

# **DECAMPO, DIAMOND & ASH**

THOMAS M. ASH III

WILLIAM H. DIAMOND

FRANCIS R. ANGELINO  
OF COUNSEL

747 Third Avenue, 33A  
New York, New York 10017  
Telephone (212)758-3500  
Facsimile (212)758-1728

February 6, 2013

Chair Nicholas D. Viest  
Manhattan Community Board 8  
505 Park Avenue, 602  
New York, NY 10022  
Attn. Latha Thompson,  
District Manager

**RECEIVED**

FEB 14 2014

BY COMMUNITY BOARD 8

**Re: 45 E. 75<sup>th</sup> St, 42-46 E.76<sup>th</sup> St, New York, NY, Block  
1390, Lots 28 & 46 (the "Subject Premises");  
BSA Cal. No. 26 -14-BZ**

Dear Chair Viest:

Please be advised that we have today filed an Application with the Board of Standards and Appeals (the "Board") on behalf of the Hewitt School for a zoning bulk variance to construct a rooftop and rear yard additions to an existing five-story building on a portion of the Subject Premises. (The "Proposed Building").

Last year, Community Board 8 recommended the approval of the Proposed Building to the Landmarks Preservation Commission which approved it on September 24, 2013.

In accordance with the rules of the Board, we are sending you copies of the following documents:

1. BZ Application form;
2. Department of Building Objection;
3. Statement of Facts and Findings, and attachments;

4. Architectural Plans, Existing and Proposed Conditions prepared by Robert A. M. Stern, Architects, LLP with BSA zoning calculations, and colored Radius Diagram;
5. Color photographs of site;
6. List of Affected Property Owners and Tenants;
7. Affidavit of Ownership;
8. CEQR, Type II checklist.
11. BSA Zoning Analysis Form.
12. Zoning & Tax Maps

Please let me know when your Board will schedule this application for its review.

Very truly yours,



Francis R. Angelino

FRA:ag  
Enclosures

cc: Board of Standards and Appeals  
City Planning Commission (2 copies)  
Manhattan Borough President Brewer  
Council Member Garodnick



250 Broadway, 29th Floor  
 New York, NY 10007  
 212-386-0009 - Phone  
 646-500-6271 - Fax  
 www.nyc.gov/bsa

**ZONING (BZ) CALENDAR**

Application Form

**Board of Standards and Appeals**

BSA APPLICATION NO. **26-14-BZ**  
 CEQR NO. **14 BSA-112M**

2014 FEB -6 10 2 17  
 RECEIVED  
 FEB 14 2014  
 BY COMMUNITY BOARD 8

**Section A**

Applicant/ Owner

Francis R. Angelino, Esq.			The Hewitt School		
NAME OF APPLICANT			OWNER OF RECORD		
747 Third Avenue, s. 33A			45 East 75th Street		
ADDRESS			ADDRESS		
New York	NY	10017	New York	NY	10021
CITY	STATE	ZIP	CITY	STATE	ZIP
212	758-1690				
AREA CODE	TELEPHONE		LESSEE / CONTRACT VENDEE		
212	758-1728				
AREA CODE	FAX		ADDRESS		
fangelino@ddanyc.com					
EMAIL			CITY	STATE	ZIP

**Section B**

Site Data

45 East 75th Street, 42-46 East 76th Street 10021  
 STREET ADDRESS (INCLUDE ANY A/K/A) ZIP CODE

N/S E. 75th St. through block to S/S E. 76th St., between Park & Madison Avenues  
 DESCRIPTION OF PROPERTY BY BOUNDING OR CROSS STREETS

1390	28, 46	Manhattan	CB8M	Upper East Side H. D.
BLOCK	LOT(S)	BOROUGH	COMMUNITY DISTRICT	LANDMARK/HISTORIC DISTRICT
Garodnick		R8B		8c
CITY COUNCIL MEMBER		ZONING DISTRICT (include special district, if any)		ZONING MAP NUMBER

**Section C**

Dept of Building Decision

BSA AUTHORIZING SECTION(S) 72-21 ZR for  VARIANCE  SPECIAL PERMIT (Including 11-41)

Section(s) of the Zoning Resolution to be varied 24-591 & -2, 24-382(a), 24-36, 24-11

DOB Decision (Objection/ Denial) date: 1/15/14 Acting on Application No: 121333878

**Section D**

Description

(LEGALIZATION  YES  NO  IN PART)

Application on behalf of the Hewitt School for a bulk variance to construct a rooftop and rear yard additions for the School's expansion into an existing five-story townhouse at 42 East 76th Street.

