

**95-13-BZ**

**CEQR #13-BSA-113X**

APPLICANT – Eric Palatnik, PC, for Lai Ho Chen, owner; Tech International Charter School, lessee.

SUBJECT – Application April 2, 2013 – Variance (§72-21) to permit the enlargement of an existing school (UG 3) at the second floor, contrary to §24-162. R6/C1-3 and R6 zoning districts.

PREMISES AFFECTED – 3120 Corlear Avenue, Corlear Avenue and West 231st Street, Block 5708, Lot 64, Borough of Bronx.

**COMMUNITY BOARD #8BX**

**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 Bronx Borough Commissioner, dated March 20, 2013, acting on Department of Buildings Application No. 200928979, reads in pertinent part:

ZR 24-162 – proposed floor area for the community facility use exceeds maximum (permitted) floor area; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R6 (C1-3) zoning district, the enlargement of an existing ten-story mixed residential, community facility and commercial building (Use Groups 2, 3, and 6) that does not comply with regulations regarding maximum community facility floor area ratio, contrary to ZR § 24-162; and

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

WHEREAS, a public hearing was held on this application on November 19, 2013 after due notice by publication in the *City Record*, with a continued hearing on January 28, 2014, and then to decision on February 25, 2014; and

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

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

WHEREAS, the subject site is a flag-shaped lot with frontages along Corlear Avenue and West 231st Street, within an R6 (C1-3) zoning district; and

WHEREAS, the site has 118 feet of frontage along Corlear Avenue, 35 feet of frontage along West 231st Street, and approximately 15,038 sq. ft. of lot area; and

WHEREAS, the site is a single zoning that comprises Tax Lots 64 and 110; Lot 64 is occupied by a one-story commercial building (Use Group 6) with 4,665 sq. ft. of floor area; Lot 110 is occupied by a ten-story

mixed residential, community facility and commercial (Use Groups 2, 3, and 6) building (the “Main Building”) with 48,233 sq. ft. of floor area (15,019 sq. ft. of community facility floor area, 32,801 sq. ft. of residential floor area, 413 sq. ft. of commercial floor area); the zoning lot has a total floor area of 52,898 sq. ft. (3.52 FAR); and

WHEREAS, the Main Building includes, at the sub-cellar, 32 accessory parking spaces; at the cellar, an office, an ambulatory health facility, and storage; at the first story, a residential lobby, six accessory parking spaces, and the School; at the second story, 19 accessory parking spaces, at the third story, the School; and on stories four through ten, residential (48 dwelling units); and

WHEREAS, the applicant seeks to convert the second story of the Main Building from parking to program space for the School, resulting in an increase in community facility floor area from 15,019 sq. ft. (1.0 FAR) to 22,219 sq. ft. (1.48 FAR); and

WHEREAS, the applicant states that while the maximum permitted FAR on the lot is 4.8 FAR, the maximum permitted community facility FAR on the lot is 1.0 FAR and the existing community facility floor area is 15,019 sq. ft. (1.0 FAR); therefore, the community facility in the Main Building cannot be increased as-of-right and the applicant seeks a variance; and

WHEREAS, the applicant notes that the proposed increase in community facility floor area is entirely within the existing building envelope; and

WHEREAS, the applicant states that the School is authorized under its charter to teach sixth, seventh and eighth graders using a technology-based curriculum, including lab periods and project development, to complement the traditional middle school coursework in language arts, mathematics, science, history, music, art, English-as-a-Second-Language (“ESL”), and special education; and

WHEREAS, the applicant represents that it has a staff of 20 full-time employees and three part-time employees, including eight full-time teachers, and it operates Monday through Friday, from 8:00 a.m. to 5:00 p.m.; and

WHEREAS, however, the applicant states that due to the School’s lack of program space, it can only accommodate sixth and seventh grades (214 total students) in its 12 classrooms at the first (six classrooms) and third (six classrooms) stories of the Main Building; and

