

FRIEDMAN & GOTBAUM LLP

568 BROADWAY SUITE 505  
NEW YORK NEW YORK 10012  
TEL 212.925.4545  
FAX 212.925.5199

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE  
**CERTIFIED MAIL™**



7011 0470 0002 6581 8006

September 25, 2015

BY CERTIFIED MAIL/Returned Receipt Requested

Hon. James G. Clynès  
Chair  
Community Board 8  
505 Park Avenue, Suite # 620  
New York, NY 10022

**RECEIVED**

SEP 30 2015

BY COMMUNITY BOARD 8

**Re: The Allen-Stevenson School  
126-134 East 78<sup>th</sup> Street  
Block 1412, Lots 58 and 61, Manhattan (the "Site")  
BSA Cal. No. 225-15-BZ CEQR No. 16-BSA-033M**

Dear Mr. Clynès:

We are special land use counsel to The Allen-Stevenson School (the "School"), owner of the Site referenced above. We write to advise you that on September 25, 2015 we filed on the School's behalf an Application with the NYC Board of Standards and Appeals (the "BSA") for a ZR Sec. 72-21 variance to permit an addition to School's two Townhouses located at 126 and 128 East 78<sup>th</sup> Street that do not comply with front wall regulations and will exceed by 6 ft the 60 ft height limit imposed by limited height LH1-A district regulations within the R8B portion of the Site.

The approval of this Application will permit the School to modernize its facilities and provide additional space for its visual arts and science programs. The proposed project, which will result in modest increase of 10,213 sf in zoning floor area on the Site, all of which is as-of-right, was previously unanimously approved by the Landmarks Preservation Commission on January 13, 2015, based on a favorable recommendation by Community Board 8. The project was favorably reviewed by the CB 8 Landmarks Committee on November 17, 2014 and at the Full Board meeting on November 19, 2014. A copy of the November 20, 2014 resolution is separately enclosed for your information.

In addition, included with the Application is our request to the BSA to confirm to the DOB that the greenhouse proposed on the roof of the Townhouses as presented on drawing P-3, P18 and P-19 dated September 1, 2015 prepared by Kliment Halsband Architects accompanying the Application (the "Greenhouse Plans") qualifies as a permitted obstruction per ZR Sec. 75-01. ZR Sec. 75-01 is a CPC Chair's Certification that provides for a 45-day comment period for the affected Community Board. We will be happy to explain this separate request when we appear, but wanted to bring this special time provision to your attention.

A complete copy of the Application is enclosed for your review. We look forward to having the opportunity to discuss the Application with all interested parties. Please contact me should you have any questions or comments about the project.

Very truly yours,

Shelly S. Friedman

Enclosures

Nicholas Viest  
Chair

Latha Thompson  
District Manager



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Suite 620  
New York, N.Y. 10022  
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## The City of New York Manhattan Community Board 8

November 20, 2014

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

**Re: 130-134 East 78<sup>th</sup> Street, 126 East 78<sup>th</sup> Street, 128 East 78<sup>th</sup> Street, [Allen-Stevenson School] – Upper East Side Historic District.**

Dear Chair Tierney:

At the Full Board meeting on Wednesday, November 19, 2014, the board adopted the following resolution regarding **130-134 East 78<sup>th</sup> Street, 126 East 78<sup>th</sup> Street, 128 East 78<sup>th</sup> Street, [Allen-Stevenson School] – Upper East Side Historic District. Klilment Halsband Architects.** Application is to add a rooftop gymnasium, add rear extensions and create a rooftop greenhouse.

### **130-134 East 78<sup>th</sup> Street:**

**WHEREAS** 130-134 East 78<sup>th</sup> Street has an existing outdoor covered play roof;  
**WHEREAS** a proposed roof top gymnasium that was 2'-8" lower than the newly proposed gymnasium was previously approved by the Landmarks Preservation Commission;  
**WHEREAS** the new design for the proposed gymnasium includes a new outdoor covered play space above that is set back from the street wall about half the depth of the proposed gym;  
**WHEREAS** the top of the gym will be terminated with a mansard roof which blocks the view of the mechanical equipment on the roof;  
**WHEREAS** the overall height of the building to the top of the mansard will be 105'-8" and to the top of the covered outdoor play space will be 117'-8";  
**WHEREAS** the overall height of the building will be less than the allowable height under the Zoning resolution of 170'-0";  
**WHEREAS** the façade of the proposed gymnasium will be made of brick to match the brick below the cornice; will have three large windows with divided lights to express the large space within; and will be visually terminated with a new limestone cornice;  
**WHEREAS** the face of the mansard will have a standing seam metal roof;  
**WHEREAS** the design of the top of the gymnasium, which sets the new cornice below the top of the gym and adds a mansard roof to complete the new enclosure, minimizes the height of the street wall with respect to the enlargement of the building;

### **126 and 128 East 78<sup>th</sup> Street:**

**WHEREAS** 126 and 128 East 78<sup>th</sup> Street were built as two, three story townhouses;  
**WHEREAS** 126 and 128 were expanded vertically to five stories;  
**WHEREAS** the fifth stories will be removed to enable a new Art Room to be built in their place;  
**WHEREAS** the new Art Room will have a new Green House above the rear portion of the Art Room;  
**WHEREAS** the Art Room will have a low vertical wall faced with metal panels and a sloping north window wall;

**WHEREAS** the angle of the north window wall and the north face of the glass roof of the green house are in line with the view angle from the sidewalk to the top of the new metal panel wall and cannot be seen from the street;

**WHEREAS** the fourth floor windows will be replaced with fixed windows to match the profiles of the existing windows;

**WHEREAS** the existing colors of the townhouses will remain to reflect their history as two separate structures;

**WHEREAS** the townhouses are in a 60 foot limited height district and will be submitted to the Board of Standards & Appeals for a variance;


**WHEREAS** a multi-purpose dance studio will be built in the rear yard of 126 East 78<sup>th</sup> Street up to the allowable height of 23'-0";

**THEREFORE** be it resolved that this application is approved as presented.

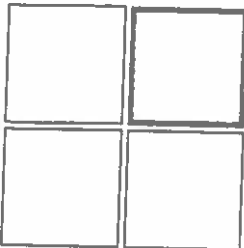
*This recommendation was approved by a vote of 24 in favor, 17 opposed, 1 abstention, and 0 not voting for cause.*

Sincerely,

  
Nicholas Viest  
Chair

  
David Helpem and Jane Parshall  
Co-Chairs, Landmarks Committee

cc: Honorable Bill de Blasio, Mayor of the City of New York  
Honorable Gale Brewer, Manhattan Borough President  
Honorable Liz Krueger, NYS Senator, 26<sup>th</sup> Senatorial District  
Honorable Dan Quart, NYS Assembly Member, 73<sup>rd</sup> Assembly District  
Honorable Ben Kallos, NYC Council Member, 5<sup>th</sup> Council District  
Honorable Daniel Garodnick, NYC Council Member, 4<sup>th</sup> Council District



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NEW YORK NEW YORK 10012  
TEL 212.925.4545  
FAX 212.925.5199

RECEIVED  
STANDARDS AND APPEALS

SEP 25 11 11 AM '15

CLERK

September 25, 2015

**BY HAND**

Hon. Margery Perlmutter, R.A., Esq.  
Chair  
NYC Board of Standards & Appeals  
250 Broadway – 29<sup>th</sup> Floor  
New York, NY 10007

Re: **The Allen-Stevenson School**  
**126, 128 and 130-134 East 78th Street (the "Site")**  
**Block 1412 Lots 58 and 61, Manhattan**

**BSA Cal. No. 225-15-BZ CEQR No. 16-BSA-0331**

Dear Madam Chair:

We are special land use counsel to The Allen-Stevenson School ("School"), owner of the Site referenced above. The School seeks a variance pursuant to ZR Sec. 72-21 in connection with reconstruction and adaptive re-use of the two townhouses that it owns (126 and 128 East 78<sup>th</sup> Street) and their integration with the School's Main Building located at 130-134 East 78<sup>th</sup> Street and its Annex located at 121-123 East 77<sup>th</sup> Street. The variance sought in this application will permit the townhouses, which do not comply with the front wall height and setback requirements, to exceed by 6 ft the 60 ft height limit within the R8B/LH1-A portion of the Site. The proposed 10,213 sf increase of floor area on the Site is as-of-right. In addition, language in the Board's resolution that will substitute for a CPC Chair's certification is requested with regard to a proposed rooftop greenhouse that the necessary findings and conditions set forth in ZR Sec. 75-01 have been satisfied to permit the greenhouse to be treated as a permitted obstruction.

Enclosed please find one (1) original and two (2) copies of the following materials in connection with the applications:

1. BZ Application form;
2. Department of Buildings Notice of Comments stamped "DENIED" on September 3, 2015;
3. Affidavit of Ownership;
4. Statement of Facts;
5. Statement of Findings;
6. Certificate of Occupancy No. 103256183F;
7. Zoning Map (12c);
8. BSA Zoning Analysis Form;
9. Tax Map;

10. Radius Diagram/Land Use Map;
11. Photographs 1 through 7;
12. BSA resolution under Cal. # 273-04-A;
13. Existing Conditions Plans (Drawings EX-00 through EX-17 dated September 1, 2015);
14. Conforming (As-of-Right) Plans (Drawings AOR-00 through AOR-17 dated September 1, 2015);
15. Proposed Conditions Plans (Drawings P-00 through P-19 dated September 1, 2015);
16. List of Affected Property Owners and Tenants;
17. CEQR Application;
18. Copies of documents attesting to School's status as follows:
  - Internal Revenue Service 501(c)(3) letter issued to the School;
  - Internet printout representing proof of School's non-profit status;

Also enclosed are:

- A CD containing all materials listed above;
- A check in the amount of \$10,100.00 payable to the Board of Standards and Appeals representing the variance application filing fee based on 71,597 sf of combined zoning floor area of the School's buildings;
- A check in the amount 13,660.00 payable to the Board of Standards and Appeals representing the CEQR application filing fee based on 98,098 sf of gross floor area of the proposed project.