**Section E**

BSA History and Related Actions

If "YES" to any of the below questions, please explain in the STATEMENT OF FACTS

	YES	NO
1. Has the premises been the subject of any previous BSA application(s)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
PRIOR BSA APPLICATION NO(S): _____		
2. Are there any applications concerning the premises pending before any other government agency?...	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Is the property the subject of any court action?.....	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Section F**

Signature

I HEREBY AFFIRM THAT BASED ON INFORMATION AND BELIEF, THE ABOVE STATEMENTS AND THE STATEMENTS CONTAINED IN THE PAPERS ARE TRUE.

Signature of Applicant, Corporate Officer or Other Authorized Representative: Francis R. Angelino

Francis R. Angelino, Esq. Attorney

Print Name Title

JOSEPH F. DUNOVICH 7 DAY OF FEB 20 14  
 Notary Public, State of New York  
 No. 022E4968458  
 Qualified in Kings County  
 Commission Expires June 25, 2014

NOTARY PUBLIC



NYC Development Hub  
 Department of Buildings  
 80 Centre Street  
 Third Floor  
 New York, New York 10013  
 nycdevelopmenthub@buildings.nyc.gov

### Notice of Comments

Owner: THE HEWITT SCHOOL

Date: January 13, 2014

Job Application #: 121333878

Applicant: ROBERT A.M. STERN ARCHITECTS, LL

Application type: Alt. Type #1

Premises Address: 45 E 75<sup>th</sup> Street, Manhattan


Zoning District: R8B (LH-1A)

Block: 1390 Lots: 28, 46 Doc(s): 01

Lead Plan Examiner at NYC Development Hub: Rodney F. Gittens, RA, MBA

Examiner's Signature:

No.	Section of ZR and/or MDL	Comments	Date Resolved
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.	
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	

REVIEWED BY  
**Jed Weiss**  
 Executive Zoning Specialist  
  
**DENIED**  
 For Appeal to Board of Standards and Appeals  
 Date/Time: Jan 15, 2014 - 9:25 AM



Board of Standards and Appeals

250 Broadway, 29th Floor  
New York, NY 10007  
212-386-0009 - Phone  
646-500-6271 - Fax  
www.nyc.gov/bsa

AFFIDAVIT OF OWNERSHIP AND AUTHORIZATION

Affidavit of Ownership

JOAN Z. LONERGAN has offices  
being duly sworn, deposes and says that (s)he resides  
at 45 East 75th Street, in the City of New York, in the County of New York, in the  
State of New York; that The Hewitt School is the owner in fee of all that certain  
lot, piece or parcel of land located in the Borough of Manhattan, in the City of New York  
and known and designated as Block 1390, Lot(s) 28, 46, Street and House Number  
45 E 75th St & 42 E 76th Street; and that the statement of facts in the annexed application are true,  
upon information and belief.

Check one of the following conditions:

- Sole property owner of zoning lot
- Cooperative Building
- Condominium Building
- Zoning lot contains more than one tax lot and property owner

Owner's Authorization

The owner identified above hereby authorizes Francis R. Angelino, Esq.  
to make the annexed application in her/his behalf.

Signature of Owner

Print Name

Print Title

*Joan Z. Lonergan*  
JOAN Z. LONERGAN  
HEAD OF THE HEWITT SCHOOL

Sworn to before me this \_\_\_\_\_ day

of January 30, 2014

*Francis R. Angelino*  
Francis R. Angelino, Esq.

Notary Public, State of New York  
No. 51-02AN-713885  
Qualified in New York County  
Commission Expires 7/31/2014

Francis R. Angelino, Esq.  
c/o DeCampo, Diamond & Ash  
747 Third Avenue, s. 33A  
New York, NY 10017

# **DECAMPO, DIAMOND & ASH**

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## **STATEMENT OF FACTS**

Re: **45 East 75<sup>th</sup> Street, 44-46 East 76<sup>th</sup> Street and  
42 East 76<sup>th</sup> Street, Manhattan  
Block 1390, Lots 28 and 46  
(The "Subject Premises")**

This is an application, on behalf of the Hewitt School ("Hewitt" or the "School" and the "Owner" of the Subject Premises) for a bulk variance to construct a rooftop and rear yard additions and alter the front areaway of an existing five-story building (the "Townhouse" or the "Proposed Building") on a portion of the Subject Premises.

