health, safety, or welfare of the surrounding community in the sense the courts envision; and

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

WHEREAS, since the School 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 asserts that the noted bulk waivers 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 proposal is compatible with nearby uses and that the Three Townhouses at the site have been used continuously for school purposes since 1963; and

WHEREAS, the applicant asserts that the variances requested are primarily to allow minor modifications of existing non-compliances inherent in the existing historic buildings and will only alter the visible built environment on the East 89th Street Campus in only the following respects: (1) the Penthouse on Graham House, is set back 34.85 feet off

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Madison Avenue to reduce its visibility, increases the roof height along the length of the Graham House's East 89th Street façade by only 11 feet to a height that is actually lower than the overall building height on the zoning lot; (2) an 866-sq.-ft. continuation of the Penthouse on Graham House, also with a height of 11 feet, added to the rear of the 16 East 89th Street Townhouse as the Townhouse Addition; (3) the rear portion of Graham House will be replaced with a distinctive new structure, eliminating a non-complying side yard, and a partially non-complying court and partially increasing the extent of the existing noncomplying rear yard; and (4) the original architectural features on Graham House will be restored and unattractive fire escapes on the rear and front elevations, will be removed in accordance with LPC approvals; and

WHEREAS, in response to comments from the Board, the applicant revised the original proposal to maintain the existing 4.2-ft. rear yard above the second story; and

WHEREAS, the applicant states that upon completion of construction, the envelope of the East 89th Street Campus will be nearly identical to the historic conditions; and

WHEREAS, further, the applicant notes that the remaining portion of Graham House's east elevation (as seen over the Madison Avenue commercial buildings) will be rebuilt with a new LPC-approved elevation that is supported by Community Board 8 and Carnegie Hill Neighbors, with a massing substantially unchanged but for extending the first and second floors 4.2 feet to the rear lot line and creating a setback above the second floor at a height of 35.66 feet; and

WHEREAS, the applicant notes that the visible and unattractive existing ground-to-roof external fire escapes that now almost fully occupy the 4.2-ft. rear yard will be eliminated; and

WHEREAS, the applicant notes that the north elevation - the historic East 89th Street street walls of Graham House and the Townhouses - remains largely unchanged except for restoration work on the Graham House façade, the introduction of ground floor doors essential for School egress and the construction of the New Penthouse and Townhouse Addition; and

WHEREAS, further, the applicant states that the penthouses and the re-configured mechanical equipment are set back from the street wall and significantly not visible; and

WHEREAS, the applicant notes that the floor area on the zoning lot is being increased by only 3,763 sq. ft., or 4 percent; and

WHEREAS, the applicant asserts that the block has a mixed use character with five institutions on the north and south sides of East 89th Street between Madison and Fifth avenues; and

WHEREAS, the applicant notes that on the south side, Saint David's, including Graham House, occupies four buildings, or approximately 51 percent of the

running length of the block; a residential rental building occupies the tax lot to the west, with a frontage that is approximately 22 percent of the running length; and the new annex to the Guggenheim Museum and the original Frank Lloyd Wright building complete the block; and

WHEREAS, the applicant states that institutional uses occupy 78 percent of the southern side of the street and on the northern side of the street, the National Academy of Design Museum and School, Trevor Day School and the NYC Road Runners Club occupy 40 percent of the frontage and two residential buildings occupy the rest; and

WHEREAS, additionally, at Fifth Avenue, the entire East 88th/89th block frontage is occupied by the Guggenheim Museum and half of the East 89th/90th block frontage is occupied by the Church of the Heavenly Rest; and

WHEREAS, finally, there are additional institutions two blocks further to the north such as the Smithsonian, Spence School, Convent of the Sacred Heart School, the Russian Consulate, Nightingale-Bamford School and the Jewish Museum; and

WHEREAS, because the site is within the Carnegie Hill Historic District, the applicant obtained approval from the Landmarks Preservation Commission ("LPC") by a Certificate of Appropriateness issued July 22, 2014 (when approving the revised proposal); 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, 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 buildings built approximately a century ago, which have pre-existing non-complying bulk conditions which constrain any development; 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 the School or a predecessor in title; and

WHEREAS, the applicant states that the requested bulk waivers represent the minimum variance necessary to allow the School to meet its programmatic needs; and

WHEREAS, the applicant analyzed two lesser scenario schemes, one in which the majority of the rear wall was maintained and one that seeks approval of the height increase and addition of the Penthouse and Townhouse Addition; and

WHEREAS, the applicant concluded that neither alternative can accommodate the School's programmatic needs; and

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WHEREAS, however, the School did revise its proposal at the Board's direction to maintain the existing 4.2-ft. rear yard above the second story; and WHEREAS, the Board therefore finds that the requested waivers represent the minimum variance necessary to allow the School 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, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; 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.14-BSA-096M, dated January 8, 2014; 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 R10/C1-5 zoning district within the Special Madison Avenue Preservation District (MP) and partially within an R8B zoning district, within the Carnegie Hill Historic District, the proposed conversion and

enlargement of two existing buildings, that does not comply with zoning parameters for rear yard, lot coverage, maximum base height and building height, front and rear setback and floor area, contrary to ZR §§ 24-11, 24-12, 24-36, 24-552, 23-633, 23-692, 99-051, 99-054, 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 August 14, 2014" – twenty-one (21) sheets; and *on further condition*:

THAT the proposed buildings will have the following parameters: (1) floor area of 63,493 sq. ft. (R8B zoning district) and 33,577 sq. ft. (with an additional 798 sq. ft. for commercial use) (R10/C1-5 (MP) zoning district); (2) an FAR of 5.54 (R8B zoning district) and 7.55 (with an additional 0.18 FAR for commercial use) (R10/C1-5 (MP) zoning district), (3) a maximum lot coverage of 79.45 percent (R8B zoning district); (4) a maximum wall height of 81.25 feet and total height of 98.5 feet; and (5) all yards and setbacks as depicted on the Board-approved plans;

THAT the site will 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 will 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, August 19, 2014.

A true copy of resolution adopted by the Board of Standards and Appeals, August 19, 2014.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