WHEREAS, the applicant also states that the School has experienced substantial growth since opening in September 2013 and that it anticipates enrollment of an additional 88 students in September 2014, which would bring enrollment to 302; and

WHEREAS, the applicant represents that the proposed enlargement will provide for four new

**95-13-BZ**

**CEQR #13-BSA-113X**

classrooms and a gymnasium at the second story, which, along with other proposed as-of-right renovations within the Main Building cellar, will bring the total number of classrooms to 17; further, the School notes that the proposal will allow it to accommodate up to 330 students, which is the targeted number for the School under its charter; and

WHEREAS, the applicant represents that absent the requested variance, the School would lack sufficient space to meet its programmatic needs; and

WHEREAS, the applicant states that an as-of-right renovation that does not increase the community facility floor area would result in only 15 classrooms and no gymnasium, and it would result in the School's eighth graders being sent to another school; and

WHEREAS, the applicant represents that a gymnasium is essential to its program, in that its middle school-aged children benefit from, and are required under state law to, participate in daily physical activities; and

WHEREAS, the applicant states that without an onsite gymnasium, it would be forced to take students to a recreation facility offsite, which results in additional staffing costs and safety concerns, since students would be forced to leave campus; and

WHEREAS, as to the School's eighth graders being sent to a different school because of space constraints, the applicant asserts that such an occurrence would jeopardize the School's charter and negatively impact its existing students and create a hardship for their families; 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, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and 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 finds that the School's programmatic needs are legitimate and agrees that the proposed enlargement is necessary to address its needs, given the current unique conditions that constrain the site; and

WHEREAS, accordingly, based on the above, the Board finds that the programmatic needs of the School 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 non-profit

educational institution and the variance is requested to further its non-profit 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, per ZR § 72-21(c), 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; and

WHEREAS, the applicant states that the surrounding area is characterized by low- to medium-density residential and community facility uses, with commercial uses along major streets; and

WHEREAS, the applicant states that schools in particular are well-represented, and submitted a Land Use Study in support of that statement, which reflects that there are seven schools within three blocks of the site; and

WHEREAS, the applicant notes that the school already exists at the site and is permitted as-of-right in the subject R6 (C1-3) zoning district; and

WHEREAS, as to bulk, the applicant notes that the community facility enlargement authorized by the variance will occur entirely within the Main Building, which complies in all other respects with the bulk regulations, including residential and commercial floor area (as does the entire zoning lot); as such, the applicant states that the proposal will have no impact on surrounding uses; and

WHEREAS, as to the impact of reducing the number of accessory parking spaces on the zoning lot, the applicant states that the elimination of 19 parking spaces to accommodate the School's program space leaves the zoning lot with 38 spaces, which is four more than the minimum number required under ZR §§ 25-23 and 36-21; 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 represents and the Board agrees that the hardship was not self-created and inherent in the unique programmatic needs of the School, in accordance with ZR § 72-21(d); and

WHEREAS, the applicant represents that, consistent with ZR § 72-21(e), the requested waiver is the minimum necessary to accommodate the programmatic needs of the School; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School to fulfill its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

**95-13-BZ**

**CEQR #13-BSA-113X**

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR §§ 617.2; 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. 13BSA113X, dated March 26, 2013; and

WHEREAS, the EAS documents that the operation of the PCE 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 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 § 72-21 and grants a variance to permit, on a site within an R6 (C1-3) zoning district, the enlargement of an existing ten-story mixed residential, community facility and commercial building (Use Groups 2, 3, and 6) that does not comply with regulations regarding maximum community facility floor area ratio, contrary to ZR § 24-162, *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 4, 2014"-Twelve (12) sheets"; *on further condition*:

THAT the community facility floor area will not exceed 22,219 sq. ft. (1.48 FAR) and that a minimum of 38 accessory parking spaces will be provided, as shown on the BSA-approved plans;

THAT construction will proceed in accordance

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

**Printed in Bulletin Nos. 8-9, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

with ZR § 72-23; and

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

HAT 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 25, 2014.