The Proposed Building is situated on the south side of 76<sup>th</sup> Street, between Madison and Park Avenues, in an R8B/LH1-A zoning district within the Upper East Side Historic District.

The School's irregularly shaped zoning lot consists of three buildings: 1) 45 East 75<sup>th</sup> Street, the School's original building, first occupied in 1954; 2) 44 and 46 East 76<sup>th</sup> Street, which the School purchased in 1966; and 3) 42 East 76<sup>th</sup> Street, the School's recently purchased Townhouse (collectively, the "Zoning Lot").

In the fall of 2010, Hewitt engaged Robert A.M. Stern Architects, LLP ("RAMSA"), to provide master plan services to evaluate their existing buildings and determine existing and future space requirements and opportunities for expansion into the Townhouse. RAMSA conducted interviews with faculty and students to collect information on building use, its success and challenges and also benchmarked Hewitt space against other private girl's schools in Manhattan.

The purpose of this Application is to obtain a variance that will enable the School to have: 1) A new dedicated art studio for younger children in the rooftop addition of the renovated Townhouse, and 2) Additional, much-needed teaching and learning space by re-aligning the rear façade of the Townhouse.

Submitted with this application are letters from: A) the Hewitt School, addressed to The Board of Standards and Appeals (the "Board"), dated December 12, 2013, (the "Hewitt Letter") indicating: 1) the inadequacy of the School's existing facilities to meet the needs of its faculty and students; and 2) that the School's existing facilities are substandard when compared to those of its peers in terms of square feet per student and other qualitative criteria; and B) RAMSA, addressed to the Board, dated December 16, 2013 (the "Architects Letter"), which describes in detail, as more particularly described below, the need to expand vertically above the height of the Townhouse, replace the south façade in its entirety and expand the lower level and first floor into the rear yard creating a one-story rear yard addition in order to meet the programmatic needs of the School.

As indicated in Hewitt's Letter, the Subject Premises is owned by Hewitt, an independent college preparatory school for girls in Kindergarten through grade 12.

Since moving to its current location at 45 East 75<sup>th</sup> Street in 1954, the School has grown steadily to an enrollment of 524. In 1966, the School expanded its physical facilities by purchasing two buildings at 44 and 46 East 76<sup>th</sup> Street, directly to the north of its 75<sup>th</sup> Street building, and subsequently constructed a two-story gymnasium with auditorium below grade. In 1974, the School added three floors to this building and, in 1986, expanded again by adding a connection in the rear yard of its 75<sup>th</sup> Street building.

In 2011, the School acquired the Proposed Building, a townhouse immediately to the west of their existing 76<sup>th</sup> Street building, providing an opportunity to create new teaching and learning spaces for the Middle and Upper School for the first time in 27 years. These new teaching and learning spaces will facilitate the implementation of the School's mission, as defined in the newly completed Strategic Plan 2012, which is to provide an inspiring place where girls are empowered to discover their full intellectual and creative abilities, to pursue their passions and to achieve their personal best.

As further described in the Hewitt and the Architects Letters, the portion of the Subject Premises where the Townhouse is situated has a lot size of only approximately 2,040 square feet ("SF"), with a 20' frontage on the south side of 76<sup>th</sup> Street, between Madison and Park Avenues, and a depth of approximately 102'. The Townhouse has a total floor area of only approximately 6,669.

The Townhouse is located in an R8B residential district and also in an LH1-A (limited height) district, which provides for a maximum height of 60 feet.

## **The LPC Approval**

The exterior design of the Proposed Building was approved by The Landmarks Preservation Commission ("LPC") at its Public Meeting of September 24, 2013, when LPC voted to approve a proposal to construct rooftop and rear yard additions, and alter the front areaway, finding that the Proposed Building will contribute to and enhance the Upper East Side Historic district's neighborhood ("LPC Status Update Letter," dated 9/24/13, a copy of which is attached). The LPC approval permitted the following work which Hewitt proposed for the Townhouse:

- 1) The vertical expansion above the existing height of the Townhouse by adding a one-story classroom with a mechanical bulkhead above.
- 2) The replacement of the south façade in its entirety, along with an extension of the lower level and first floor into the rear yard, creating a one-story rear yard addition with a roof height of 12'-0".
- 3) The removal of the two-story iron balconies on the existing three-story brick build out on the south facade.