Thank you for your cooperation. If you should have any questions please feel free to call me or Elena Aristova at (212) 925-4545.

Very truly yours,



Shelly S. Friedman

#### Enclosures

cc: Hon. James G. Clynes, Chair, Manhattan CB 8  
Hon. Daniel R. Garodnick, City Council Member  
Hon. Gail A. Brewer, Manhattan Borough President  
Ms. Edith Hsu-Chen, Director, Manhattan Office, Department of City Planning  
Mr. Christopher Holme, Zoning & Urban Design Division, Department of City Planning  
Martin Rebholz R.A., Manhattan Borough Commissioner, Department of Buildings



**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

**ZONING (BZ) CALENDAR**  
 Application Form

BSA APPLICATION NO. **225-15-BZ**  
 CEQR NO. **16-BSA-033M**

**Section A**

Applicant/  
Owner

Friedman & Golbaum LLP by Shelly S. Friedman, Esq.			The Allen-Stevenson School		
NAME OF APPLICANT			OWNER OF RECORD		
568 Broadway - Suite 505			132 East 78th Street		
ADDRESS			ADDRESS		
New York	NY	10012	New York	NY	10075
CITY	STATE	ZIP	CITY	STATE	ZIP
212	925-4545				
AREA CODE	TELEPHONE		LESSEE / CONTRACT VENDEE		
212	925-5199		ADDRESS		
AREA CODE	FAX		CITY		
sfriedman@frigot.com; earistova@frigot.com			STATE		
EMAIL			ZIP		

**Section B**

Site  
Data

126-134 East 78th Street (a/k/a 121-123 East 77th Street), New York, NY 10075  
 STREET ADDRESS (INCLUDE ANY A/K/A) ZIP CODE

Property is situated on the south side of East 78th Street, 38.33 ft west of the corner formed by the intersection of East 78th Street & Lexington Avenue

DESCRIPTION OF PROPERTY BY BOUNDING OR CROSS STREETS

1412	58, 61	Manhattan	8M	Upper East Side District
BLOCK	LOT(S)	BOROUGH	COMMUNITY DISTRICT	LANDMARK/HISTORIC DISTRICT
Daniel R. Garodnick		C1-8X, R8-B/LH-1A		8c
CITY COUNCIL MEMBER		ZONING DISTRICT		ZONING MAP NUMBER
		(include special district, if any)		

**Section C**

Dept of Building  
Decision

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

Section(s) of the Zoning Resolution to be varied 24-522(b); 24-591

DOB Decision (Objection/ Denial) date: September 3, 2015 Acting on Application No: 121192842

**Section D**

Description

(LEGALIZATION  YES  NO  IN PART)

The proposed action will facilitate the adaptive re-use and enlargement of the East and West Townhouses and interior renovations to the School's Main Building necessary to (1) provide for modern educational facilities for the School; (2) allow for a more efficient use of and adjacencies within the existing facilities and space within the newly acquired West Townhouse; and (3) accommodate additional art classrooms which are essential to School's visual arts program.

**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)? ..... PRIOR BSA APPLICATION NO(S): <u>273-04-A</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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**

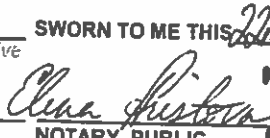
Signature

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

SWORN TO ME THIS 22nd DAY OF September 2015

Shelly S. Friedman Counsel  
 Print Name Title

  
 NOTARY PUBLIC

ELENA ARISTOVA  
 Notary Public, State of New York  
 No. 01AR6050323  
 Qualified in Kings County  
 Commission Expires 11/6/2016

9/22/2015



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

### Notice of Comments

<b>Owner:</b> THE ALLEN STEVENSON SCHOOL	<b>Date:</b> September 3, 2015
	<b>Job Application #:</b> 121192842
	<b>Application type:</b> Alt-1
<b>Applicant:</b> MICHAEL A NIEMINEN	<b>Premises Address:</b> 130 East 78 Street, NY
	<b>Zoning District:</b> C1-8X/R8B/LH-1A
	<b>Block:</b> 1412 <b>Lot:</b> 58 <b>Doc(s):</b> 01
<b>Lead Plan Examiner at NYC Development Hub:</b> Marguerite Baril, RA	
<b>Examiner's Signature:</b>	

No.	Section of ZR and/or MDL	Comments	Date Resolved
1.	ZR 24-522(b)	Proposed enlargement within the R8B (LH-1A) portion of the zoning lot contrary to height and setback as per ZR 24-522 (b)	
2.	ZR 24-591	Proposed enlargement within the R8B (LH-1A) portion of the zoning lot contrary to height limitations as per ZR 24-591.	

REVIEWED BY  
**David Aigner**  
 Senior Zoning Specialist

*David J. Aigner*

**DENIED**

For Appeal to Board of Standards And Appeals  
 Date: **September 3, 2015**

**AFFIDAVIT OF OWNERSHIP AND AUTHORIZATION**

**Affidavit of Ownership**


David R. Trower \_\_\_\_\_, being duly sworn, deposes and says that (s)he resides at c/o 132 East 78th Street, in the City of New York, in the County of New York, in the State of New York; that The Allen-Stevenson 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 1412, Lot(s) 58, 61, Street and House Number 126-134 East 78th Street; and that the statement of facts in the annexed application are true.

Check one of the following conditions:

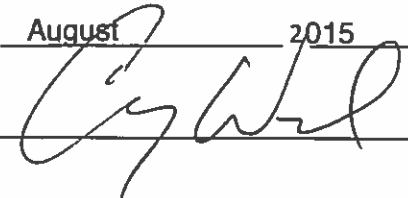
- Sole property owner of zoning lot
- Cooperative Building
- Condominium Building
- Zoning lot contains more than one tax lot and property owner

**Owner's Authorization**

The owner identified above hereby authorizes Friedman & Gotbaum, LLP to make the annexed application in her/his behalf.

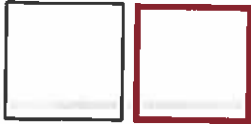
Signature of Owner   
Print Name David R. Trower  
Print Title Headmaster

Sworn to before me this 18th day

Of August 2015  


**CRAIG WEXLER**  
Notary Public, State of New York  
No. 01WE6071493  
Qualified in New York County  
Commission Expires March 18, 2018





FRIEDMAN & GOTBAUM LLP

568 BROADWAY SUITE 505  
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## BSA Cal. No.

STATEMENT OF FACTS IN SUPPORT  
OF CERTAIN VARIANCES  
FROM THE PROVISIONS OF  
THE NEW YORK CITY ZONING RESOLUTION

Affected Premises:

The Allen-Stevenson School  
126 – 134 East 78<sup>th</sup> Street

Block 1412 Lots 61 and 58  
Manhattan

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Filed: September 25, 2015

Friedman & Gotbaum LLP  
568 Broadway - Suite 505  
New York, New York 10012  
(212) 925-4545  
sfriedman@frigot.com  
earistova@frigot.com

## **A. The Application**

This Statement of Facts is filed in support of the application filed by Friedman & Gotbaum LLP pursuant to Section 72-21 of the Zoning Resolution of the City of New York (the "Zoning Resolution" or "ZR") and Section 666 of the New York City Charter on behalf of The Allen-Stevenson School ("Allen-Stevenson" or the "School"), a nonprofit private kindergarten through Grade 9 school for boys which has been in continuous operation on its Upper East Side site since 1924.

The Application seeks variances with respect to height and setback requirements of the Zoning Resolution necessary for the expansion of the townhouse located on Tax Lot 58 in Block 1412 on the tax maps for the City of New York for the Borough of Manhattan (the "Tax Map") with the street address of 128 East 78<sup>th</sup> Street (the "East Townhouse") and the adaptive re-use and conversion to school use of the adjacent townhouse located on Tax Lot 61 of Block 1412 with the street address of 126 East 78<sup>th</sup> Street (the "West Townhouse") that the School acquired in 2012. The East Townhouse was purchased by the School and converted from residential to school use in 1978, through connecting its existing floors at their original elevations to those of the adjacent purpose-built school building to its east that the School has occupied and used since 1924, the "Main Building" at 130-134 East 78<sup>th</sup> Street.

Both Townhouses and the Main Building are situated within the Upper East Side Historic District. None are individually designated landmarks. A C1-8X/R8B zoning district boundary bisects the East Townhouse, leaving the Main Building and its Annex at 121-123 East 77<sup>th</sup> Street (the "Annex") situated entirely within the C1-8X district and the West Townhouse situated entirely within the R8B district. All of the School's property is situated in Manhattan Community District 8.

