

**282-13-BZ**

**CEQR #14-BSA-052K**

APPLICANT – Flora Edwards, Esq., for Red Hook Property Group, LLC, owner; High Mark Independent, LLC, lessee.

SUBJECT – Application October 4, 2013 – Special Permit (§73-19) to permit construction of a new 89,556 sq.ft. school (*The Basis Independent Schools*). M1-1 zoning district.

PREMISES AFFECTED – 556 Columbia Street aka 300 Bay Street, west side of Columbia Street between Bay Street and Sigourney Street, Block 601, Lot 17, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 19, 2013, acting on Department of Buildings Application No. 320843110, reads in pertinent part:

This application for a proposed school (Use Group 3) will require a special permit by the BSA. It is in the M1-1 district and a school is permitted by special permit only: (42-31); and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site in an M1-1 zoning district, the construction of a five-story Use Group 3 school, contrary to ZR § 42-31; and

WHEREAS, a public hearing was held on this application on February 25, 2014, after due notice by publication in the *City Record*, and then to decision on March 25, 2014; and

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

WHEREAS, Community Board 6, Brooklyn, recommends disapproval of this application, primarily based on concerns about the compatibility of the use with the surrounding area and integration into the community; and

WHEREAS, City Council Member Carlos Menchaca and State Senator Velmanette Montgomery provided testimony in opposition to the proposal, citing concerns that the school cannot co-exist with nearby industrial use, the school does not benefit the community, and it will introduce traffic conflicts; and

WHEREAS, South Red Hook Industrial Alliance for No Basis, Red Hook East Resident Association, Red Hook West Resident Association, Red Hook Rise, Southwest Brooklyn Industrial Development Corporation

and several members of the community provided testimony in opposition to the proposal, citing concerns that the school would not be harmonious with the surrounding area, that its location threatens the Industrial Business Zone (“IBZ”) and job retention and would be both disruptive to existing traffic and create unsafe traffic conditions for students; and

WHEREAS, together, the Opposition raised additional concerns about: (1) whether notification had been performed as required; (2) whether there is a higher standard for review for private schools; (3) whether the School established that there is a practical possibility of obtaining a site as of right within the neighborhood to be served; (4) whether the traffic issues of the surrounding non-residential district had been addressed; (5) whether the project will have a negative impact on the IBZ; and (6) whether the school will have a negative impact on public welfare; and

WHEREAS, certain members of the surrounding community provided testimony in support of the application and submitted a petition with 200 signatures; and

WHEREAS, the application is brought on behalf of the Basis Independent Schools (the “School”); and

WHEREAS, the subject site is on the east side of the block, bounded by Bay Street, Otsego Street, Sigourney Street, and Columbia Street; the site has 241 feet of frontage on Bay Street, 200 feet of frontage on Columbia Street, and 241 feet of frontage on Sigourney Street, with a lot area of 48,623 sq. ft.; and

WHEREAS, the site is a paved lot which is currently vacant, but was formerly used as a private lot for school buses and construction vehicles; and

WHEREAS, the School proposes to construct a Use Group 3 school with five stories, 89,556 sq. ft. of floor area (1.8 FAR) and a building height of 79’-3”;

WHEREAS, the applicant represents that the proposal meets the requirements of the special permit under ZR § 73-19 to permit a school in an M1-1 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant represents that the proposal will meet the School’s programmatic needs; and

WHEREAS, the applicant states that it will attract families from Brooklyn neighborhoods of Carroll Gardens, Cobble Hill, Boerum Hill, DUMBO, Brooklyn Heights, Park Slope, Vinegar Hill, and Williamsburg as well as some from downtown Manhattan, such as Battery Park City and Tribeca, which is less than a 20-minute drive via the Brooklyn-Battery Tunnel; and

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WHEREAS, the School's projected enrollment of 1,000 students and needs for specific spaces such as a 389-seat theater, full-size gymnasium, and science labs necessitate a site with (1) a minimum lot size of at least 40,000 sq. ft., preferably 200 feet by 200 feet; (2) a potential to accommodate at least 80,000 sq. ft. of floor area; (3) the ability to safely drop-off/pick-up students; and (4) a purchase process not to exceed \$10 million or a lease not to exceed \$10/square foot unimproved; and

WHEREAS, the applicant states that it conducted a search of more than 50 properties within its catchment area which yielded no feasible sites as alternatives to the project site; and

WHEREAS, the applicant states that neighborhoods where a school is permitted as of right were substantially improved with residential and commercial development, which made it not possible to locate a lot or facility large enough to accommodate the proposed school program; and

WHEREAS, the applicant asserts that the majority of potential sites were located in manufacturing zoning districts; and

