

**117-14-BZ**

**CEQR #14-BSA-161M**

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Trinity Episcopal School Corporation, owner; Trinity Housing Comp. Inc., lessee.

SUBJECT – Application June 3, 2014 – Variance (§72-21) to permit the enlargement of a school (*Trinity School*), including construction of a 2-story building addition with rooftop turf field, contrary to required rear yard equivalents, lot coverage, height and setback, and minimum distances between buildings. Split zoning lot within R7-2 and C1-9 zoning districts.

PREMISES AFFECTED – 101 W 91st Street, 121 & 139 W 91st St and 114-124 W 92nd St, bounded by West 91st and 92nd street and Amsterdam and Columbus Avenues, Block 1222, Lot(s) 17, 29, 40, 9029, Borough of Manhattan.

**COMMUNITY BOARD # 7M**

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

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez .....4  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 12, 2014, acting on Department of Buildings Application No. 121185225, reads in pertinent part:

1. ZR 24-11 – Proposed enlargement exceeds the maximum lot coverage; contrary to ZR 24-11;
2. ZR 24-382(a)– Proposed enlargement over an existing one-story building within the R7-2 portion of the zoning lot is contrary to the 23 foot one-story permitted in the required rear yard equivalent; contrary to ZR 24-382(a);
3. ZR 24-522 – Proposed height for the enlargement exceeds the maximum permitted height within the initial setback distance; contrary to ZR 24-522;
4. ZR 23-711 – Proposed enlargement is contrary to the required distance of 50 feet between wall of the proposed enlargement and existing legally required windows; contrary to ZR 23-711; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R7-2 zoning district and partially within a C1-9 zoning district, the enlargement of existing school buildings (Use Group 3), which do not comply with zoning regulations for lot coverage, rear yard equivalent, encroachment into the required initial setback distance, and minimum distance between wall and a legally-required window, contrary to ZR §§ 24-11, 24-382, 24-522, and 23-711; and

WHEREAS, a public hearing was held on this

application on October 7, 2014, after due notice by publication in the *City Record*, with continued hearings on December 9, 2014 and January 13, 2015, and then to decision on February 24, 2015; and

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

WHEREAS, Community Board 7, Manhattan, recommended disapproval of the original version of the application based on the following concerns: (1) that the proposed building would block off the entire west side of the loggia of the Trinity House (adjacent residential tower on the same zoning lot as the Trinity School); (2) that the proposal would result in the construction of air ventilation structures within the loggia; and (3) that the sunshade above the athletic field is unnecessary and inappropriate and will have a negative visual impact on the residents of the Trinity House and other nearby buildings; and

WHEREAS, Community Board 7 noted that it would recommend approval of the application if it were amended to: (1) eliminate approximately 30 feet at the third floor level so as to avoid blocking the loggia; (2) relocate or substantially reduce the size of the air ventilation structures within the loggia; and (3) eliminate the sunshade; and

WHEREAS, Manhattan Borough President Gale Brewer, Congressman Jerrold Nadler, Councilperson Helen Rosenthal, and Assemblyman Daniel O’Donnell submitted testimony noting their interest in the application; and

WHEREAS, certain members of the community, including some members represented by counsel and several tenants of the Trinity House, testified at the hearing and provided testimony in opposition to the application (collectively, the “Opposition”), citing the following primary concerns: (1) the impact of the proposal on the fourth story “loggia” of the Trinity House (an open area at the fourth story that provides recreational space for the Trinity House tenants); (2) the negative visual impacts of the sunshade, its potential to create a hazardous buildup of snow and ice, and its potential to diminish the light and ventilation of the Trinity House tenants and other nearby properties; (3) the impact of noise due to the elevation of the School’s athletic field; (4) the decrease in parking spaces in the Trinity House garage, which the Opposition states is a critical revenue source that keeps the Trinity House rental units affordable; (4) the inconsistency of the proposal with the City Planning special permit that authorized the construction of the Trinity House and the Trinity Housing Company’s obligations under the Mitchell-Lama program; (5) the non-compliance of the proposed garage with the Article I, Chapter 3 of the Zoning Resolution; (6) the noise and traffic caused by the operation of the garage

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and the movement (or idling) of large delivery vehicles and school buses around the site; and (7) the persistence of refuse and its attendant nuisances (odor, rodents, etc.) on the public sidewalks along West 92nd Street; and

WHEREAS, during the hearing process, the Opposition requested a number of modifications to the proposal, including: (1) a 30-foot open area between the Trinity House loggia and the enlarged portion of the school; (2) the removal of the sunshade; (3) the reduction of the height of the athletic field netting and structural supports to 24 feet; (4) an increase in the size of the netting openings from two-inch to four-inch; (5) a 20-foot setback of the netting/supports from the West 92nd Street façade; (6) a 50-foot open area between the netting/supports and the Trinity House; (7) the establishment of limited hours of operation for the use of the field; (8) a prohibition on non-emergency lighting of the field; (9) an analysis that demonstrates that 106 parking spaces will fit into the proposed garage; (10) a plan for traffic mitigation and management; and (11) a refuse disposal plan; and