The proposed project includes significant expansion and alterations of the Main Building and Annex and the two Townhouses that will (1) complete the physical integration of the East Townhouse begun with the 2004 alterations and (2) fully physically integrate the recently purchased and vacant West Townhouse and in the process increase slightly the building heights of both Townhouses.<sup>1</sup> As reconstructed, reconfigured and enlarged, the

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<sup>1</sup> The Main Building, its Annex added to the Main Building in 1993 and the East Townhouse were combined in 2004 into a single zoning lot. The West Townhouse is being added to the zoning lot. The associated work proposed for the Main Building and the Annex can be undertaken as a matter of right.

Townhouses will share the same floor elevations and floor-to-floor heights as the Main Building. The newly aligned floors will create new uniform floors throughout the Main Building and the Townhouses, providing more and better opportunities to create teaching spaces and to organize them among disciplines and divisions. The new alignment will provide new integrated means of egress with the least amount of loss of educational space that will be safer and more direct than their existing configuration can provide or that any as-of-right alteration can provide.

While the overall enlargement is small in terms of additional zoning floor area (10,213 sf), and the requested increases in the heights of the East and West Townhouses are even smaller (28 in and 11 ft 8 in, respectively), the project will produce three additional rooms for the School's visual arts program and two additional science labs within the Townhouses. It will also alter the existing art rooms and science labs so that they can be right-sized for their educational purposes, as well as arrange these new and altered facilities in appropriate location to each other. And finally, the project will provide for two new educational facilities: an as-of-right gymnasium and accessory space within the Main Building and a rooftop greenhouse on the aligned Townhouses' rooftops.<sup>2</sup>

Allen-Stevenson School is at a pivotal moment in its history. When the West Townhouse was unexpectedly put up for sale in 2012, its purchase provided the School with a rare opportunity to upgrade its facilities at its current location. The variances sought in this Application will allow the School to proceed with the reconstruction project that will support its robust educational programming for Kindergarten through Ninth Grade, with no plan to increase its current enrollment of just over 400 students. When this transformative project is completed, Allen-Stevenson will have more appropriately and better located facilities to support its traditionally strong programs of academics, visual and performing arts, science and technology, as well as four on-campus spaces dedicated to physical education and athletics.

## **B. The Zoning Lot (a/k/a Site)**

1. Zoning Lot Location and Configuration. The irregularly-shaped Zoning Lot comprised of tax lots 58 and 61 in block 1412 is located on the block bounded by East 77<sup>th</sup>

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<sup>2</sup> The Application request that the Board find that the proposed greenhouse complies with conditions in ZR Sec. 75-01 required to be deemed a permitted obstruction.

and East 78<sup>th</sup> Streets and Lexington and Park Avenues. The Site has a lot area of 14,053 sf with a 50-ft frontage on East 77<sup>th</sup> Street and an 88 ft 10 in frontage on East 78<sup>th</sup> Street. On East 77<sup>th</sup> Street, it begins 30 ft westerly of Lexington Avenue and represents an interior lot for an 8 ft 4 in by 102 ft 2 in portion of the Site. On East 78<sup>th</sup> Street, it begins 38 ft 4 in westerly of Lexington Avenue and extends the entire depth of the block (204 ft 4 in) for 41 ft 8 in, forming a 204 ft 4 in by 41 ft 8 in through lot. For the remaining 47 ft 2 in of its East 78<sup>th</sup> Street frontage the Site represents an interior lot with a depth of 102 ft 2 in.

A zoning district boundary runs north/south through the Site, separating it into a C1-8X district (11,286 sf, or 80 percent) and an R8B/LH-1A limited height district (2,767 sf, or 20 percent). C1-8X district bulk controls permit a maximum FAR 2 for commercial and a maximum FAR 9 for residential and community facility development. R8B (medium density residential/community facility) bulk controls permit residential development to a maximum of FAR 4 and community facility development to FAR 5.1 when the R8B portion of the zoning lot is used exclusively for Use Group 3 or 4 community facility uses. R8B bulk regulations impose yard, lot coverage and street wall requirements typical of midblock medium density districts. In addition, R8B/LH-1A regulations limit building height to 60 ft.

2. Zoning Lot Improvements. The Zoning Lot is improved with (1) the Existing School Campus comprised of the Main Building, a five-story purpose-built school building constructed for the School in 1923 by James W. O'Connor and expanded in 1965; the Annex, added to the campus in 1969, both located entirely within the C1-8X portion of the Site; and the East Townhouse, a five-story townhouse acquired by the School and converted to school use in 1978, located partially within the C1-8X and partially within the R8B/LH-1A portion of the Zoning Lot and (2) the newly acquired four-story West Townhouse located within the R8B portion of the Zoning Lot.<sup>3</sup> Current development of 54,079 sf in the C1-8X portion of the Zoning Lot (FAR 4.79) and 7,305 sf in the R8B/LH-1A portion of the Zoning Lot (FAR 2.64) is considerably less than the permitted FAR of 9.0 and 5.1, respectively.

Neither of the Townhouses which, according to the Landmarks Preservation Commission ("LPC") designation report for the Upper East Side Historic District appear to have been built around 1866, complies with the current 1961 Zoning Resolution with respect to R8B/LH-1A base height and front setback regulations. Their front wall height of

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<sup>3</sup> The Main Building, the Annex and the East Townhouse are located on tax lot 58 in block 1412. The West Townhouse is located on tax lot 61.

43 ft 9 in is less than the 55 ft minimum required and the 5 ft 7 in setback provided above the non-complying base height is less than the 15 ft setback required on a narrow street. In addition, the 63 ft 8 in tall East Townhouse exceeds the 60 ft maximum permitted building height by 3 ft 8 in.

3. Proposed Redevelopment and Adaptive Re-Use. The School proposes a variety of alterations to its buildings, all essential to the School's educational mission and program. Those within the Main Building and the Annex are entirely as-of-right. The proposed work on the East Townhouse and on the adjacent West Townhouse will require a waiver of the limited height controls in ZR Sec. 24-591 and height and setback waiver of ZR Sec. 24-522(b). In addition, both will require a certification pursuant to ZR Sec. 75-01 so that the proposed rooftop greenhouse can be recognized as a permitted obstruction for the purposes of determining compliance with building height.

The scope of the project calls for re-aligning and incorporating the Townhouses' floors with those of the Main Building into a unified, purpose-designed and purpose-built educational facility, appropriately sized to its present enrollment of 418 students and appropriately configured with the correct adjacencies around academic subjects, physical education activities and performance spaces, all of which it presently lacks.

The details of the School's expansion are as follows:

- Main Building. The School intends to add a seventh floor<sup>4</sup> with 4,980 sf of floor area for a regulation-sized gymnasium, increasing the Main Building's overall height approximately 36 ft from 80 ft 9 in to 116 ft 1 in. A covered outdoor play space/physical education area will be constructed above the new gymnasium. This planned expansion is as-of-right.

- Annex. The School intends to add a seventh floor for training and athletic storage, which will be aligned with the Main Building's proposed seventh floor. This planned reconstruction is as-of-right.

- East Townhouse: The School intends to remove 1,251 sf of zoning floor area to modernize the building for necessary programmatic purposes and accommodate the relocated stair connecting the re-aligned floors of the Townhouses with the Main Building and providing the second means of egress. The current 63 ft 8 in height of this building

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<sup>4</sup> Sixth floor is provided within the Annex.

already exceeds the 60 ft height limit imposed by ZR Sec. 24-591 and will be increased by 28 in to 66 ft to accommodate the space for the visual arts program that will span both Townhouses. A 380 sf greenhouse spanning both Townhouses' roofs will also be added.<sup>5</sup>

- West Townhouse: The School intends to add 3,178 sf of zoning floor area to modernize the building and expand it into its rear yard for necessary programmatic purposes. The program will also include increasing its building height 11 ft 8 in from 54 ft 4 in to 66 ft, level with the raised East Townhouse roof, which will add a story for the visual arts program, with the greenhouse above spanning the roofs of both Townhouses.

The proposed reconstruction and adaptive re-use of the West Townhouse and reconstruction of the East Townhouse will require the demolition of all of their floors while retaining and restoring their historically significant East 78<sup>th</sup> Street façades and only as much of the remaining walls, foundation and structure as necessary to maintain the façades' structural integrity. Accordingly, the windows of the Townhouses will not align with the new floor slabs above the first floor. The new slabs will be built 8 ft 5 in behind their façades, creating a clear space between their interior planes and the new slabs, which will be used as the gallery for School's visual arts program and may also be used for the science program. The reconstructed slabs will provide new floor heights, permitting greater alignment between upper floors of the Main Building and the Townhouses.

The proposed rooftop greenhouse will straddle the new Townhouse roofs. Its highest point will be 84 ft 7 in above grade, while the Townhouses' height for the purposes of the Zoning Resolution will be 66 ft. (see Plan P-18). The proposed greenhouse will be set back from the fifth floor west and south perimeter walls by 6 ft and from the north and east perimeter walls by 9 ft 2 in and 10 ft 8 in, respectively (see Plan P-19).