WHEREAS, the applicant considered the feasibility of (1) 82 and 74 Sullivan Street, but the combined lot size of 160 feet by 100 feet was insufficient; (2) 840-850 Metropolitan Avenue, (3) 657-665A Fifth Avenue, and (4) 834 Sterling Place, which all had an insufficient size; and

WHEREAS, the applicant states that the school expanded its search into residential zoning districts beyond its catchment area, but rejected four more sites due to lot and building size inadequacy; those were (1) 5601 Second Avenue in Sunset Park; and (2) 203 Sutter Avenue, (3) 191 Dumont Avenue, and (4) 994 Saratoga Avenue in Brownsville; and

WHEREAS, the applicant submitted a letter from a real estate brokerage stating that it was impractical to assemble the required amount of floor area within a residential zoning district because such districts are substantially developed; and

WHEREAS, the applicant states that the building program includes: (1) 42 accessory parking spaces for teachers and staff, a lobby, a security office, and associated circulation space at the ground level; (2) a main lobby, theater, gymnasium, outdoor play areas, a cafeteria, and several classroom and administrative offices at the first school level; (3) eight classrooms and administrative space at the second school level; (4) ten classrooms, a cafeteria, and a lab at the third school level; (5) ten classrooms and an art room at the fourth school level; and (6) three physics labs, three biology labs, three chemistry labs, a reading room, and teachers' offices at the fifth school level; and

WHEREAS, the applicant maintains that the site search establishes that there is no practical possibility of

obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as-of-right; and

WHEREAS, the applicant submitted a radius diagram which reflects that the subject site is located directly across the street from an R5 zoning district, less than 100 feet to the east across Columbia Street and to the south across Sigourney Street where the proposed use would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant submitted a land use map which reflects that the adjacent manufacturing and commercial uses include: warehousing/shipping, a landscape design and urban ecology firm, and fine art and transport company to the west; a construction company and a marine engine and equipment repair business to the north; and another construction company to the northwest; and

WHEREAS, the applicant notes that it shares a lot line with only one building to the west, which is occupied primarily by light manufacturing and commercial uses within a two- to four-story building, and the site is separated from the other uses by Bay Street to the north and Columbia Street to the east; and

WHEREAS, the applicant notes that two of its largest neighbors are the 58.5-acre Red Hook Recreation Area directly to the east across Columbia Street and the full-block park occupied by the Red Hook Community Farm directly to the south across Sigourney Street; diagonally to the south is the Todd Memorial Square, a landscaped traffic island; and

WHEREAS, the applicant states that the block immediately north of the site includes a school bus parking lot and a construction company use; and

WHEREAS, the applicant has identified a series of building conditions that will minimize sound transmission levels from the street to the building interior; those include: reinforced exterior wall assembly well in excess of the required sound attenuation, annealed, laminated, and insulated glass for the windows which provide an Outdoor-Indoor Sound Transmission Coefficient (OITC) in excess of that required; and

WHEREAS, the applicant proposes that the separation from noise, traffic, and other adverse effects would be achieved through their proposed window and

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wall assemblies, which include the exterior wall design with an Sound Transmission Coefficient (STC) of 65 dB(A) and exterior glazing to perform at an OITC rating of 32 dB(A) on all east-facing windows and OITC of 28 dB(A) on all other facades; and

WHEREAS, the applicant states that on the north façade, a sound attenuation level of 25 dB(A) is required to achieve the desired community facility interior noise level of 45 dB(A) or lower; at the east façade, a sound attenuation level of 31 dB(A) is required to achieve the desired community facility interior noise level of 45dB(A); at the south façade, a sound attenuation level of 25 dB(A) is required to achieve the desired community facility noise level of 45 dB(A) or lower; and

WHEREAS, the applicant states that it will have an HVAC system to provide an alternate means of ventilation in all habitable rooms that will allow for a closed window condition and adequate window-wall attenuation to ensure acceptable interior noise levels; and

WHEREAS, the applicant concludes that it will comply with all applicable environmental regulations and that emissions from industrial uses within 400 feet of the site will not cause significant adverse impact on the school; and

WHEREAS, further, the applicant notes that the building will be set back from all street frontages by a minimum of ten feet and buffered by landscaped areas; and

WHEREAS, as far as traffic, the applicant states that based on the traffic study, none of the intersections in close proximity to the proposed site were found to be high accident points; and

WHEREAS, the applicant has identified what it predicts to be the most common routes to the school and has addressed those with the Department of Transportation (“DOT”); and

WHEREAS, the Board finds that the conditions surrounding the site and the building’s construction will adequately separate the proposed school from noise, traffic and other adverse effects of any of the uses within the surrounding M1-1 zoning district; thus, the Board finds that the requirements of ZR § 73-19(c) are met; and