WHEREAS, this application is brought on behalf of Trinity Episcopal School Corporation (the “School”), a non-profit educational institution founded in 1709; it is the oldest continuously-operating independent school in New York City and it serves students from grades kindergarten through 12; and

WHEREAS, the subject site comprises four tax lots (Lots 17, 29, 40, and 9029), which occupy the eastern half of the block bounded by Amsterdam Avenue, West 91st Street, Columbus Avenue, and West 92nd Street; and

WHEREAS, the site is located partially within a C1-9 zoning district and partially within an R7-2 zoning district, with the C1-9 portion mapped along Columbus Avenue to a depth of 100 feet; the easternmost portion of the site—from Columbus Avenue to a depth of 150 feet—is also subject to a Large Scale Residential Development Plan and City Planning Commission (CPC) special permit, which was adopted in 1964 (CP-18505); and

WHEREAS, the site has 400 feet of frontage along West 91st Street, approximately 201 feet of frontage along Columbus Avenue, 400 feet of frontage along West 92nd Street, and 80,567 sq. ft. of lot area; and

WHEREAS, the site is currently occupied by: (1) the four-story building located at 121 West 91st Street (the “Annex Building”), which the New York City Landmarks Preservation Commission (“LPC”) has designated as a New York City landmark; (2) the three-story building located at 115 West 91st Street (the “Moses Building”); (3) the three-story-portion (the “Hawley Wing”) of the 29-story apartment building located at 101 West 91st Street (“Trinity House”), which was developed pursuant to the above-referenced CPC special permit; and (4) the one-story building located at 132 West 92nd Street, which contains the School Cafeteria (the “Cafeteria”), the Trinity House Parking Garage (the “Garage”), and (atop the

building) the School Athletic Field (the “Turf”); and

WHEREAS, the applicant notes that Trinity House was constructed in 1969 in connection with the West Side Urban Renewal Plan and is owned by the Trinity Housing Company (“THC”), a corporation organized under the New York State Mitchell-Lama program; as such, THC is subject to the oversight of the New York City Department of Housing Preservation and Development (“HPD”); and

WHEREAS, the applicant also notes that, in addition to the site, the School’s campus includes Lots 11, 12, and 110, which are located directly west of the site along West 91st Street and are occupied by the Lower School building (an individual New York City landmark located on Lot 12) and administrative buildings (located on Lots 11 and 110); the applicant states that these buildings are on a separate zoning lot and are not part of the subject application, except insofar as there will be connections between the Lower School building and the buildings on the site, as set forth below; and

WHEREAS, the School proposes additions and major renovations to the campus to accommodate its programmatic needs (the “Proposed Development”); the three major components of the Proposed Redevelopment are: (1) the construction of two stories atop the existing Garage and Cafeteria (the “92nd Street Addition”); (2) the elevation and reduction in size of the Turf above the 92nd Street Addition and the construction of an arcing fence enclosure with an apex height of 81’-1” and a street wall height of 60’-0”; and (3) the construction of a three-story connector building between the Annex Building, the Lower School, and the 92nd Street Addition (the “Annex Link”); in addition, the Proposed Development includes the construction and relocation of vents and bulkheads for mechanical equipment and stairs along the eastern edge of the 92nd Street Addition, west of the Trinity House loggia; and

WHEREAS, as to the 92nd Street Addition, the applicant states that it will result in a three-story building; the first story of the 92nd Street Addition will continue to be used as the Cafeteria and the Garage; structural modifications to the existing spaces will be required to accommodate the loads of the new structure above, and a portion of the garage will be developed into new utility and mechanical rooms; and

WHEREAS, the applicant represents that although the area of the Garage will be reduced as a result of the project, there will be no change in the number of spaces permitted in the Garage since the Garage will be operated with attendants; the applicant states that the Garage has a licensed capacity of 106 spaces, that 106 spaces are shown on its certificate of occupancy, and that while the CPC special permit indicated that the zoning required

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only 92 accessory parking spaces for the Trinity House building, 106 spaces were provided; and

WHEREAS, the applicant states that the second story of the 92nd Street Addition will be provide performing arts spaces, including a new band room, an orchestra room, two Lower School music rooms, a chorus room, large and small practice rooms, a production studio, instrument storage, and the office of the performing arts faculty; and