Overall, the total proposed increase in floor area is 10,213 sf, an increase of 8,664 sf in C1-8X and 1,549 sf in R8B portion of the Zoning Lot, which is available as a matter of right. This modest expansion will yield transformative operational improvements in space planning and scheduling leading to a more suitable academic setting. Upon completion of the proposed work, the School will gain critically needed new teaching spaces organized with the appropriate programmatic adjacencies, new regulation-sized gymnasium and covered outdoor physical education space whose utilization will not depend on the inclement weather. As a result of the approval of this Application, the aligned slab above the fifth

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<sup>5</sup> Subject to certification as a permitted obstruction pursuant to ZR Sec. 75-01.

floor of Main Building and Townhouses will permit necessary egress to both the new gymnasium and the proposed greenhouse from the main elevator bank located within the connector between the Main Building and the Annex. Relocation of the Staircase A to the East Townhouse allows for more efficient planning and layout of academic space within the reconfigured School campus. (See Plan P-05.)

**C. VARIANCES REQUESTED AND ZR SECTIONS TO BE WAIVED**

The proposed project will require two variances from the bulk provisions of the Zoning Resolution pursuant to ZR Section 72-21 (the "BSA Actions"). Because the Townhouses were built in 1866, 50 years before the adoption of the first Zoning Resolution in 1916 and prior to the establishment of limited height district, the East Townhouse as it now exists and both Townhouses with their proposed enlargements do not comply with the maximum building height requirement of ZR Sec. 24-591 within the R8B/LH-1A district and those requirements must be waived. In addition, although the current noncomplying front wall heights will remain, the fact that the heights of the Townhouses' north elevations will be increased above a noncomplying setback distance (5 ft 7 in) is deemed an increase in the extent of the pre-existing height and setback non-compliances with the provisions of ZR Sec. 24-522(b) and those requirements must also be waived.

Accordingly, the BSA Actions requested in this Application, all associated exclusively with the R8B/LH-1A portion of the Zoning Lot, are as follows:

1. ZR Sec. 24-591. Maximum permitted building height in R8B/LH-1A districts is limited to 60 ft. The proposed height of both Townhouses is 66 ft, thereby increasing the height of the East Townhouse of 63 ft 8 in by 28 in (4% increase) and increasing the height of West Townhouse by 11 ft 8 in, or 6 ft above the permitted building height, creating a new-non-compliance of 10%.
2. ZR Sec. 24-522(b). The existing base height of both Townhouses of 43 ft 9 in is less than minimum permitted base height of 55 ft and their setback distance is 5 ft 7 in, which is less than the 15 ft required for a narrow street.

**D. The DOB Objections**

The Department of Buildings ("DOB") has issued the following Notice of Objections dated September 3, 2015 with regard to the Zoning Lot:

1. ZR 24-522(b). Proposed enlargement within the R8B(LH-1A) portion of the zoning lot contrary to height and setback as per ZR Secs. 24-522(b).
2. ZR 24-591. Proposed enlargement within the R8B(LH-1A) portion of the zoning lot contrary to height limitations as per ZR Sec. 24-591.

#### **E. The ZR Sec. 75-01 Certification**

In order for a school's greenhouse to qualify as a permitted obstruction, a ZR Sec. 75-01 certification by the Chairperson of the City Planning Commission to DOB is required that the greenhouse complies with certain conditions. A confirmation is being requested that the proposed greenhouse complies with all conditions of ZR Sec. 75-01, as shown on Drawings P-3, P-18 and P-19 prepared by Kliment-Halsband Architects dated September 1, 2015 (the "Greenhouse Plans") and discussed in the accompanying Statement of Findings filed with this Application.

#### **F. The LPC Approvals**

As previously noted, a large portion of the Site is located within the boundaries of the Upper East Side Historic District. Accordingly, the majority of work requested in this Application for the Existing School Campus and West Townhouse is subject to the jurisdiction of the LPC. The exterior work proposed by the School was reviewed and unanimously approved by the LPC<sup>6</sup> at the January 13, 2015 Public Meeting following the December 2, 2014 Public Hearing.

#### **G. The Surrounding Neighborhood**

The neighborhood in the vicinity of the School contains a mix of residential, institutional and commercial uses. Within the 400 ft radius there are such important institutions as Lenox Hill Hospital occupying the entire block south of the Site and several lots on Block 1412, west of the Site, and Eighth Church of Christ, Scientist located west of the Site at 103 East 77<sup>th</sup> Street.

Residential uses are generally found in three- to six-story townhouses built between 1866 and 1920s and larger buildings ranging from four to twenty-six stories built

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<sup>6</sup> See Exhibit A, LPC-164381, Status Update Letter 16-6870 issued on January 14, 2015.



predominantly in the early and mid-1900s. Medical offices are located on the ground floors of residential buildings along East 78<sup>th</sup> Street. Larger residential buildings along Lexington Avenue house various ground floor commercial uses, such as banks, local restaurants, a convenience store, grocery stores, drug stores and other neighborhood services. To the School's east, there are two six-story buildings with frontages on Lexington Avenue and East 78<sup>th</sup> and East 77<sup>th</sup> Streets containing residential uses above ground floor retail, including a food market, a florist shop and a shoe store. To its west, there is a 10-story rental building at 117 East 77<sup>th</sup> Street and a five-story townhouse at 122 East 78<sup>th</sup> Street. A two-story commercial building with FedEx offices on the ground floor is located on the north-west corner of Lexington Avenue and East 78<sup>th</sup> Street.

#### **H. The Allen-Stevenson School**

The School was founded in 1883 by Francis Bellows Allen at a home on Fifth Avenue and 57<sup>th</sup> Street. Its first class enrolled only three boys. By 1885, the School's enrollment grew to 20 boys and it moved to rented rooms at Madison Avenue and 44<sup>th</sup> Street. By 1918, the School's enrollment exceeded 200 students, at which time the School published its first newspaper, *The Spotlight*, and introduced an exercise program and team sports. In 1924, the School moved to its current location at 132 East 78<sup>th</sup> Street.

Today, Allen-Stevenson provides an education that is a balanced curriculum of academics, arts and athletics aimed towards developing in each boy a passion for excellence, the proven foundation on which to build a productive adult life. The School also strives to instill its core values, which include: education of the whole child in an atmosphere of mutual trust and respect and ethical standards of conduct, citizenship and community responsibility. The Allen-Stevenson School program strives to balance academics, athletics and the arts. It is renowned for its inclusion of arts and music at the youngest levels. All boys, from Kindergarten through grade 9, benefit from a varied and well-rounded program that includes:

- Academics - from traditional subjects taught in enlightened ways to multi-disciplinary programs in science and engineering.
- Athletics - including physical education, wellness, and inter-scholastic competition in soccer and football in the fall; basketball, wrestling and ice hockey in the winter, baseball, lacrosse and track in the spring and intramurals all year around.

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- Visual Arts – taught by professional artists, the program ranges from painting and drawing to wood shop, ceramics, sculpture and 3D/CNC printing.
  - Performing Arts – a storied program that includes two choruses, four instrumental groups, and 14 dramatic productions each year.

In 2009, Allen-Stevenson was twice recognized for its work on energy and the environment, first with a coveted Energy Star rating by the U.S. Department of Energy and then by the U.S. Green Building Council (USGBC) for LEED Gold Certification for Existing Buildings (EB). This makes Allen-Stevenson the very first elementary school in the United States to achieve LEED-EB Gold status.

Today, the Allen-Stevenson enrollment is 418 students. The School has 142 employees, 70 of whom are teachers. The School's normal class hours currently run Monday through Friday, from 8:00 am to 3:30 pm, varying per school division. Additional before- and after-school programs are available from 7:00 am until 6:00 pm. No changes to the enrollment, staff or operating hours are anticipated upon completion of this project.

## **I. History of the School Campus**

Allen-Stevenson has grown since its founding in 1883 from serving three kindergarten students in a residence at Fifth Avenue and 57<sup>th</sup> Street to 418 students today. In 1924, when its enrollment surpassed 200 students, the School purchased two brownstones 132-134 East 78<sup>th</sup> Street, which were razed for the construction of the majority of the Main Building. In 1954, the School acquired the adjacent townhouse at 130 East 78<sup>th</sup> Street, which was demolished in 1965 to accommodate the western expansion of the Main Building to its present format. In 1969, the School acquired a carriage house on East 77<sup>th</sup> Street and began to use it for art, shop, and music. It was later incorporated into the Main Building as the Annex. In 1978, the School purchased and began using the East Townhouse for educational purposes. In 1993, new construction added three floors to the Annex, including a sixth floor fitness room. Improvements also included a larger computer room, a music room, an art studio and a woodshop within the Main Building, two spaces for the visual arts program, and a locker room. In 2004, when the enrollment approached 400, Allen-Stevenson undertook comprehensive renovation of its unconsolidated facilities, adding new space and program scope.<sup>7</sup> In 2007, a total renovation-expansion of the School interior

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<sup>7</sup>This renovation was subject of an Administrative Appeal (BSA Cal. 273-04-A) (see Prior BSA Resolution).

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was completed, which preserved the Main Building's Classical Revival brick and Victorian brownstone façades in accordance with the LPC's guidelines and extended the Annex' floorplates connecting it to the Main Building on all levels.<sup>8</sup> In 2012, the School purchased the West Townhouse, which remains vacant.