WHEREAS, ZR § 73-19(d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant represents that the following measures are proposed to protect children traveling to and from the School: (1) installation of seven high visibility crosswalks at key intersections; (2) installation of school zone signage at the approaches to

the site to warn motorists that they are approaching a school; and (3) positioning crossing guards at local intersections where high pedestrian activity is anticipated; and

WHEREAS, the Board notes that the applicant has submitted a Proposed Pedestrian Safety Plan, which reflects all the points for crosswalks, crossing cards, and signage that will be installed and maintained in the surrounding area; and

WHEREAS, the Board referred the application to DOT’s School Safety Engineering Office; and

WHEREAS, by letter dated October 21, 2013, DOT states that it has no objection to the proposal and has identified Bay Street and Columbia Street as local truck routes and recommended that this should be taken into consideration when designing the pedestrian safety plan; and

WHEREAS, upon approval of the application, DOT will prepare a safe route to school map with signs and marking; and

WHEREAS, the Board finds that the above-mentioned measures will control traffic so as to protect children going to and from the proposed school; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, in response to certain concerns raised by the Opposition about the applicability of the special permit, the applicant asserts that a special permit, unlike a variance, authorizes the use of property in a manner expressly permitted by the zoning ordinance under stated conditions and that “inclusion of the permitted use in the ordinance is tantamount to a legislative finding that the permitted use is in harmony with the generalized zoning plan and will not adversely affect the neighborhood” North Shore Steak House Inc. v. Board of Appeals of Town of Thomastown, 30 N.Y.2d 238 (1972); and

WHEREAS, accordingly, the applicant states that the burden on one seeking a special use permit is lighter than one seeking variance since the issuance of a special permit is a duty enjoined upon zoning officials whenever there is compliance with the statutory conditions see Peter Pan Games of Bayside, Ltd. v. Board of Estimate of City of New York, 67 A.D.2d 925 (2d Dept 1967); and

WHEREAS, additionally, the applicant states that because of their inherently beneficial nature, educational institutions enjoy special treatment and are allowed to expand into neighborhoods where nonconforming uses would otherwise not be allowed, citing to Albany Preparatory Charter School v. City of Albany, 31 A.D.3d 870 (3d Dept. 2006); and

WHEREAS, by supplemental submission, the applicant responded to the Opposition’s following

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concerns: (1) whether notification had been performed as required; (2) whether there is a higher standard for review for private schools; (3) whether the School established that there is a practical possibility of obtaining a site as of right within the neighborhood to be served; (4) whether the traffic issues of the surrounding non-residential district had been addressed; (5) whether the project will have a negative impact on the IBZ; and (6) whether the school will have a negative impact on public welfare; and

WHEREAS, as to proper notice, the applicant described its compliance with the Board's Rule §§ 1-10.6 1-10.7 and Community Board 6's Responsible Development Policy; and

WHEREAS, as to the appropriate standard of review for private schools, the applicant states that there is not any statutory or regulatory basis for finding that an application for a special permit to construct an independent or private school be viewed with any more stringent scrutiny under ZR § 73-19 than an application submitted by a religious institution or charter school; and

WHEREAS, the applicant asserts that New York State courts recognize deferential treatment to educational institutions due to their inherently beneficial nature (citing Pine Knolls Alliance Church v. Zoning Bd. of Appeals of Town of Moreau, 5 N.Y.3d 407 (2005); Trustees of Union College of Town of Schenectady in State of N.Y. v. Members of Schenectady City Council, 91 N.Y.2d 161; and

WHEREAS, the applicant asserts that private institutions are entitled to deferential treatment so long as they carry out the educational mission of the State because they have the same beneficial effect upon the general welfare of the community as public schools (citing to Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986); and

WHEREAS, the applicant states that the School's mission to raise the level of American education to the highest international standards and that the curriculum meets or exceeds New York State requirements; and

WHEREAS, the applicant asserts that there is no doubt that the School carries out the educational mission of the State and is entitled to the same deferential treatment of public institutions; and

WHEREAS, as to alternate sites, the applicant asserts that it has fully satisfied the requirement to demonstrate that there is no practical possibility of obtaining a site as of right with the neighborhood to be served; and

WHEREAS, the applicant represents that it undertook a deliberate search process, during a one-year period, it visited more than 50 sites and identified Brooklyn as under capacity for private schools and thus the focus of its search; and

WHEREAS, the applicant states that there is not

any merit to the Opposition's contentions that ZR § 73-19 requires that an applicant prove a need for expansion or establish a pre-existing presence in the catchment area; and