WHEREAS, the applicant contends that the large floorplates of the 92nd Street Addition will allow these various performing arts spaces to be located on the same floor, side-by-side; in addition, a large multipurpose room, to be used for dance, wrestling, and other student activities best-suited to a large, unprogrammed space, will be located in the center of the floor, and the remainder of the second story will be occupied by the Upper School student lounge and study center, which will be located adjacent to the Upper School Dean's Office and other Upper School faculty offices; and

WHEREAS, the applicant states that the third story of the 92nd Street Addition will include biology, chemistry, and physics labs; in addition, there will be space for 13 new Upper School classrooms, which will be used for math, history, and English instruction for the Upper School; the applicant notes that locating these academic spaces on one floor level will allow for more time in classrooms by minimizing travel distances, will foster collaboration and exchanges among students and faculty, and will allow the efficient sharing of classroom materials; the applicant also notes that the new third story will align horizontally with the existing third story of the Hawley Wing, which holds the existing Upper School library, art rooms, and seminar rooms; and

WHEREAS, the applicant states that the new classrooms, on average, will be approximately 524 sq. ft. in size to accommodate 20 students (26 sq. ft. per student), which aligns with the New York City School Construction Authority's guidelines of approximately 730 sq. ft. for 30 students (24 sq. ft. per student); these classrooms will be designed to be flexible, to support various teaching and learning configurations; chemistry and physics labs will average approximately 940 sq. ft. (including prep labs) to accommodate up to 16-20 students each, which allows approximately 55 sq. ft. per student; and

WHEREAS, as to the Turf Enclosure, the applicant states that it will be reduced in size from 31,500 sq. ft. (250 feet by 126 feet) to approximately 21,000 sq. ft. (196 feet by 107 feet); the Turf will continue to serve the physical education requirements of the School and its athletic teams; and

WHEREAS, the applicant states that the Turf will be enclosed with a fence on the sides and netting above it, as required by Building Code Section 1509.8.1, for ballplay areas located on the roof of a building; (the applicant notes that this Building Code requirement was

instituted in 2008, so this type of enclosure is not required for the current Turf, which is enclosed with a standard 10-foot-high chain link fence); the netting over the Turf will require a steel lattice frame for support, with structural members of approximately six inches in diameter; the fence and netting will consist of one-mm diameter wire, which, the applicant represents is 88.4 percent transparent; and

WHEREAS, the applicant represents that the size of the structural supports is determined by the snow and ice load requirements for the netting and that the proposed supports are sufficient to carry the anticipated loads; the applicant states that the fence enclosure has been designed to preserve light and air to the residential apartments of Trinity House, in that the fence and netting will be located 30 feet away from the apartments and the structural supporting elements of the fence enclosure will be located 50 feet away from the apartments; and

WHEREAS, as to the Annex Link, the applicant states that it will provide new stair connections, aligned to serve all floor levels in both buildings, and horizontal connections between buildings; the Annex Link will also, by its connections to the 92nd Street Addition, allow elevators in the new building to serve the Lower School building, which currently has no elevator access to its upper floors at all levels; thus, the applicant asserts that the Annex Link thereby facilitates connections to all buildings on the campus; and

WHEREAS, the applicant notes that the south façade of the Annex Link will be set back from the adjacent building facades by 3'-9", and will be enclosed by highly transparent glass to maximize visibility of the side facades of the existing landmark buildings; and

WHEREAS, as to the vents, bulkheads, and mechanical equipment adjacent to the Trinity House loggia, the applicant states that the bulkheads have been minimized in size and arrangement, with stair bulkheads placed north and south of Trinity House, so as not to block the residential windows; in addition, design refinements have allowed those stair bulkheads to be lowered to provide the minimum required interior clearance, and, to the extent permitted by the Building Code, fenestration has been provided in the bulkheads to lighten their apparent mass; and

WHEREAS, the applicant notes that the Proposed Development was also modified to relocate the air intake vents from the Trinity House fourth floor loggia; these intake ducts already exist within the Hawley Wing, extending from the basement mechanical plant, up through the Upper School library, with air intake openings pointed westward, over the Turf and the School's original design solution was to elevate the ducts by one floor, into the Trinity House loggia (which is located directly above the Upper School library), with new, west-facing intake openings one story higher;

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however, in response to concerns raised by the Board and by Opposition, the vents were relocated and a mechanical well was created within the 92nd Street Addition just below the height of the existing parapet of the Trinity House loggia, which will create a 20-foot open area opposite the Trinity House loggia; this modification allows the western opening of the loggia to remain open from the height of the loggia parapet to the ceiling; and

WHEREAS, further, the applicant states that the wall of the mechanical well that is opposite the loggia will be clad in brick, and planters will be installed in the 20-foot space adjacent to the loggia, creating an attractive garden amenity for the Trinity House residents, which, upon the approval of the Department of Buildings, will be made available to Trinity House tenants for outdoor, passive recreation; and