## **J. Current Conditions and Need for Renovation**

Allen-Stevenson's principal programmatic difficulties stem from the limitations attributable to the Townhouses' original residential layouts and the wide variation in floor slab elevations and their differing heights. The East Townhouse was converted to school use in 1978 without addressing either of these concerns and the West Townhouse has yet to be converted. Their current configuration both impinges on current day-by-day educational programming and adversely impacts all decisions on future educational programming. More specifically, the School's physical configuration creates the following programmatic deficiencies:

- a. Academic Program.
  - In line with current pedagogic trends, the School needs to move toward more student-centered, inquiry-based learning, requiring additional spaces where students can break out into small groups for much of their work. As presently configured, the School has no choice but use the hallways and stairwells in addition to classrooms for these breakout sessions.
  - As the School's science and engineering program has intensified, both the amount of time students engage in classwork and the way they use space has changed. Work is far more hands on and ranges over the course of weeks, not periods or days. These new programs demand larger work spaces, display areas and storage space for long-range projects. The existing middle school science lab is only 575 sf. The NSTA Safety Advisory Board in 2014 recommends a minimum of ratio of 60 sf per student in middle and high school science labs. With classes of 24 students, the minimum recommended size for a science lab is 1,440 sf.

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<sup>8</sup> Floors 1 through 4 of Main Building and Annex are connected via ramps; fifth floors are connected via an eight-step stair.

b. Physical Education/Athletics Programs.

Physical Education. New York State law mandates, and research has shown, that regular physical activity is an essential component to a daily learning regimen. In fact, recent research suggests that regular movement during class can also be beneficial to student attention and engagement. While the School is committed to providing all students with the opportunity to move regularly throughout the school day, with 418 students in ten grades, it currently lacks sufficient appropriate space for them to do so.

- The School's only fitness room (a 3,675 sf room in the Annex) is scheduled to 100% capacity.
- In order to provide daily movement for the lower school students in grades K-3, the School currently holds 19 physical education classes in its Assembly Hall, a distinctive and purpose-built space that was not intended for such activity. The result is a "domino effect," with music and drama rehearsals often displaced into hallways and classrooms while the Assembly Hall is in use for physical education.

Athletics Program. The after-school athletics program also suffers from the lack of space:

- Junior varsity and varsity basketball teams must split practices, with each team allowed 45 minutes of practice, while the other team waits in the library.
- The middle school and upper school wrestling programs are forced to use the dining room and share that space with after-school cooking classes offered to the younger students.
- The uncovered roof play space located on top of Main Building is used by students of all ages for kickball, tag, and other "schoolyard" games. However, roof time is weather-dependent and the uncovered play roof is closed approximately 57% of school days during the year.

c. Visual Arts.

The School is especially well-known for its integration of the performing and visual arts into its educational program. While the incorporation of the West Townhouse adds critically needed floor area, the spatial configuration of the Townhouses and their lack of common floor elevations with the Main Building results in compromised programming for

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the visual arts that fails to optimize and support artistic creativity and provide adequate safety, as follows:

- The layout of the existing woodshop requires the School to limit class size to 14 students because structural columns impede line of sight supervision of students using power tools, an essential safety measure.
- The single, narrow 810 sf art studio limits the possibility of multiple art classes even if faculty supervision is available. A number of art classes are held in the "town center" outside of the art room and other classrooms, often disturbing academic classes.

d. Performing Arts.

- With four instrumental groups, two choruses and multiple dramatic productions each year, performance space is at a premium. Each morning from 7:30 to 8:30 am, one instrumental group uses the Assembly Hall for rehearsals, forcing School's choral groups to rehearse in the dining room where the acoustics are less than ideal for vocal rehearsal.
- As a result, the School must use other spaces, including its Dining Room, for rehearsals, when it would like to offer breakfast and other alternatives to students and staff throughout the day, as many independent and most public schools do.
- Dance program classes offered in grades K through 9 should be rehearsing on a sprung floor to minimize potential injuries; however, most dance classes are held in the dining room or, when lunch is in session from 11:00 – 2:00 PM, in carpeted "town centers" on the academic floors.

e. Connectivity.

While the Main Building and the East Townhouse are presently connected, the floor levels within the Existing School Campus are not aligned and the connection between the Main Building and the East Townhouse occur at different locations on all floors, via stairs whose height varies from floor to floor and ranges between 1 ft 2 in (connection via ramp) on fifth floor and 7 ft 10 in (11 stairs) on second floor, see Diagram 1 below. In addition, as shown on Plan EX-05, existing first and second floors of the East Townhouse both have

different floor levels, with a 3 ft 1 in level change of floor 1 and 1 ft 11 in level change on floor 2, and require connection via internal stairs on both floors.

Diagram 1. Existing Floor Levels



Approval of the proposed Application will provide Allen-Stevenson with a campus that addresses current programmatic difficulties as follows:

a. Academic Program.

- The renovated space with aligned floors will accommodate six small group workspaces that will provide improved line of sight monitoring by classroom teachers. In addition, the retractable partitions provided in five rooms (on floors 2, 4 and 5) will more than double the amount of workspaces, creating seven additional classrooms.
- The new middle school science and engineering program will have three labs available for shared use with the upper school. A total of 2,600 sf will be dedicated to the science program located on third and fourth floors of the renovated Townhouses, a 64 percent increase in space currently available for this program. These rooms will be equipped with fume hoods, gas, sinks, 3-D and CNC printing, safety eye wash and showers and extensive storage to facilitate a wide and flexible

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range of group experimentation and research. Open planning with adjacent break out spaces along with movable partitions will allow for ease of configuration to adapt to different formats for teaching and learning. State of the art dimmable LED lighting and new HVAC systems will ensure that these new labs are designed to meet current and future needs.

- Overall, classroom space will be increased by 3,960 sf, or 20 percent.

b. Physical Education/Athletic Programs.

- The new 4,890 sf regulation-sized gymnasium for basketball proposed on Main Building's new seventh floor will satisfy a long outstanding need for the School to have an appropriate venue to host interscholastic events. Retractable bleachers on the south main entrance side of the gymnasium will permit up to 100 spectators. The north elevation's windows will be fitted with mechanically-operated light-blocking curtains that will eliminate dusk and nighttime illumination and permit the space to be darkened during the day for special events and assemblies. Adjustable compact fluorescent lighting and acoustical treatment to dampen excessive reverberation will serve both the compulsory physical education and the athletic program.
- The existing fitness room on the sixth floor of the Annex will be repurposed for basketball practice and other physical education uses and will provide much needed support and restroom facilities and an athletic director's office. A climbing wall will be added to the north wall of this repurposed space. A seventh floor will be constructed in the Annex, which will align with the Main Building's new seventh floor gymnasium and will be used for training and athletic storage.
- A new covered roof space above the new gymnasium on the seventh floor of the Main Building will serve similar physical education program needs as the existing play roof but will no longer depend on the inclement weather. The roof will be translucent to allow for plentiful natural light. A synthetic lawn floor is planned to facilitate the anticipated athletic activities such as kickball, tag, and other "schoolyard" games.
- A new and more spacious locker and shower room is proposed for all students on cellar level of the Main Building. Work space for the balance of the athletic faculty and staff is located just north of the locker rooms providing adult supervision.

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- Adjacent and connected to these facilities is a new fitness/wellness room which can expand to include the new lower school dining area during non-lunch periods via movable partitions and retractable dining tables.
  - A new 1,050 sf wrestling and lower school playroom with synthetic lawn flooring with portable wrestling mats is planned on the sub-cellar level of the repurposed Townhouses. Storage areas for mats and other play equipment will be provided directly adjacent to this room to facilitate reconfiguration.
  - These new facilities will also serve to eliminate the use of the assembly hall, the dining room and various corridors and hallways as physical education venues.

c. Visual Arts.

- Visual arts-related facilities will be located near each other on the new fifth floor of the Townhouses and will include three art rooms totaling 1,300 sf and a 70 sf room housing the kiln. These new open studio art spaces will facilitate multimedia studio arts ranging from painting, drawing, ceramics, sculpture and 3D/CNC printing. Extensive storage is planned as well as ample areas for display of completed work, including the double height gallery spaces to the north along the Townhouses' historic façades, which will be retained. Dimmable LED lighting and efficient new HVAC systems will create a comfortable climate for the current and future art program.
- Adjacent to these art rooms will be a reconfigured and remodeled 665 sf woodshop with a 135 sf dedicated storage room located in the Main Building. As important as this increase in space will be, these facilities will share the equally important attributes of adjacency and the central location they will enjoy in the reconfigured campus.

d. Performing Arts.

A new 1,180 sf Performing Arts Pavilion will occupy a double height space on the first floor of the reconstructed Townhouses. It will feature north facing monitors, a state of the art lighting and technology grid and comprehensive and tunable acoustical treatment to meet a wide range of music, theater and dance performances. This much needed space for dance will have a sprung floor and high ceilings to support the dance program, which currently convenes in the low ceiling space of the dining room. This smaller scale space will provide an excellent venue for choral rehearsals, smaller productions and free up the current schedule in the severely overbooked Assembly Hall.



e. Connectivity.

All three 78<sup>th</sup> Street buildings within the reconfigured School campus will provide unified floor heights on floor one through five and seven<sup>9</sup>, thereby ensuring easy access to classrooms. The reconfigured campus will accommodate two means of egress ensuring a fully accessible direct evacuation route with ADA access to the greenhouse proposed on the roof of the Townhouses provided at the seventh/gymnasium floor. The alignment of the Main Building and Townhouse floors will significantly improve student and faculty travel throughout the School, permit a wider range of academic and social divisions of space and increase optionality for future organizational modifications as programmatic needs change. Most importantly, each floor will now read as "one school," providing a greater sense of community than could be provided through the current warren of small spaces and convoluted corridors, ramps and stairways.