WHEREAS, as to the Opposition's contentions that the site is situated in a heavily-trafficked truck route and student safety cannot be assured, the applicant's studies show that there are not any high accident locations nearby and its noted safety measures will be implemented in the area to mitigate any concerns; and

WHEREAS, as to the location within the IBZ, the applicant addresses the Opposition's characterization that the site is located in an M3 zoning district in the heart of the IBZ and that permitting construction of a school would negatively impact the economic viability of the zone by depriving the area of needed industrial use space, employment opportunities, and establish a precedent for the development of alternative uses for sites in the IBZ; and

WHEREAS, the applicant notes that that the site is located within an M1 zoning district, rather than M3, and is located 200 feet from the border of the IBZ between a public park and an urban farm, rather than at its heart; and

WHEREAS, the applicant represents that the site's lot area constitutes approximately two percent of the total available area in the IBZ and that currently, there is 2,039,422 sq. ft. of available space for rent in the IBZ and that for the past ten years, the site has not generated any employment or other income except for the payment of the lease to park buses; and

WHEREAS, the applicant asserts that, on the contrary, the School will create approximately 100 new permanent jobs and contracts; and

WHEREAS, as to any impact on public welfare, the applicant asserts that the presumption is that educational uses are always in furtherance of the public health, safety, and morals (citing Cornell, 68 N.Y.2d at 589); and

WHEREAS, the applicant asserts that the burden shifts to the Opposition to rebut the presumption with evidence of a significant impact on traffic congestion, property values, and municipal services (citing Albany Preparatory Charter School v. City of Albany, 31 A.D.3d at 870; and

WHEREAS, the applicant asserts that its traffic safety measures and building construction conditions address safety and health issues and the School is prepared to adopt whatever additional measures may be deemed necessary; and

WHEREAS, the applicant states that the School is committed to being a good neighbor and will establish a working advisory committee to assist in further integrating the school with the community; and

WHEREAS, the applicant states that the school has committed to offer two scholarships to community

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members per year and will make School space available to the community for meetings and also for emergency relief; and

WHEREAS, the Board finds the applicant's submissions to be responsive to the Opposition's concerns and is satisfied that the proposal meets the findings of the special permit and is not subject to additional considerations; and

WHEREAS, the Board recognizes the purpose of the IBZ but based on the site's size, location at the edge of the zone across from two large parks, and history of use, it does not find that the use of the site, as contemplated by the special permit, undermines the IBZ's goals; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; as noted above, the School's impact on traffic will be minimal and will be mitigated by: (1) installation of high visibility crosswalks; (2) installation of school zone signage at the approaches to the site to warn motorists that they are approaching a school; and (3) positioning crossing guards at local intersections where high pedestrian activity is anticipated; and

WHEREAS, further, the Board notes that DOT has reviewed and approved of the traffic safety plan; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No.14BSA052K, dated March 21, 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, DOT's Division of Traffic and Planning reviewed the EAS and March 2014 Traffic Study and concluded that the proposed project would not

create any significant adverse traffic or pedestrian impacts; and

WHEREAS, the New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis reviewed the project for potential air quality and noise impacts; and

WHEREAS, DEP reviewed the consultant's December 18, 2013 air quality response submissions and determined that the proposed school would not create any significant adverse air quality impacts and that there would not be any adverse air quality impacts on the proposed school from existing industrial emission sources within 400 feet of the subject site; and

WHEREAS, based on the projected noise levels, DEP concurred with the consultant that their proposed design measures would provide sufficient attenuation to satisfy CEQR requirements; and

WHEREAS, OER has approved the Remedial Action Plan and the Construction Health and Safety Plan; and

WHEREAS, OER has requested that a P.E.-certified Hazardous Materials Remedial Action Report be submitted to it for review and approval at the conclusion of remedial/construction activities; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; 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 Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 and grants a special permit, to allow on a site in an M1-1 zoning district, the construction of a five-story Use Group 3 school, contrary to ZR § 42-31; *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 December 30, 2013" – Ten (10) sheets and "Received March 24, 2014" – Three (3) sheets and *on further condition*:

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 school will be limited to 89,556 sq. ft. of floor area (1.8 FAR) and a building height of 79'-3";

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided it with OER's approval of the Remedial Action Report;

THAT interior noise levels will be maintained at 45 dBA or below within the building in accordance with the

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noise attenuation notes on the BSA-approved plans;

THAT bus drivers will not idle in front of the building, the School or the site;

THAT enhanced crosswalks, crossing guards, and signage will be installed and maintained as reflected on the Proposed Pedestrian Safety Plan of the BSA-approved plan sheets;

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70;

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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 25, 2014.

**A true copy of resolution adopted by the Board of Standards and Appeals, March 25, 2014.**

**Printed in Bulletin Nos. 12-13, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