WHEREAS, the applicant states that the Proposed Development is confined to the R7-2 portion of the site and will result in an increase in floor area from 172,561 sq. ft. (2.86 FAR) to 229,689 sq. ft. (3.80 FAR), which is well below the maximum permitted (392,763 sq. ft. (6.5 FAR)); in addition, the Proposed Development will increase the height of the Annex Link from 16'-8" to 52'-6" and increase the height of the 92nd Street Addition from 17'-0" to 47'-2"; and

WHEREAS, the applicant also represents that the Proposed Development will not be located within the portion of the site subject to the CPC special permit, and therefore does not require the approval of CPC; and

WHEREAS, the applicant states that the Proposed Development does not comply with the bulk regulations in the R7-2 portion of the site for: (1) rear yard equivalent (no rear yard equivalent is proposed; a rear yard equivalent with a minimum depth of 60 feet is required for a through lot with a depth of at least 110 feet, per ZR § 24-382); (2) lot coverage (88 percent lot coverage is proposed; lot coverage is limited to 65 percent on a through lot, per ZR § 24-11); (3) initial setback distance (no initial setback distance is proposed for the netting structure, however, the netting will be set back 3'-0" from the street line; for portions of a building fronting on a narrow street, there is a maximum front wall height of 60 feet or six stories, whichever is less, a required initial setback distance of 20 feet, and a sky exposure plane of 2.7 to 1, per ZR § 24-5220); and (4) minimum distance between a wall and a legally-required window (a distance of 30 feet is proposed between the netting and a legally-required window; where there is more than one building on a zoning lot, the minimum distance between a residential window providing legal light and air and a wall of any other building is 50 feet, for buildings with an average height of greater than 50 feet, per ZR § 23-711); the applicant also notes that the proposed distance from the netting structure and the legally required window is 50'-0"; and

WHEREAS, because the Proposed Development

does not comply with the applicable bulk regulations in the R7-2 portion of the site, the applicant seeks the requested variance pursuant to ZR § 72-21; and

WHEREAS, the applicant contends that, per ZR § 72-21(a), the history of development of the site is a unique physical condition, which, when coupled with the School's programmatic needs, creates practical difficulties and unnecessary hardships in developing the site in compliance with the zoning regulations; and

WHEREAS, the applicant identifies the existence of two landmarked buildings (the Lower School and the Annex Building) and unique physical relationship of the Hawley Wing and the Trinity House as practical impediments to as-of-right development of the School's campus; and

WHEREAS, the applicant states that the Lower School, which is not on the site but will connect to the buildings on the site, and the Annex Building were constructed in the 1890s and cannot structurally support new construction; further, even if structural modifications were feasible, the applicant contends that it is unlikely that LPC would find enlargements that would satisfy the School's programmatic—full-floorplates with shear walls—to be appropriate additions to the historic buildings; and

WHEREAS, the applicant asserts that, similarly, the Hawley Wing is uniquely constrained in its ability to expand due to its having been constructed physically beneath the 29-story Trinity House in 1969; and

WHEREAS, the applicant states that an enlarged Hawley Wing would have to setback a minimum of 50 feet from the Trinity House, which would result in a slender, eight-story building that would have inefficient floorplates (a high vertical circulation-to-program space ratio) and lack the adjacencies of the Proposed Development; the applicant also notes that expansion of the Hawley Wing would not be as-of-right but would, due to the Large Scale Residential Development plan and special permit, be subject to the approval of CPC; and

WHEREAS, the applicant also asserts that the School requires the requested waivers to construct a facility that meets the School's programmatic needs; and

WHEREAS, the applicant states that the primary programmatic needs of the Proposed Development are: (1) to improve existing facilities and programs (the School represents that no growth in student enrollment is planned in connection with the renovations); (2) to create functional adjacencies and relocate certain program space; (3) to preserve the Turf; and (4) to improve internal circulation; and

WHEREAS, the applicant states that the Proposed Development seeks to address the following current space deficiencies of the School: (1) the School cannot add any curricular offerings to the Upper School program