**L. Community Outreach**

The proposed project was introduced to the community prior to the LPC Public Hearing. On November 13, 2014, the School held an open house for neighbors of the Allen-Stevenson School. On November 20, 2014, Manhattan Community Board 8 issued a resolution recommending approval of the School's LPC application.

**M. Development Alternative**

The alternate as-of-right scenario (the "AOR Scheme") presented in this Application represents the same alterations to the Main Building and floors one through four of both Townhouses. However, due to the 60 ft height limitation imposed by the LH-1A limited height district in an R8B portion of the Site, the height of the AOR Townhouses would be 9 ft 6 in less than the proposed, thereby precluding construction of the Townhouses' fifth floor, rendering the AOR Building inefficient as follows:

- Loss of three visual arts rooms. These art classrooms cannot be relocated elsewhere within the reconfigured School campus due to programmatic requirements such as natural light, open floor space, ceiling height and area requirements. Additionally, location of these art spaces on the fifth floor of the Townhouses provides adjacencies

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<sup>9</sup> Sixth floor is provided only in the Annex.

to such important arts functions as the woodshop, being renovated in the Main Building on that floor.

- The AOR Scheme lacks the ADA connection between the new gymnasium on the seventh floor of the Main Building (elevation 66 ft) and the greenhouse proposed on the roof of the Townhouses (elevation 56 ft 6 in). To provide such a connection as a matter of right, the School would have to install a separate lift to connect these two levels, requiring loss of program space on fourth floor and reduction of the greenhouse within the reconstructed Townhouses.
- The AOR Scheme does not provide a direct egress path from the new Main Building seventh floor gymnasium as does the proposed scheme, resulting in a longer and indirect evacuation path from the gymnasium, a place of public assembly.

In sum, the necessity to comply with the 60 ft height limitation would deprive the School from realizing its visual art program, which is one of the core components of Allen-Stevenson's curriculum. The loss of these three classrooms, which would also adversely affect the adjacent arts rooms planned for the fifth floor of the Main Building, would deprive the School of an academic commitment and would undermine the quality of education that the expansion must address. In addition to the loss of the visual arts classrooms, the height limitation would hinder the overarching project goal of aligning all floor levels throughout the School and providing superior egress patterns and ADA access to all floors of the campus.

#### **N. Prior Board Applications**

No previous actions by the Board were sought by the Applicant. The Main Campus (tax lot 58) is subject to the following 2004 Administrative Appeal case:

*273-04-A. "An Administrative Appeal challenging Department of Building's final determination dated August 3, 2004, in which the Department refused to revoke approvals and permits which allow an enlargement of a school that violates the rear yard requirements under ZR Sections 33-26 and 33-301" - denied on March 8, 2005.*

This Appeal challenged DOB's determination for an enlargement that - the Appellant argued - violated the rear yard requirements under ZR Sec. 33-26 and 33-301. The Board found that "DOB's interpretation was reasonable; therefore, the exemption of the [s]chool's development proposal from any rear yard requirement, as reflected in the DOB-approved plans, was correct, and the approval and permit were appropriately issued."

## O. Open Department of Buildings Violations

There are two open DOB violations issued to the buildings located on the Site:

1. V 100810VCAT101963 (128 East 78<sup>th</sup> Street, elevator)
2. V 062713E9027/477123 (121 East 77<sup>th</sup> Street, elevator)

Both violations have been corrected and all required documentation is being provided to the DOB. It is expected that both violations will be cleared in late 2015.

## CONCLUSION

Since the purchase of West Townhouse in 2012, Allen-Stevenson has been planning the proposed project, which will result in the adaptive re-use and full integration of the West Townhouse into the Existing School Campus; expansion of East Townhouse and enlargement and reconfiguration of the Main Building and the Annex, which will improve the size and distribution of Allen-Stevenson academic classrooms, create additional necessary space for the visual arts program, nearly double the space for the science program, create necessary adjacencies and enhance the circulation within the campus.

A key benefit offered to each Allen-Stevenson boy is the opportunity to participate in all aspects of the School – no boy must choose between being an athlete, an artist, a musician or a singer. Approval of this Application will help the School to overcome the constraints of its existing campus and enable it to provide its rich array of offerings and activities within the renovated campus. Approval of the modest waivers requested in this Application will allow Allen-Stevenson to enhance the utilization of its facilities and strengthen its academic, athletic and visual and performing arts program within its renovated and reconfigured complex.

On the basis of the foregoing, the Applicant respectfully requests (1) that the Board make the requisite findings and grant the requested variances and (2) that the Board find that the findings and conditions have been met for the proposed greenhouse to qualify as a rooftop greenhouse for the purposes of ZR Sec. 75-01 certification.

Respectfully submitted,

FRIEDMAN & GOTBAUM, LLP

By:

  
Shelly S. Friedman, Esq.

New York, New York  
September 22, 2015

# EXHIBIT A



THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION  
1 CENTRE STREET 9TH FLOOR NORTH NEW YORK NY 10007  
TEL: 212 669-7700 FAX: 212 669-7780



January 14, 2015

ISSUED TO:

**David R. Trower, Headmaster**  
**The Allen-Stevenson School**  
**132 East 78th Street**  
**New York, NY 10075**

**Re: STATUS UPDATE LETTER**  
LPC - 164381  
SUL 16-6870  
126-134 EAST 78TH STREET  
HISTORIC DISTRICT  
UPPER EAST SIDE  
Borough of Manhattan  
Block/Lot: 1412 / 58

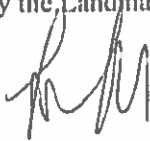
This letter is to inform you that at the Public Meeting of January 13, 2015, following the Public Hearing of December 2, 2014, the Landmarks Preservation Commission voted to approve a proposal to construct rooftop and rear yard additions at the subject premises.

However, the Commission made its determination subject to the condition that the applicant work with staff to lower the parapet of the Mansard roof as much as feasible.

Approval for this project expires on January 13, 2021; however, no work can begin until a Certificate of Appropriateness is issued. Upon receipt, review and approval of two sets of the final signed and sealed drawings to be submitted to the Department of Buildings, showing the approved proposal with the staff approved revision, a Certificate of Appropriateness will be issued.

Please note that all drawings, including amendments which are to be filed at the Department of Buildings, must be approved by the Landmarks Preservation Commission. Thank you for your cooperation.

  
Lisa Schaeffer





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NEW YORK NEW YORK 10012  
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## **BSA Cal. No.**

STATEMENT OF FINDINGS IN SUPPORT  
OF CERTAIN VARIANCES  
FROM THE PROVISIONS OF  
THE NEW YORK CITY ZONING RESOLUTION

**Affected Premises:**

Allen-Stevenson School  
126 - 134 East 78<sup>th</sup> Street

Block 1412 Lots 58, 61  
Manhattan

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Filed: September 25, 2015

Friedman & Gotbaum LLP  
568 Broadway Suite 505  
New York, New York 10012  
(212) 925-4545  
sfriedman@frigot.com  
earistova@frigot.com

This Statement of Findings is filed in support of the application of Friedman & Gotbaum LLP pursuant to Section 72-21 of the Zoning Resolution of the City of New York (the "Zoning Resolution" or "ZR") and Section 666 of the New York City Charter on behalf of the Allen-Stevenson School ("Allen-Stevenson" or the "School"), a nonprofit private pre-K through Grade 8 school for boys founded in 1883 and in continuous operation at this address since 1924.<sup>1</sup>

**A. The DOB Objections**

The Department of Buildings ("DOB") has issued the following Notice of Objections dated September 3, 2015:

No.	Section of ZR	Comments
1.	ZR 24-522(b)	Proposed enlargement within the R8B(LH-1A) portion of the zoning lot contrary to height and setback as per ZR Secs. 24-522(b)
2.	ZR 24-591	Proposed enlargement within the R8B(LH-1A) portion of the zoning lot contrary to height limitations as per ZR Sec. 24-591.

**B. The ZR Sec 72-21 Required Findings:**

The Board's authority to grant variances is described in ZR Sec. 72-21 as follows:

***When in the course of enforcement of this Resolution, any officer from whom an appeal may be taken under the provisions of Section 72-11 (General Provisions) has applied or interpreted a provision of this Resolution, and there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such provision, the Board of Standards and Appeals may, in accordance with the requirements set forth in this Section, vary or modify the provision so that the spirit of the law shall be observed, public safety secured, and substantial justice done.***

***Where it is alleged that there are practical difficulties or unnecessary hardship, the Board may grant a variance in the application of the provisions of this Resolution in the specific case, provided that as a condition to the grant of any such variance, the Board shall make each and every one of the following findings:***

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<sup>1</sup> Capitalized terms in this Statement of Findings are as defined in the Statement of Facts submitted concurrently herewith.