## **The Zoning Lot**

The Zoning Lot of the existing School's lot together with the Townhouse lot, occupies a frontage of approximately 58' on the south side of East 76<sup>th</sup> Street between Park and Madison Avenues and 51' on the north side of East 75<sup>th</sup> Street, in an R8B/LH-1A zoning district within the Upper East Side Historic District. It has a depth of approximately 100' on the Townhouse and approximately 204' at the through-block portion of the Zoning Lot. The Zoning Lot has a total lot area of only approximately 11,090 SF. The Zoning Lot had an irregular through-block shape prior to the acquisition of the Townhouse, which gives the Zoning Lot an even more irregularly shaped lot currently.

## **The Proposal**

Submitted with this application are two sets of drawings prepared by RAMSA, dated January 31, 2014: 1) the Existing and Conforming Conditions, and 2) the Proposed Conditions, which were examined as the feasible development alternatives.

### **The Existing and Conforming Conditions**

Currently, the Townhouse is a five-story residential-use building and will require reclassification as a community facility building in order for the School to assume



use of the building as an extension of their current educational program. The total floor area of the Townhouse is approximately 6,669 SF.

The School is merging its two lots, numbered 28 and 46, into one zoning lot covering the entire Subject Premises.

### The Proposed Conditions

The Proposed Conditions would consist of a complete gut demolition of the Townhouse's interior while preserving the exterior north facade and masonry party walls, consistent with the LPC approval, in order to provide a self-sufficient, free standing and seismically independent structural system which will be able to support proper loading capacity for the School's use.

The proposed second and third floor would end 24'-7" from the Townhouse's south property line and encroach into the rear yard 30'-0" setback by approximately 5'-5". The rooftop addition would build above the 60'-0" Maximum Normal Building Height by approximately 9'-11" in order to provide a classroom and the required mechanical space to support the new spaces created within the Townhouse. The total floor area of the Proposed Conditions for the Townhouse will be 8,166 SF or an increase of 1,507 SF over the existing Townhouse's 6,659SF.

### The Department of Buildings ("DOB") Objection

The DOB has denied the Application, for appeal to the NYC Board of Standards and Appeals, based on the following objections:

**"1) The proposed vertical addition exceeds the maximum height, contrary to ZR 24-591; 2) 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) the proposed building portion above 23'-0" in height occurs in the required yard equivalent for the through lot portion, contrary to ZR 24-382(a); 4) the proposed building portion above 23'-0" in height occurs in the required yard for the interior lot portion, contrary to ZR 24-36; and 5) the proposed building portion above 23'-0" in height in the rear yard equivalent exceeds the maximum lot coverage, contrary to ZR 24-11."**

All of the above DOB objections relate solely to the expansion of the Townhouse for School purposes by 1) Approximately 9'-11" in height on the Townhouse's roof and 2) The encroachment into the rear yard by approximately 5'-5" on the rear of the second and third floors of the Townhouse. See attached drawing PS-01 of the RAMSA Proposed Conditions which, in section, graphically illustrates the relatively

small expansion of the Townhouse. Both of these expansions to the roof and the rear of the townhouse are for the single purpose of providing sorely needed classroom space for the School.

### **Programmatic Needs**

The new teaching and learning spaces in the Proposed Building are designed to facilitate the implementation of the School's mission, defined in the newly completed Strategic Plan 2012, which is to provide an inspiring place where girls are empowered to discover their full intellectual and creative abilities, to pursue their passions and to achieve their personal best. As detailed below, the Proposed Building will enable the School to implement its mission not only by providing additional teaching and learning spaces, but by enabling the School to use its additional teaching and learning spaces more efficiently. In addition, the Proposed Building will create a much-needed organizing element for the School since, as further described in the Architects Letter, the various expansions on the School's current site have produced a disjointed maze of inaccessible, narrow and winding hallways connecting the north and south ends of the School. Such hallways are not only impractical but detrimental to the psychological perception of the School as a unified body.