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of study because it does not have available classrooms in which to schedule additional classes; Upper School general classrooms are scheduled 96 percent of the day in the academic year 2013-2014; the standard rule of thumb for school scheduling is that an 85 percent utilization rate provides the necessary flexibility for an effectively functioning high school schedule; (2) in response to the growing importance of science and technology in education, the School needs to expand the number and size of its laboratories and laboratory prep rooms; the five existing Upper School science labs, which are scheduled 100 percent of the day, are insufficient to fulfill the School's curricular goals, since the School is unable to provide juniors and seniors with the opportunity to enroll in more than one science class each year; the School has determined that it needs at least seven labs to allow students to take introductory as well as advanced courses in biology, chemistry, and physics during their four years of high school; (3) Class sizes in Fifth and Sixth grades are 33 percent larger than in any other grade level, and the student-teacher ratio in those grades far exceeds that in all other grades because the School does not have space to create additional classrooms; thus, the School needs to add three classrooms to accommodate the Fifth and Sixth graders once they reach Middle School; (4) the Lower School currently does not have a classroom devoted to modern language instruction, significantly limiting the materials that teachers can bring into class to enrich students' study of global cultures and languages; (5) Lower School teachers routinely teach reading groups in the hallways because there is no available classroom space to hold these groups; this practice creates a distracting environment for the students; (6) many classrooms, teacher offices, and breakout spaces have no windows, are located in basement spaces, are not co-located with related academic teaching areas, and/or have inadequate light, air, and circulation; (7) the School's performing arts practice rooms (choral, orchestra, and jazz rehearsal rooms) are not large enough to accommodate the number of Upper School students enrolled in these performing arts; as a result, all of the students in the Upper School chorus cannot rehearse at the same time in the choral room and they routinely come together as a full chorus for the first time only during actual performances; in addition, the School needs space where students can practice or rehearse individually or in small ensembles; (8) the School's current theater lacks a backstage, a dressing/make-up room, a scene shop, and a lobby; and (9) the School needs to increase the allocation of space used for life-fitness instruction in physical education; and

WHEREAS, the applicant represents that no increase in enrollment is anticipated or planned and that the Proposed Development seeks to address the School's current space deficiencies and is not intended to allow the School to increase its enrollment; and

WHEREAS, in addition, the applicant states that

many of the areas of the School lack appropriate access for people with disabilities; thus, the Proposed Development seeks to improve access for all members of the Trinity community (students, faculty, staff, and visitors) and to ensure that prospective students do not reject the School due to accessibility challenges; and

WHEREAS, the applicant asserts that because the School has expanded incrementally over many years, its different program areas are spread over its four main academic buildings in an unplanned and haphazard fashion, and in some cases students must travel significant distances from one class to the next; accordingly, students often devote time traveling to classes – time that would be better spent on instruction and study; for example, currently, Upper School Science labs are scattered throughout the Hawley Wing and prep spaces, and offices are not contiguous to the labs; similarly, the School's performing arts classrooms and faculty offices are scattered across three buildings, and the Library is isolated from the Upper and Middle Schools; and

WHEREAS, thus, the applicant states that the Proposed Development will create functional adjacencies and relocate program space, including the creation of a central core for science and math classrooms and labs, the clustering of nearly all performing arts classrooms, and the creation of a direct link between the Hawley Wing and the Library; additionally, the Upper School student lounge and study center will be moved from the entrance of the School to a more central and expanded location near faculty offices and with direct access to the Library, facilitating more opportunities for small group collaboration among students, and access to faculty members and research materials between periods; and

WHEREAS, in addition to addressing the School's current deficiencies with respect to classroom sizes and program adjacencies, the Proposed Development will preserve the Turf at a minimum functional size for use in physical education, athletic, and recreational programs; the applicant states that the School's athletic program teaches the value of hard work to achieve meaningful goals while encouraging the development of self-discipline and self-sacrifice, character and sportsmanship, teamwork and cooperation, as well as loyalty and pride in one's self and in the school community; and

WHEREAS, the applicant notes that the Turf is used actively from 8:30 am to 6:00 pm each school day; Lower and Middle School students use the Turf four times per week for physical education and fitness classes, as well as additional periods for recess, and Upper School students use the Turf for physical education and fitness class twice every six days; typical Middle School students who participate in athletics use the Turf three times per week for after-school practice, and typical Upper School students use it four times per week for athletic practice;

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and

WHEREAS, the applicant asserts that the ability to use the Turf for these activities allows athletics to be integrated into the school day rather than interrupting the day for travel to distant fields; and

WHEREAS, the Board notes that, initially, the School proposed to enclose the Turf with a permanent fabric sunshade to allow full utilization of the Turf during inclement weather; however, through the hearing process and in response to concerns raised by the Board and by the Opposition, the proposal was revised to reflect the removal of the sunshade; and

WHEREAS, finally, the Proposed Development will improve the internal circulation of the School by replacing the disjointed and sometimes confusing circulation patterns with a network of natural-light-filled passages and stairways that will be more intuitive and direct, and foster communication between and among students and personnel in the three divisions of the School; and

WHEREAS, the applicant examined the feasibility of an as-of-right redevelopment of the School; in particular, the applicant assessed whether a five-story, 59,545 sq.-ft. enlargement with a total building height of 112'-0" and complying lot coverage, yards, and setbacks would satisfy the School's programmatic needs to improve existing facilities, create functional adjacencies, preserve the Turf and improve internal circulation; and