This Application respectfully requests that Board invoke its unique authority based on its finding the following:

**ZR Sec. 72-21(a):**

***[T]hat 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 or bulk provisions of the [zoning] Resolution; 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 School is required to seek the two overlapping waivers requested in this Application because (1) a necessary alignment of floors among its three buildings facing East 78<sup>th</sup> Street (Main Building and East and West Townhouses) to eliminate a current misalignment of as much as 7 ft 10 in between floors requires an increase in the heights of the Townhouses to achieve a useful fifth floor in those buildings, (2) without the increase in heights necessary to accommodate an aligned fifth floor in the Townhouses the School will be deprived of the floor area required for an appropriately sized and located visual arts center, (3) the inability to align the floor level of the Main Building's new gymnasium with the roof level of the Townhouses results in an inferior egress system and eliminates ADA access to the greenhouse that can only otherwise be addressed through the utilization of the Townhouses' space required for School's programs and (4) the inability to align the roof levels of the two Townhouses eliminates the only available footprint on the roofs of the School's buildings that meets the School's visual arts and science programs requirements while providing a 380 sf rooftop greenhouse that the School deems essential to further its sustainability and earth sciences curricula.<sup>2</sup>

While the School has sufficient floor area for all of these purposes on its Zoning Lot, waiver of the two height and setback provisions is the only means available to the School to fully utilize this floor area within its three East 78<sup>th</sup> Street buildings for its educational

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<sup>2</sup> This application includes the School's proposal to build a greenhouse complying in all respects with the requirements of ZR Sec. 75-01, which allows schools to add qualifying greenhouses that will not count as zoning floor area for the purposes of ZR Sec. 24-11 or building height for the purposes of ZR Sec. 24-591. ZR Sec. 75-01 requires a certification from the Chairperson of the City Planning Commission (the "CPC") that the eligibility requirements set forth therein have been met and that the community board has been provided an opportunity to comment.

purposes.<sup>3</sup> After careful study, the School's Trustees and Administration, understanding that even partial demolition of its historic buildings is not an option, have determined that the School's sole available remedy to strengthen its existing curriculum and provide improved facilities in the arts, sciences, engineering, sustainability, earth sciences and physical education lies in consolidating all school functions into a reconfigured single campus through integrating the interiors of its three buildings into a unified and coherent educational facility. This ambitious program requires the enlargement of its Main Building for the gymnasium and support facilities; reconfiguring the roofline of the Annex to provide for the seventh floor that aligns with the Main Building's proposed seventh floor; alignment of the varying Townhouses' floor levels with those of the Main Building to facilitate connectivity for all disciplines;<sup>4</sup> and a modest increase to the heights of the two adjacent Townhouses to create a new fifth floor providing sufficient room within the reconstructed Townhouses for science and engineering labs and a visual arts center, thus creating a reconfigured campus with right-sized facilities and improved academic adjacencies throughout, while creating a superior egress system serving the entire School and providing ADA access to all floors of the campus, including the greenhouse. **This Application is required solely with regard to a 28-inch increase in the height of East Townhouse and an 11 ft 8 in increase in the height of the West Townhouse that produce a uniform height of 66 ft to achieves these purposes.**

In order to achieve its program, the School must find sufficient space on the Zoning Lot for a regulation-sized gymnasium, science and engineering labs, sufficient recital space, a visual arts center consisting of three dedicated classrooms and a rooftop greenhouse, all of which it presently lacks. The gymnasium can be located within its Main Building as a matter of right. The recital space can be located within an enlargement into the West Townhouse's rear yard as a matter of right.<sup>5</sup> Either the science and engineering labs or the visual arts center, but not both, can be located on the third and fourth floors of the re-aligned Townhouses as a matter of right. Due to the desire for natural light for its visual arts

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<sup>3</sup> The School has existed and grown on the lot now occupied by the Main Building continuously since 1924. It purchased the East Townhouse in 1978 and modified it for limited educational purposes pending a longer term adaptation. The West Townhouse became available for purchase in 2012. The West Townhouse is currently unusable for educational purposes in its residential format.

<sup>4</sup> This alignment will not track the exterior elevations of the Townhouses. The new slabs will be built 8 ft 5 in behind their façades, creating a clear space between their interior planes and the new slabs, which will accommodate the gallery as part of School's visual arts program.

<sup>5</sup> Pursuant to ZR Sec. 24-12.



program, the School has decided that the science and engineering labs should be located on the third and fourth floors of the re-aligned Townhouses and that the visual arts center should be located above them on a newly built fifth floor, which must be located at elevation 49 ft 8 in in order to connect with the existing fifth floor art studio and woodshop in the Main Building. A fifth floor slab at that elevation leaves only 10 ft 4 in of height in which to fit the entire volume of the fifth floor and the remaining structure supporting the roof above it before reaching the 60 ft building height restriction within the R8B portion of the Site.<sup>6</sup> In order to provide the necessary building height to accommodate the science labs and the visual arts center within the Townhouses, at the appropriate elevation to provide connectivity with the Main Building's third, fourth and fifth floors, the Townhouses must share a uniform overall building height of 66 ft.

In addition, the sole available location for the rooftop greenhouse spans the two Townhouses, thus constituting a second reason why the Townhouses' roofs must share a uniform height. The proposed rooftop greenhouse physically raises the actual building height to 84 ft 7 in, but ZR Sec. 75-01 provides that the mass of a qualifying rooftop greenhouse can be deducted in calculating its building height for the purposes of ZR Sec. 24-591, so that its height for zoning purposes will remain the proposed 66 ft roof height of the Townhouses. Therefore, assuming compliance with the certified findings in ZR Sec. 75-01, the addition of the rooftop greenhouse for educational purposes can proceed as a matter of right without regard to the waivers necessary for the height and setback of the buildings below.

And thirdly, the new gymnasium on the seventh floor of the Main Building will require, in the architects' estimation, a travel path for necessary egress down to street level with a width of at least 44 in (3.67 ft). The School proposes to provide code-compliant egress for the proposed gymnasium by connecting its egress to the new egress being provided within the Townhouses at the new roof heights proposed in this Application. Without approval of the waivers for their new combined fifth floor and the proposed building height at elevation 66 ft, the direct evacuation path from the new gymnasium as proposed in this Application cannot be as readily provided in a manner that fosters accessibility and life safety.

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<sup>6</sup> The West Townhouse is entirely within the R8B district and the East Townhouse is partially within the R8B district.

Accordingly, this Application seeks relief simply to waive the two height and setback objections applicable to the construction of the combined Townhouses' new fifth floor to permit an increase in the height of the two Townhouses from their current heights, 63 ft 8 in and 54 ft 4 in respectively, to 66 ft, an overall exceedance of 6 ft above the relevant LH-1A limited height district regulation. While the waivers are small, only they can provide the relief which is essential to permit (1) the alignment of the fifth floor throughout the School's East 78<sup>th</sup> Street buildings, (2) the headroom required on the Townhouses' fifth floor to permit the visual arts center, (3) a superior evacuation route from the proposed gymnasium to connect with the Townhouses and (4) ADA access throughout the entire campus, including to the greenhouse. The programmatic hardships that would be inflicted on the School were it required to comply with the building height provisions applicable to the R8B portion of the Zoning Lot pursuant to ZR Secs. 24-522(b) and 24-591, *i.e.*, having to accept the loss of direct connectivity between the new gymnasium on the seventh floor of the Main Building and the greenhouse proposed on the roof of combined Townhouses and a loss of ADA access to the proposed greenhouse and foregoing a visual arts center comprised of three new classrooms, a kiln located in a dedicated room and the expanded woodshop with storage are significant and unnecessary practical hardships which the Board has consistently recognized as valid bases for waiving those provisions to the minimal extent required to eliminate the hardships.

Strict compliance with the 60 ft height limitation imposed by Sec 24-591 would exact a heavy burden on the School's ability to adequately utilize the Townhouses for its educational purposes within a unified campus. Specifically, the waiver of ZR Sec. 24-591 is necessary to permit (1) a 28 in waiver to permit an increase in non-complying height of the portion of the five-story East Townhouse located within the R8B portion of the Zoning Lot from 63 ft 8 in to 66 ft and (2) an 11 ft 8 in ft increase (5 ft 8 in of which is permitted as-of-right) in the building height of the adjoining four-story West Townhouse from 54 ft 4 in to 66 ft, thereby aligning their fifth floors at the elevation of the Main Building's fifth floor and aligning their rooftops. Currently, the School Campus' misaligned floors fronting on East 78<sup>th</sup> Street<sup>7</sup>, as indicated on Drawing EX-03, are as follows:

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<sup>7</sup> Floors 1 through 4 of Main Building and Annex are connected via ramps; fifth floors are connected via an eight-step stair.

**Table 1. Existing Floor levels**

Floor	Elevation		
	Main Building	East Townhouse	West Townhouse
1	0 ft 0 in	6 ft 7 in; 9 ft 8 in <sup>8</sup>	6 ft 7 in
2	10 ft 11 in	18 ft 9 in; 20 ft 8 in	18 ft 9 in
3	23 ft 10 in	30 ft 4 in	30 ft 4 in
4	36 ft 9 in	40 ft 6 in	43 ft 9 in
5	49 ft 8 in	50 ft 10 in	-
Roof	64 ft 0 in	63 ft 8 in	54 ft 4 in
Top of play space	80 ft 9 in	-	-

With the approval of this Application, all three East 78<sup>th</sup> Street buildings would be totally aligned at the elevations of the existing Main Building floors 1 through 5.

