

**26-14-BZ**

**CEQR #14-BSA-112M**

APPLICANT – Francis R. Angelino, Esq., for The Hewitt School, owner.

SUBJECT – Application February 6, 2014 – Variance (§72-21) to permit the enlargement of an existing community facility (*Hewitt School*), contrary to maximum building height (24-591); street wall height (§24-592); and rear yard requirements (§24-36). R8B zoning district.

PREMISES AFFECTED – 45 East 75th Street aka 42-76 East 76<sup>th</sup> Street, north side, East 75th Street through block to south side E 76th between Park & Madison Avenues, Block 1390, Lot(s) 28, 46, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 15, 2014, acting on DOB Application No. 121333878, reads in pertinent part:

1. ZR 24-591 – The proposed vertical addition exceeds the maximum height; contrary to ZR 24-591;
2. ZR 24-592 – The proposed vertical addition for the street wall less than 45'-0" wide on Lot 46 exceeds height permitted; contrary to ZR 24-592;
3. ZR 24-382(a) – The proposed building portion above 23'-0" in height occurs in the required rear yard equivalent for the through lot portion; contrary to ZR 24-382(a);
4. ZR 24-36 – The proposed building portion above 23'-0" in height occurs in the required rear yard for the interior lot portion; contrary to ZR 24-36; and
5. ZR 24-11 – The proposed building portion above 23'-0" in height in the rear yard equivalent exceeds the maximum lot coverage; contrary to ZR 24-11; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R8B zoning district, within a Limited Height District (LH-1A), within the Upper East Side Historic District, the conversion and enlargement of an existing building to be occupied as a school (Use Group 3), which does not comply with zoning regulations for lot coverage, rear yard, rear yard equivalent, and height and setback, contrary to ZR §§ 24-11, 24-36, 24-382, 24-591, and 24-592; and

WHEREAS, a public hearing was held on this application on October, 28, 2014, after due notice by publication in the *City Record*, with subsequent hearings held December 9, 2014 and January 6, 2015, then to decision on February 10, 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 8, Manhattan, recommends approval of the application; and

WHEREAS, this application is brought on behalf of the Hewitt School (the “School”), a nonprofit educational institution for girls, which serves students from grades kindergarten through 12; and

WHEREAS, the subject site is an interior through lot located on the block bounded by Madison Avenue, East 75th Street, Park Avenue, and East 76th Street; it comprises Tax Lots 28 and 46 and is within an R8B zoning district, within a Limited Height District (LH-1A), within the Upper East Side Historic District; and

WHEREAS, the site has 51 feet of frontage along East 75th Street, 58 feet of frontage along East 76th Street, and approximately 11,136 sq. ft. of lot area; and

WHEREAS, the site is occupied by three buildings, two of which currently comprise the School’s campus and are classified within Use Group 3: the four-story building located at 45 East 75th Street (Lot 46), which was the original School building; the five-story building located at 44-46 East 76th Street (Lot 46), which was acquired by the School in 1966; and the five-story multiple dwelling (Use Group 2) located at 42 East 76th Street (Lot 28) (the “Townhouse”), which was acquired in 2011; and

WHEREAS, the applicant represents that the buildings have a combined existing floor area of approximately 37,754 sq. ft. (3.4 FAR) and the applicant notes that the maximum permitted floor area of the site is 56,796 sq. ft. (5.1 FAR); and

WHEREAS, the applicant states that the School proposes to renovate and vertically and horizontally enlarge the Townhouse and combine it with the existing School buildings; specifically, the proposal reflects the construction of a sixth story atop the Townhouse, resulting in an increase in building height from 61'-10" to 69'-11" and an increase in floor area from 37,754 sq. ft. (3.4 FAR) to 39,261 sq. ft. (3.5 FAR); in addition, the existing approximately 6'-0" x 10'-0" court at the rear of the Townhouse will be filled in, with the rear wall being extended to the eastern lot line (which is the western lot line of Lot 28); and

WHEREAS, the applicant states that the renovated Townhouse will accommodate the following: (1) at the cellar, a dance room, a changing room, a restroom, and storage and mechanical rooms; (2) at the first story, offices, a lobby, a choir room with related storage, and a conference room; (3) at the second story, a science classroom and laboratory space; (4) at the third story, a digital arts room, and a drama room; (5) at the fourth story, faculty office space and a conference room; (6) at the fifth story, two multipurpose rooms; and (7) at the sixth story, a dedicated art studio for the Lower School (kindergarten through grade five); and

WHEREAS, the applicant states that proposal requires the following waivers: (1) height and setback, in that the proposed building height (69'-11") is contrary to

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ZR §§ 24-591 and 24-592 (which permit a maximum building height of 60'-0"); (2) rear yard, in that, within the interior lot portion of the site and above a height of 23'-0" and one story, the proposed depth of 24'-7¼" is contrary to ZR § 24-36 (which requires a minimum depth of 30'-0"); (3) rear yard equivalent, in that, within the through lot portion of the site and above a height of 23'-0" and one story, the proposed depth of 24'-7¼" is contrary to ZR § 24-382 (which requires an open area with a minimum depth of 30'-0"); and (4) lot coverage, in that within the through lot portion of the site and above a height of 23'-0" and one story, the proposed lot coverage is 90 percent, contrary to ZR § 24-11 (which permits a maximum lot coverage of 70 percent); and