WHEREAS, the applicant determined that the as-of-right scenario was deficient, in that it would: (1) result in a tower-like, elevator-dependent structure that would be largely isolated from the other program areas of the School; (2) be highly inefficient in terms of student movement, with the only means of common access being a first-story corridor; (3) not allow the intended improvements in ADA accessibility; (4) not provide the desired adjacencies among the academic spaces, and so would not create the same opportunities for communication and collaboration; (5) result in constrained floorplates, which reduce the sizes of the classrooms and labs; and (6) reduce the size of the Turf, which would significantly limit its utility for physical education classes, and athletic team practices and games; and

WHEREAS, accordingly, the applicant states that the Proposed Development most effectively meets the School's programmatic needs; and

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

WHEREAS, as noted by the applicant, under well-established precedents of the courts and this Board, an application for a variance that is needed in order to meet the programmatic needs of a non-profit educational institution is entitled to significant

deference and shall be permitted unless the application can be shown to have an adverse effect upon the health, safety, or welfare of the community (see, e.g., Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986)); and

WHEREAS, the Board acknowledges that, as set forth in Cornell, general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the Board observes that Cornell 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 based on an extensive review of its facility and operations, the proposal is the most efficient and effective use of its educational programmatic space, and the applicant concludes that the bulk relief requested is necessary to meet the School's programmatic needs; 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; 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 Opposition argues that the applicant has failed to make the finding set forth at ZR § 72-21(a) because, unlike in Cornell, there are negative impacts to the public welfare, namely the nearby residences, which are not outweighed by the proposal's benefits; and

WHEREAS, specifically, the Opposition cites to the impacts of the Turf enclosure, the 92nd Street Addition, and the Garage renovation upon the residents of the Trinity House; 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; the Board also notes that the School modified its proposal significantly in response to the Opposition's concerns and, as set forth below, has agreed to a number of conditions to mitigate

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the impact of the Proposed Development and the general operation of the School on nearby residents; 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, based upon the above, the Board finds that, consistent with ZR § 72-21(a), the programmatic needs of the School along with the existing constraints of the site create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the School is a non-profit educational institution and the variance is needed to further its 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 variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the surrounding area is characterized by low- to high-density mixed residential, commercial and community facility buildings, including townhouses in the mid-block, apartment houses on the avenues, large schools and religious institutions, playgrounds, and ground floor commercial uses along Columbus Avenue and Amsterdam Avenue; and

WHEREAS, the applicant states, as noted above, that both the Lower School and the Annex Building are designated New York City landmarks; as such, LPC approval for portions of the Proposed Development was required, and it issued by Certificate of No Effect, dated April 17, 2014; and

WHEREAS, the applicant asserts that the requested waivers will have little discernible impact on the surrounding neighborhood, as the 92nd Street Addition will be built to the same height as the townhouses located to the west and across the street; and

WHEREAS, the applicant notes that the primary impact of the waivers is to allow a deeper building, which is not visible from the street; further, while the rooftop fence and netting enclosure would rise to a height of approximately 80 feet, the fence enclosure is, as noted above, more than 88 percent transparent; thus, its visual impact upon the streetscape will be minimal; and

WHEREAS, the applicant also notes that the Proposed Development is well below the maximum permitted floor area and that an as-of-right building could rise to a height of more than 110 feet; and

WHEREAS, as to adjacent uses, the applicant states that in response to the concerns of the Board and the Opposition, it has: (1) as noted above, removed the sunshade; (2) modified the configuration of the Turf and the 92nd Street Addition to provide a buffer of 20'-0" between the Turf level and the level of the Trinity House loggia; (3) modified the structural supports for the Turf netting and the netting itself to provide a horizontal distance of 30'-0" between the netting and the Trinity House and a horizontal distance of 50'-0" between the structural supports and the Trinity House; (4) relocated mechanical ventilation ducts to an area in the 92nd Street Addition that is 10'-0" to the west of the Trinity House; (5) created a new terrace abutting the Trinity House loggia, which, upon DOB approval, will be available to Trinity House residents for passive recreation; (6) reduced the height of the wall opposite the loggia to 3'-2" above the loggia parapet; (7) reduced the height of the eastern bulkheads for the 92nd Street Addition; and (8) reduced the height of the western bulkheads adjacent to the townhouses; and

WHEREAS, the applicant asserts and the Board agrees that the modifications will mitigate the impact of the Proposed Development on the light and ventilation of neighboring properties; and

WHEREAS, as to the Opposition's concerns regarding the Turf netting and support *vis à vis* snow and ice, the Board observes that the design must comply with the applicable provisions of the Building Code and such design is subject to the review and approval of DOB; and

WHEREAS, as the Opposition's concerns regarding the elevated Turf's potential noise impacts, the applicant agreed to limitations on the hours of use, degree of lighting, and use of sound amplification equipment; and