In conjunction with the renovation of the Townhouse, the School is considering renovating the lobby of its existing 76<sup>th</sup> Street building in order to create a central passageway on the first floor which will traverse the north end of the School, and have a visual termination focused on the existing fan light above the 76<sup>th</sup> Street entry. Finally, the Proposed Building will include an elevator on the north end of the School (there currently is none) which will serve all levels of the Townhouse and the existing 76<sup>th</sup> Street building and will be sized to meet requirements for medical stretchers.

The School's indoor athletic facilities currently consist of a single gymnasium/multipurpose room located in the basement of the School's existing 76<sup>th</sup> St. building. A variety of activities and events compete for the use of this room including basketball, volleyball, gym class, various clubs, and large meetings and gatherings. There is currently only one 13'-0" x 8'-0" locker room with 54 small lockers, and one 90 sq ft storage space for athletic equipment. The gymnasium itself is only 34'-2" wide, 68'-7" long and has a clear height of 14 - 8". (In comparison, a regulation high school basketball court is 60 ft wide, 104 ft long and has a clear height of 26 ft.) The School's gymnasium/multipurpose room also has no room for spectators except for a 2'-8" by 26'-0" mezzanine, which is located at one end of the court and currently used for equipment storage.

Historically, the School has been known for the strength of its performing arts program, even though its performing arts facilities are inferior in size and quality to those of all of its peers. The School's only dedicated performing arts space is a "black box" space measuring 25'-10" by 34'-1" by 18'-1" high. There is no performing arts storage, spectator or pre-function space outside of this black box space and it is put to non-performing arts use frequently, including as overflow space for the cafeteria. By way of comparison, the performing arts facilities of the School's peers include auditoria and dedicated dance studios.

The proposed lower level extension into the rear garden of the Townhouse will provide the School with a much needed storage room for the gymnasium and performing arts, which will subsequently free up the gymnasium and "black box" spaces, and restore the functions of these spaces to their original intended uses. The first floor extension into the rear yard will provide a much larger choir room for the School, sufficient to house a baby grand piano, while also having a table formation for their bell choir. The existing choir room in the School will be repurposed as office space for the School's network and technology department – a group of five staff members who currently are crowded into a room approximately 8'-0" x 15'-0". The new space for the technology group will allow them to grow their staff as well as provide support services to the School and students which previously were not possible due to space limitations.

The Proposed Building will provide a total of three additional performing arts spaces – a dance room adjacent to the gym, the choir room described in the preceding paragraph, and a drama room on the third floor. A locker room in the lowest level of the Townhouse will replace the existing locker room adjacent to the cafeteria and "black box" space. This will allow the School to repurpose the existing locker room to be an extension of the cafeteria, serving as "swing" space for food service or performance support.

Central to Hewitt's mission and current strategic plan is the goal of providing a high-quality and well-rounded science, technology and mathematics education in, and appropriate to, all grades. An assessment of Hewitt's science and technology needs in light of its mission and strategic plan indicates that the School has the requisite number of science labs but lacks the appropriate proportions for these rooms and preparation space to accommodate its academic needs at a minimally acceptable level. Additionally, the School lacks a maker space that would support its goal to provide students with hands-on opportunities to create and build things as a new way of learning.

The Proposed Building will provide a science lab and a fabrication lab. The science lab, located on the second floor, will be adjacent to the existing science labs and share resources already in place for the existing labs. The proposed Townhouse re-

alignment of the south façade on the second floor will extend the floor's footprint by approximately 100 SF by filling in the recessed area formed by the existing three story build-out at the southeast corner and will afford the School a rectangular-shaped, better-proportioned science lab that is larger than the School's existing labs and able to accommodate two faculty members in this extended area. This lab is also designed to open to the fabrication lab to its north via large doors and is intended to provide a flexible open space which can work as one large suite while still maintaining the ability to secure each room.

Hewitt's creative arts program currently is limited to what can be taught in two fairly large art studios. These studios often serve many different branches of the creative arts and, as a result, are crowded with materials and lack the proper free area necessary for easels, sculpture and pottery.

The Proposed Building will house a digital art studio on the third floor, adjacent to the existing art studios, and provide the School with a space to advance activities related to writing, publishing, video and news-making. The proposed rooftop addition will be a dedicated art studio for grades Kindergarten to 5<sup>th</sup> grade and provides a space for younger children to practice art in an environment designed to accommodate their smaller bodies. This new art studio is on the top floor of the Townhouse, which is easily accessible to the third and fourth graders on the upper floors of the existing 76<sup>th</sup> Street building thereby saving time by alleviating the need for the youngest children in the school to travel two floors to an art studio. This additional art classroom will also allow the existing art studios to be more focused on its use of providing classes geared towards the Middle and Upper schools.