WHEREAS, the applicant notes that the rear yard and rear yard equivalent waivers are required only for a small portion of the Townhouse at the second and third stories (approximately 65 sq. ft. on each story) and that the fourth, fifth, and sixth stories would be—in terms of yard provisions—as-of-right, in that each provides a rear setback with a depth of 30'-0"; as to lot coverage, the applicant states that with the inclusion of the Townhouse, the site's non-complying lot coverage will be reduced from 95 percent to 90 percent; and

WHEREAS, because the enlargement does not comply with the applicable bulk regulations in the subject zoning district, the applicant seeks the requested variance; and

WHEREAS, the applicant states that the variance is necessary to meet the School's programmatic need to expand and improve existing classroom space and create new adjacencies and additional classrooms, all of which will result in a significantly more efficient use of the School buildings and enable the School to remain competitive—in terms of resources, faculty office space, and classroom square footage-per-student—with similar institutions, such as the Spence School, the Nightingale-Bamford School, and the Chapin School; and

WHEREAS, the applicant also notes that the proposal is to accommodate the School's existing needs and is not intended to facilitate an increase in enrollment; and

WHEREAS, the applicant asserts that while the as-of-right configuration is similar to the proposal, it does not fully satisfy the School's programmatic needs; and

WHEREAS, specifically, the applicant states that the as-of-right configuration results in the following: (1) the loss of the entire sixth story, which provides a new arts classroom that is specifically designed for younger children and adjacent to Lower School classrooms in the existing School Building; and (2) the loss of significant program space in the science classroom on the second story and the digital arts/drama classroom on the third story, where the Townhouse's existing rear wall configuration creates unusable space and reduces the number of students below the School's standard 16-18 students per class; and

WHEREAS, thus, the applicant contends that the requested waivers are both modest and essential to the School's full utilization of the Townhouse for its

programmatic needs; and

WHEREAS, the applicant also contends that, per ZR § 72-21(a), the site is uniquely burdened by an unusual lot shape and a history of piecemeal development, which create practical difficulties in developing the site in compliance with the Zoning Resolution; and

WHEREAS, the applicant states that particularly with the inclusion of Lot 28, the site has an irregular shape, with multiple rear lot lines, and both interior and through lot portions; and

WHEREAS, in addition, as noted above, the applicant states that the School has expanded at different times within different existing buildings over the past 60 years, which has resulted in a disjointed maze of inaccessible, narrow, and winding hallways connecting the north and south ends of the School that are impractical and that interfere with the unity of the school; and

WHEREAS, the Board acknowledges that the School, as an educational institution, is entitled to significant d

ference 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 NY2d 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, based upon the above, the Board finds that 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 institution and the variance is needed 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, pursuant to 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 immediate neighborhood is characterized by medium-density residential and community facility uses in the mid-block and higher-density mixed residential, commercial, and community facility uses on the avenues; and

WHEREAS, the applicant notes that the site is located within a Limited Height District (LH-1A) within the Upper East Side Historic District and the applicant states that the proposal was designed to be consistent with the appearance and bulk of the surrounding buildings; and

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WHEREAS, in addition, the applicant states that the proposed sixth story of the Townhouse will be virtually invisible from all sightlines and that the second and third story enlargement will result from the horizontal extension of an existing, non-complying rear wall; and

WHEREAS, the applicant also notes that the proposed 39,261 sq. ft. of floor area (3.5 FAR) is well below the maximum permitted at the site (56,796 sq. ft. (5.1 FAR)) and that the inclusion of the Townhouse (Lot 28) decreases the non-compliance of the site with respect to lot coverage; and

WHEREAS, finally, the applicant states, as noted above, that the proposal is not intended to allow an increase in the number of students at the School; thus, the applicant does not anticipate any changes to pedestrian or vehicular traffic; and

WHEREAS, accordingly, the applicant asserts that the proposal will have no negative impacts on the surrounding neighborhood; and

WHEREAS, because the site is within the Upper East Side Historic District, the applicant has obtained Certificate of Appropriateness No. 16-7281 from the Landmarks Preservation Commission ("LPC"), dated January 26, 2015; and

WHEREAS, the Board agrees with the applicant that the proposal 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 the hardship was not self-created, and that no as-of-right development that would meet the programmatic needs of the School could occur given the existing conditions of the School buildings and the site; and

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

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

WHEREAS, 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 II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action discussed in the CEQR Checklist, 14-BSA-112M dated February 6, 2014; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues Appeals issues a Type II determination 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 within an R8B zoning district, within a Limited Height District (LH-1A), within the Upper East Side Historic District, the conversion and enlargement of an existing building to be occupied as a school (Use Group 3), which does not comply with zoning regulations for lot coverage, rear yard, rear yard equivalent, and height and setback, contrary to ZR §§ 24-11, 24-36, 24-382, 24-591, and 24-592, *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 September 22, 2014"– seventeen (17) sheets; and *on further condition*:

THAT the site shall be limited to a maximum floor area of 39,261 sq. ft. (3.5 FAR) and the total building height of the Townhouse shall be limited to 69'-11", exclusive of bulkheads and parapets, as illustrated on the BSA-approved plans;

THAT any change in the use, occupancy, or operator of the School shall require the Board's approval;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by February 10, 2019;

THAT all construction shall be in conformance with the LPC Certificate of Appropriateness No. 16-7281, dated January 26, 2015;

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 10, 2015.

**A true copy of resolution adopted by the Board of Standards and Appeals, February 10, 2015.**

**Printed in Bulletin No. 8, Vol. 100.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