WHEREAS, as to the Opposition's concern about the size of the openings in the netting, the applicant provided support for its assertion that a four-inch opening would be too large and would create a risk of balls breaching the netting during certain games; and

WHEREAS, turning to traffic and parking, the applicant contends that the Proposed Development will have no significant impact; the applicant states, as noted above, that the number of parking spaces within the Trinity House garage will remain at 106, in accordance with the CPC special permit; and

WHEREAS, at hearing, in part in response to the concerns of the Opposition, the Board directed the applicant to provide additional information regarding the operation of the Garage and the general management of traffic around the site; and

WHEREAS, in response, the applicant submitted multiple analyses and plans from its traffic and parking consultant, which reflect that the garage can accommodate a minimum of 106 vehicles in accordance with ZR § 25-62, which requires a minimum of 200 feet

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per parking space in an attended garage; and

WHEREAS, the applicant also agreed to revise its lease with the Garage operator to prohibit the use of the Garage for more than 106 vehicles, the obstruction of the sidewalks and the flow of traffic along West 92nd Street; and

WHEREAS, as to the Opposition's concerns regarding late-night and early-morning truck traffic, the applicant agreed to restrict the hours of pickup and deliveries of goods; and

WHEREAS, as to Opposition's assertion that the Garage does not comply with various provisions of the Zoning Resolution regarding certain parking garages, the applicant contends that the garage was constructed as an accessory parking garage for a multiple dwelling prior to the 1982 amendments to the Zoning Resolution; as such, it complies with the pre-1982 version of Article II, Chapter 5 and need not be altered to comply with requirements of Article I, Chapter 3, which applies to new or enlarged parking facilities; and

WHEREAS, as to the Opposition's concerns regarding the negative impacts of the current refuse management of the School—which the Board shares—the applicant agreed to provide a refrigerated food refuse storage area in the interior of the 92nd Street Addition; and

WHEREAS, as to the Opposition's assertion that CPC and HPD, must approve the Proposed Development prior to any action by the Board, the Board disagrees and finds that nothing in the record indicates that CPC or HPD approval is a pre-condition to the subject application; and

WHEREAS, as to the Opposition's assertion that the Proposed Development will result in a diminution of Garage revenue for the Trinity House contrary to certain private agreements, the Board takes no position on its merit and finds that the issue is beyond the scope of the Board's jurisdiction in this matter; and

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

WHEREAS, the applicant states that, per ZR § 72-21(d), the hardship was not self-created, and that no development that would meet the programmatic needs of the School could occur given the history of development of the site; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the School; and

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the School's current and projected programmatic needs, in accordance with ZR § 72-21(e); and

WHEREAS, the Board notes that it reviewed dozens of written submissions, held numerous hearings,

and accepted hours of testimony from the applicant, representatives from the School, the Opposition, counsel for the Opposition, Trinity House tenants, and surrounding neighbors regarding the Proposed Development, the necessary waivers, the potential impacts on surrounding uses; the record reflects that the School responded to every concern raised by the Opposition and either modified its proposal or provided detailed, programmatic needs-based reasons why it could not; and

WHEREAS, based on this exhaustive review, the Board finds that the requested relief 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 has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 14-BSA-161M, dated November 19, 2014; and

WHEREAS, the EAS documents that the operation of the School 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; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; 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.

*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 and § 6-07(b) of 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 R7-2 zoning district and partially within a C1-9 zoning district, the enlargement of existing school buildings (Use Group 3), which do not comply with zoning regulations for lot coverage, rear yard equivalent, encroachment into the required initial setback distance,



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and minimum distance between wall and a legally-required window, contrary to ZR §§ 24-11, 24-382, 24-522, and 23-711, *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 February 24, 2015”– eighteen (18) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the Proposed Development: a maximum floor area of 229,689 sq. ft. (3.80 FAR) in the R7-2 portion of the site; a maximum height to the roof of the 92nd Street Addition (excluding bulkheads, netting, and structural members) of 47’-2””; a maximum height to the roof of the Annex Link of 52’-6””; a maximum apex height for the supports for the Turf netting of 81’-1””; a maximum height at the street line for the supports for the Turf netting of 60’-0””; a minimum distance between the street line and the Turf netting of 3’-0””; a minimum distance of 50’-0”” between the Trinity House and the major structural members for the Turf netting; a minimum distance of 30’-0”” between the Trinity House and the Turf netting (except where the Turf netting connects to the stair bulkheads, where the distance shall range from 30’ to 21’-6””); a minimum distance of 20’-0”” between the Trinity House loggia and the Turf level; a maximum height for the eastern bulkheads not to exceed a height of 170’-0””; a maximum height of the western bulkheads not to exceed a height of 175’-9””; a maximum height to the top of the Turf level wall located opposite the Trinity House loggia of 162’-0<sup>3</sup>/<sub>4</sub>””; a maximum height of the finished floor at the terrace level located within 20’-0”” of the Trinity House Loggia not to exceed 158’-10<sup>3</sup>/<sub>4</sub>””; as illustrated on the BSA-approved plans;