Hewitt's current Middle and Upper School classrooms are both too few and too small for the School's needs. Middle and Upper school classes typically vary in size between 16 and 18 students. Accepted educational standards, and comparison with Hewitt's peers, suggest that classes of this size should be accommodated in classrooms of approximately 25 net square feet. Only six of Hewitt's Middle and Upper School classrooms currently achieve this size and the four smallest classrooms are 45% below this standard. A school-wide assessment of Hewitt's classrooms indicates that the School needs ten more classrooms to accommodate its academic needs at a minimally acceptable level and needs to expand or replace existing classrooms with appropriately sized, proportioned, and equipped rooms. In addition to the significant deficit in classroom size and quantity, Hewitt's Middle and Upper school classrooms are consistently and chronically short of teaching preparation space, storage space, as well as faculty support, offices, and meeting space.

The Proposed Building will provide the School with an additional three classrooms seating between 14 -18 students, and a faculty room for 10 additional faculty.

## **The Findings:**

### **THIS APPLICATION MEETS EACH OF THE REQUIREMENTS UNDER SECTION 72-21 Z.R.**

As demonstrated herein (1) the Owner's practical difficulties arise from a unique physical condition on its zoning lot, (2) because of the unique physical conditions there is no reasonable possibility that a reasonable return would result from development of the zoning lot in strict conformity with the use provisions of the Zoning Resolution; (3) the Proposed Building will not alter but instead will enhance the essential character of the neighborhood, (4) the Owner's practical difficulties are not self-created, and (5) the variance is the minimum necessary to afford relief from Owner's practical difficulties.

We show below that there is more than sufficient evidence for the Board to make each of the five required findings.

***A. That there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular zoning lot; and that, as a result of such unique physical conditions, practical difficulties or unnecessary hardship arise in complying strictly with the use and bulk provisions of the ZR; and that the alleged practical difficulties or unnecessary hardship are not due to circumstances created generally by the strict application of such provisions in the neighborhood or district in which the zoning lot is located;***

The Zoning Lot historically has had an irregular through-the-block shape and, with the addition and merger of the Townhouse's zoning lot, has an even more irregularly shaped lot.

New York courts have consistently held that religious and educational institutions are given wide latitude in meeting their programmatic needs because of the presumed beneficial effect they have on their local communities. It is widely acknowledged in New York State that "Church and school and accessory uses are, in themselves, clearly in furtherance of the public morals and general welfare." In the controlling case of Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986), the New York Court of Appeals (the "Court") held that the favorable zoning status accorded for religious and educational uses may be limited solely by factors involving the health, safety or welfare of the public. The zoning board involved in Cornell required that the school make a showing of affirmative need for its proposed expansion, and the zoning board's denial of a special permit was, on that basis,

reversed and remanded to the zoning board by the Court. While the BSA must still engage in a typical inquiry when granting a variance to non-profit schools and religious institutions, it has in numerous past cases expressly recognized that variance applications for such non-profits are entitled to significant deference. The BSA has further indicated that the uses which occupy a proposed development, as in the case of the Proposed Building, which is an educational institution, must generally be related to the non-profit purpose of the institution itself.

The Court also held that a school should not be denied a variance unless there is a finding that the result will "unarguably" contravene the "public's health, safety or welfare." Id. at 595. The Cornell holding means that in considering applications involving nonprofit institutions, the Board may deny the application only if it finds that the adverse impact of the proposed application is both extremely high and indisputable.

The Cornell decision's principles are directly applicable in this case. The fundamental premise of the Cornell decision is that land use authorities must afford special treatment to schools because they "singularly serve the public's welfare and morals" and because of "their presumed beneficial effect on the community." Id. at 593 and 595.