THAT the maximum height of the finished floor at the terrace level located within 20’-0”” of the Trinity House loggia shall be no higher than the Trinity House loggia parapet;

THAT any new or amended certificates of occupancy issued in connection with the Proposed Development shall include the following note: “Use of the site shall be in accordance with the conditions set forth in BSA Cal. No. 117-14-BZ.”;

THAT the use of the Turf shall be limited to the hours between sunrise and sunset;

THAT the Turf shall not have any lighting, other than lighting required by the Building Code for emergency egress;

THAT the Turf shall not include any permanent sound amplification equipment;

THAT to the extent that temporary sound amplification equipment, including but not limited to electronic equipment, is used in connection with activities occurring on the Turf, such amplification equipment shall commence no earlier than 9:30 a.m. and shall cease no later than 7:30 p.m.;

THAT air horns and similar voice amplification equipment shall not be used in connection with activities

occurring on the Turf; however, whistles shall be permitted;

THAT the School shall take reasonable steps to ensure the safety of pedestrians within and around the site, including but not limited to ensuring that snow and ice accumulations from the Turf and its enclosure do not create a safety hazard;

THAT the Garage shall provide a minimum of 106 parking spaces;

THAT the School shall establish a traffic management plan to improve traffic flow at the site, including operation of the Garage, student loading and offloading, refuse pickup, and Cafeteria and other deliveries;

THAT pickup and delivery of goods, refuse, materials, supplies, etc.—everything other than the students themselves—shall be limited to Monday through Friday, from 6:00 a.m. and 8:00 p.m., and on Saturday and Sunday, from 9:00 a.m. to 8:00 p.m.;

THAT the School shall apply to the Department of Transportation for an extension of the no-parking time in the no-parking zone outside the Cafeteria, from 7:00 a.m. to 4:00 p.m. to 6:00 a.m. to 4:00 p.m.;

THAT the School shall insure that the Garage operations do not obstruct the flow of traffic;

THAT that there shall be no vehicle parking or standing on the sidewalks at any time;

THAT the new lease entered into between the Garage operator and Trinity Housing Company subsequent to the construction of the Proposed Development, and any subsequent lease, shall contain (a) an affirmative representation by the garage operator that the operator acknowledges the number of spaces permitted by law for the garage, (b) covenants that the operator will abide by all governmental laws, rules, and regulations applicable to the operation of the garage, and will employ responsible operational practices consistent with industry standards; and (c) that no parking or standing on the sidewalk will be permitted and that garage operations will not obstruct the movement of traffic along West 92nd Street;

THAT vehicles with more than two axles making deliveries or pickups at the site shall not park or stand along West 91st Street or West 92nd Street; however, this condition shall not apply to passenger buses; and

THAT subject to DOB approval, the School shall allow Trinity House tenants access to the terrace on the roof of the 92nd Street Addition for passive recreation;

THAT the School shall consult in good faith with Trinity House tenants in the selection of materials to be used in constructing the wall opposite the loggia and the plantings and any furniture to be provided on the terrace;

THAT the School shall be responsible for maintaining all fencing, railings, materials, plantings, and furnishing within the terrace area;

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THAT the School shall replace the chain-link fence over the Brass Pavilion with the same mesh material that will be used on the School's rooftop enclosure, and shall scrape and repaint the metal vents on the Brass Pavilion; and the School shall maintain these elements in good condition;

THAT a refrigerated trash storage area shall be provided within the interior of the School Building; the refrigerated trash storage area shall be of sufficient capacity to accommodate the School's kitchen and cafeteria related trash and a separate trash storage area sufficient to contain all of the School's non-perishable trash shall also be provided within the interior of the School Building;

THAT all school trash shall be stored within the interior of the building until immediately before pickup;

THAT all construction shall be in conformance with the LPC Certificate of No Effect, dated April 17, 2014;

THAT any necessary CPC approvals for the Proposed Development shall be obtained prior to the issuance of DOB permits;

THAT all necessary HPD approvals for the Proposed Development shall be obtained prior to the issuance of DOB permits;

THAT any change in the use, occupancy, or operator of the School shall require review and approval by the Board;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by February 24, 2019;

THAT this approval is limited to the relief granted by the Board in response to specifically cited 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, February 24, 2015.

**A true copy of resolution adopted by the Board of Standards and Appeals, February 24, 2015.**  
**Printed in Bulletin Nos. 9-10, Vol. 100.**

**Copies Sent**  
**To Applicant**  
**Fire Com'r.**  
**Borough Com'r.**