In numerous cases in New York City, the Board has considered and granted variances based on institutional programmatic needs. For example, in Columbia University Northwest Science Building, 3030 Broadway, Manhattan (BSA Cal. No. 113-06-BZ), the Board granted variances from the lot coverage and front height and setback requirements of the Zoning Resolution in order to accommodate the floor plate requirements of a proposed science research building. Other similar cases include the following: Columbia University 113th Street Residence Hall, 2900-2914 Broadway, Manhattan (BSA Cal. No. 15-98-BZ) (variance from height and setback regulations granted to allow larger floor plates required by the institution and to allow the proposed building to respect and reflect the predominant existing building form along Broadway); Polytechnic University, 101 Johnson Street, Brooklyn (BSA Cal. No. 164-00-BZ) (variance from sky exposure plane regulations granted on lot with existing buildings because layout of college dormitory to be constructed would otherwise be inefficient); The Nightingale-Bamford School, 16-26 East 92nd Street, Manhattan (BSA Cal. No. 207-86-BZ) (school initially was granted variance and special permit to enlarge existing community facility building where the inadequacy of the existing building hampered the school's ability to satisfy educational needs of its students; school subsequently was granted amendment to special permit and variance to permit 1) the merger of the lot on which the existing community facility building was located with the lot of the school's two adjacent buildings, and 2) renovation and enlargement of adjacent buildings in order to allow all of the school's buildings to function as one); Actors' Fund of America, 469-

475 West 57th Street, Manhattan (BSA Cal No. 116-94-BZ) (area variance modifying alternate front setback regulations granted for proposed 30-story community facility where programmatic needs foreclosed removing 10 feet from front of existing church on zoning lot); MTA Substation; 142-148 East 57th Street, Manhattan (BSA Cal. No. 74-97-BZ) (area variance modifying alternate front setback regulations granted for proposed residential development where removing 10 feet in front of existing MTA substation on zoning lot would have been contrary to MTA's programmatic needs).

Finally, this application requests a bulk or area variance, consisting of a modification of the rear yard setback and an increase in the maximum building height, and not a use variance. It is well settled that a less rigorous standard of review applies to an area variance than to a use variance. See Bronxville v. Francis, 1 A.D.2d 236 (2nd Dep't 1956); aff'd 1 N.Y.2d 839 (1956); Dauernheim, Inc. v. Town of Hempstead, 33 N.Y.2d 468 (1974). As the Appellate Division has explained, "[t]he rationale for greater leniency in the standard of proof required for an area variance is that such a variance does not change the essential character of the zoning district as [does] a use variance..." Envoy Towers Co. v. Klein, 51 A.D.2d 925, 925 (1st Dep't 1976), appeal den., 39 N.Y.2d 710 (N.Y. 1976).

The Zoning Lot is unique for the following reasons, which all together, satisfies the "A" Finding requirements:

- 1) The Zoning Lot has an irregular through-block shape.
- 2) The Zoning Lot had an irregular through-block shape prior to the acquisition of the Townhouse, which when added to the Zoning Lot gives it an even more irregularly shaped lot.
- 3) The configurations of the existing School buildings on the Zoning Lot present a major challenge to the School in enlarging the School to meet its programmatic needs.
- 4) The existing three-story partial build out on the rear south façade of the Townhouse is impractical and necessitates re-alignment of the façade to create more usable and uniform teaching and learning spaces in the interior.
- 5) The expansion of the School into the Townhouse and the Townhouse lot with the small additions to the roof and to the rear, permits the School to better meet its programmatic needs and overcome the constraints imposed by the irregularity of its Zoning Lot.

**B. That because of such physical conditions there is no reasonable possibility that the development of the zoning lot in strict conformity with the provisions of the ZR will bring a reasonable return, and that the grant of a variance is therefore necessary to enable the owner to realize a reasonable return from such zoning lot;**

This finding is not required in cases where the owner, as here, is a not-for-profit organization.

**C. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the zoning lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare;**

The rooftop addition to the Townhouse will not be visible from almost every nearby sightline location. It only will be visible in through alleyways where it appears as a minimally visible part of the existing building's topography. The rear yard addition to the Townhouse will not be visible from any public street. The small amount of additional interim floor area that will be created to meet the School's programmatic needs is well within the permitted floor area for the Zoning Lot. The Proposed Building is being constructed for the School's existing population, so there will be no greater impact than the School presently has on the essential character of the neighborhood.

In considering the Proposed Building for the School, the LPC after public hearings, took into consideration that the proposed vertical extension of the Townhouse, along with the retention of its north facade, was appropriate in the context of its block and in its historic district and consistent in design with neighboring buildings, which adds great weight to the argument that the variance being sought for the Proposed Conditions does not alter the essential character of the neighborhood. Nor will it substantially impair the appropriate use or the development of adjacent property or be detrimental to the public welfare, especially since the expansion is being undertaken for the School's existing population.

**D. That the practical difficulties or unnecessary hardship claimed as a ground for the variance have not been created by the owner or by a predecessor in title; however, where all other required findings are made, the purchase of a zoning lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship; and**

The practical difficulties and unnecessary hardship result directly from the need to meet the School's programmatic needs within the context of its existing building, on its irregularly shaped zoning lot, by 1) building additional teaching and learning



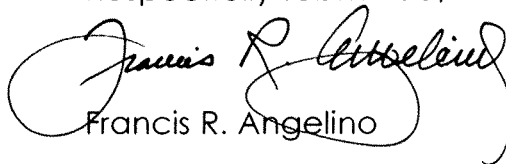
spaces while retaining the north façade of the Townhouse in order to respect its location in the Upper East Side Historic District; and 2) adding additional facilities space in the rear of the Proposed Building.

**E. That within the intent and purposes of this ZR the variance, if granted, is the minimum variance necessary to afford relief; and to this end, the Board may permit a lesser variance than that applied for.**

Consistent with the minimum variance necessary to afford relief, the School is requesting a variance to build above the maximum building height by only 9'-11" and to realign the Proposed Building's south façade by encroaching into the rear yard setback by only 5'-5".

For the reasons shown above, we respectfully request that the subject variance be granted.

Respectfully submitted,



Francis R. Angelino

January 24, 2014

Nicholas Viest  
Chair

Latha Thompson  
District Manager



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## The City of New York Manhattan Community Board 8

September 24, 2013

Hon. Robert B. Tierney, Chair  
NYC Landmarks Preservation Commission  
Municipal Building  
One Centre Street, 9<sup>th</sup> Floor  
New York, NY 10007

**Re: 42 East 76<sup>th</sup> Street (between Madison and Park Avenues) – Upper East Side Historic District**

Dear Chair Tierney:

At the Full Board meeting on Wednesday, September 18, 2013, the board adopted the following resolution regarding **42 East 76<sup>th</sup> Street (between Madison and Park Avenues) – Upper East Side Historic District – Robert A.M. Stern Architects & Bill Higgins, Preservation Consultant** – A Queen Anne style residence designed by John G. Prague and built in 1881-82. Application is to alter the front areaway, reconfigure the rear elevation, and add a rear-yard extension and rooftop addition.

**This Resolution has two parts. Part A includes the front façade and the roof top addition. Part B includes the rear façade and rear yard extensions**

### **Part A – Front Façade and the Rooftop Addition**

**WHEREAS**, the original façade design remains from the second floor up;  
**WHEREAS**, first floor façade will be restored to be similar to the original façade except for the stoop;  
**WHEREAS**, the existing areaway planter will be restored;  
**WHEREAS**, a new railing similar in design to the railing at the second floor will be added to the wall of the planter abutting the sidewalk;  
**WHEREAS**, the rooftop addition which is partly classroom and partly mechanical bulkhead, will be set back 19'-10" and will rise about 17' above the top of the parapet; and  
**WHEREAS**, the rooftop addition is not visible from the street except very minimally at three locations;  
**THEREFORE BE IT RESOLVED THAT**, Part A is **approved**.

*This recommendation was approved by a vote of 44 in favor, 0 opposed, and 0 abstentions.*

### **Part B – Rear façade and rear yard extensions**

**THEREFORE BE IT RESOLVED THAT**, Part B is **approved**.

*This recommendation was approved by a vote of 44 in favor, 0 opposed, and 0 abstentions.*

Sincerely,

*Nicholas Viest*

Nicholas Viest  
Chair

*David Helpen & David Liston*

David Helpen and David Liston  
Co-Chairs, Landmarks Committee

cc: Hon. Michael Bloomberg, Mayor of the City of New York  
Hon. Scott M. Stringer, Manhattan Borough President  
Hon. Liz Krueger, NYS Senate Member  
Hon. Dan Quart, NYS Assembly Member  
Hon. Micah Kellner, NYS Assembly Member  
Hon. Daniel Garodnick, NYC Council Member  
Hon. Jessica Lappin, NYC Council Member