The As-of-Right Alternative

This Application includes an as-of-right scheme (filed as the "AOR" drawings) for comparison to the requested proposal. The AOR Scheme represents a campus in which the Townhouses are adapted for educational use but their building heights are limited to 60 ft in order to provide for the uniform roofline necessary for the proposed greenhouse. In the AOR Scheme, the East Townhouse's height would be lowered 7 ft 2 in to a building height of 56 ft 6 in and the West Townhouse's height would be raised 2 ft 2 in to 56 ft 6 in. The Zoning Lot's footprint and massing is substantially the same as the proposed project, however there would be no fifth floor for the visual arts center. The Main Building would still be modified to include a new gymnasium and supporting facilities and the rear yard of the West Townhouse would still be developed to its full as-of-right potential for the recital space. While the resulting 19 ft 9 in Townhouses' fourth floor height exceed the average floor-to-floor height of approximately 13 ft, creating rooms with excessively high ceilings, addition of

<sup>8</sup> As shown on Plan EX-05, existing first and second floors of the East Townhouse have differing floor levels, which are connected by internal stairs on both floors.

the fifth floor is impossible because even the minimum necessary floor height of 11 ft cannot be achieved.

By raising the East Townhouse height to 56 ft 6 in and lowering the West Townhouse height to 56 ft 6 in, to provide for a uniform height for the proposed rooftop greenhouse, the following would occur after alignment of East 78<sup>th</sup> Street floors<sup>9</sup>, see Drawing AOR-03:

**Table 2. Floor levels achievable under AOR Scheme**

Floor	Elevation		
	Main Building	East Townhouse	West Townhouse
1	0 ft 0 in	0 ft 0 in	0 ft 0 in
2	10 ft 11 in	10 ft 11 in	10 ft 11 in
3	23 ft 10 in	23 ft 10 in	23 ft 10 in
4	36 ft 9 in	36 ft 9 in	36 ft 9 in
5 (Main Building) & Greenhouse (Townhouses)	49 ft 8 in	56 ft 6 in	56 ft 6 in
7	66 ft 0 in	-	-
Roof (Main Building) & Top of Greenhouse (Townhouses)	94 ft 1 in	75 ft 8 in	75 ft 8 in
Top of Play Space	112 ft 10 in	-	-

As this table and Table 1 providing the floors' alignment under the existing conditions demonstrate, both the existing condition and the AOR condition do not provide the aligned Townhouses floors usable for educational purposes above their fourth floors, thus requiring the School to eliminate or significantly reduce the visual arts center, or the proposed new science labs, or both by squeezing them into the diminished four-story Townhouses. Additionally, without an aligned fifth floor, the direct egress path to and from the 7<sup>th</sup> floor gymnasium and an ADA access to the rooftop greenhouse cannot be provided. The

<sup>9</sup> Sixth floor is provided in the Annex.

situation is similar in the existing condition, since the existing depth of the fifth floor of the East Townhouse, which is currently set back 10 ft 5 from the front wall, is only 52 ft 4 in, rendering it insufficient for any educational purposes.

And finally, the waivers will permit the Townhouses to have a roofline with a common height, providing a suitable roof footprint of 1,255 sf, which currently does not exist anywhere on the Zoning Lot for the 380 sf educational rooftop greenhouse. The only available greenhouse footprint would be somewhere on the roof of the Main Building, however its roof space is committed to the campus' mechanical equipment and an outdoor physical education area.

#### Legal Framework and Precedents Regarding The (A) And (C) Findings

The Applicant respectfully requests that the Board recognize and adhere to its customary standard of significant deference to a not-for-profit educational facility's assessments of its programmatic needs in its administration of applications for relief pursuant to ZR Sec. 72-21. Even the most cursory review of the Board's determinations in past similar cases involving educational institutions reveals the substantial weight accorded by the Board to the New York State Court of Appeal's instructions to zoning boards of appeal throughout the State as articulated in its three comprehensive decisions: *Matter of Westchester Reform Temple v. Brown et al., Constituting the Planning Commission of the Village of Scarsdale*, 22 N.Y.2d 488 (1968), *Cornell Univ. v. Bagnardi*, 68 N.Y.2d 583 (1986), and *In the Matter of Pine Knolls Alliance Church v. Zoning Board of Appeals of the town of Moreau*, 5 N.Y.3d 407 (2005). For almost half a century, this series of cases and its progeny have served as the "Law of the Land" in New York State with regard to variance applications by religious and educational institutions seeking relief from local land use regulations of all stripes. Specifically regarding educational institutions, the concluding statements in the *Pine Knolls* case define the Court's approach in all three cases:

"In assessing a special permit application, zoning officials are to review the effect of the proposed expansion on the public's health, safety, welfare or morals, concerns grounded in the exercise of police power, 'with primary consideration given to the over-all impact on the public welfare' (*Trustees of Union Coll.*, 91 N.Y.2d at 166). Applications may not be denied based on considerations irrelevant to these concerns.

We made clear in *Cornell University* that it is not the role of zoning officials to second-guess the expansion needs of religious and educational institutions."  
[Emphasis supplied.]

The *Pine Knoll* Court's plain spoken affirmation of its holding in *Cornell Univ.* twenty-five years earlier has been noted by this Board in dozens of decisions pertaining to

schools, healthcare institutions that provide significant educational programming and churches, the resolutions of many of which make specific reference to *Cornell Univ.* Attached to this Statement of Findings is a compendium of selected Board cases from 2005 – 2014 and selected pertinent language from the Board’s resolutions which in each case grant the requested variances.

**ZR Sec. 72-21(b):**

***[T]hat because of such physical conditions there is no reasonable possibility that a development, enlargement, extension, alteration or change of use on the zoning lot in strict conformity with the provisions of this Resolution 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 shall not be required for the granting of a variance to a non-profit organization.***

This finding is not applicable because Allen-Stevenson School is a non-profit institution and all of the development proposed on the Zoning Lot will be in support of its educational mission.

**ZR Sec. 72-21(c):**

***[T]hat 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.***

A. Character of the built environment. The requested waivers are limited to providing additional heights for the portions of the Townhouses located within the R8B portion of the Zoning Lot to provide a fifth floor that aligns with the fifth floor of the Main Building, resulting in building heights of 66 ft above grade. In addition to providing 3,178 sf of additional programmable space (expanded floors 1 through 4 and new fifth floor for the West Townhouse), all of which is as-of-right, the requests to increase in the Townhouses’ building heights are the minimum necessary to provide a uniform height that will support a rooftop greenhouse across the newly raised and aligned roofs and a direct egress path to the new 7<sup>th</sup> floor gymnasium and an ADA access to the greenhouse. Approval of this Application will alter the essential character of the built environment on and around the Zoning Lot in only the following minor respects:

- The East Townhouse’s building height, without reference to the proposed rooftop greenhouse, will be increased by only 28 in.

- The West Townhouse's building height, without reference to the proposed rooftop greenhouse, will be increased by only 11 ft 8 in, or 6 ft above the height permitted to any property owner within an R8B/LH-1A district (subject to LPC permission where applicable).
- Upon approval of the Application, the School will install the rooftop greenhouse, which will add 18 ft 7 in to the physical heights of the Townhouses, designed so that it cannot be viewed from the public way.<sup>10</sup>

While the LPC standards for visibility are not dispositive under finding (c), its approval of a Certificate of Appropriateness connotes that the design of the proposed enlargement of the Townhouses is compatible with the essential character of the neighborhood's architectural character and vocabulary. The School has gone to great lengths to retain the typology of these structures as individual free-standing townhouses by keeping and in some cases restoring their individual stoops and doors and their existing architectural details. The increase in their height by 28 in and 11 ft 8 in while keeping their existing façades will do nothing to disturb their traditional residential typology or the essential character of the other adjacent buildings.

Viewed in plan, the changes are limited to the rooftop greenhouse, which will add 380 sf of non-zoning floor area on the roofs of the Townhouses, and an approximately 1,039 sf one-story as-of-right build-out of the rear yard of the West Townhouse and extensions of its second, third and fourth floors' floor plates by 24 ft 4 in, neither of which will be visible from the public way and are therefore incapable of altering neighborhood character.

B. Character of the Fabric of the Community. The School's adaptive re-use of the Townhouses can only strengthen the essential character of this mixed use neighborhood, which is indelibly marked by the vibrant commercial Lexington Avenue corridor, the multiblock presence of Lenox Hill Hospital directly across the street to the south of the Zoning Lot and the diverse mixed use residential/institutional character of the historic properties west of the School between Lexington and Park Avenues. For nearly, 100 years, Allen-Stevenson, through several expansions of its purpose-built large Main Building, has

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<sup>10</sup> The rooftop greenhouse will not, as a technical matter under the Zoning Resolution, increase the height of the building any more than rooftop mechanical equipment. The height of a school's rooftop greenhouse which satisfies the requirements of ZR Sec. 75-01 is disregarded for the purposes of determining compliance with the height and setback regulations such as the limited height district regulations in ZR Sec. 24-591.

been educating boys on this block amid townhouses and apartment buildings and its continuing presence will only strengthen the *status quo* on this block and in this neighborhood. Its adaptive re-use of the Townhouses for its educational purposes brings neither new uses nor increased use. As one of several private schools in the area, Allen-Stevenson contributes to the enrichment of the families living within this community and of the City as a whole.

C. Character of the Upper East Side Historic District. There can be no higher measure of this Application's consistency with this (c) Finding than the LPC's unanimous and enthusiastic determination that the work proposed for the Townhouses is appropriate to the Historic District.<sup>11</sup> In addition, the LPC Record contains the resounding support of Community Board 8.

And finally, in the broadest sense, the general welfare of any community can only be furthered by strengthening the quality of its educational facilities, especially one which has been in residence at this location for over 91 years. The case is even stronger with respect to this institution, which over the years since the advent of the Upper East Side Historic District has proved itself to be a good steward for its historic buildings in this neighborhood.

**ZR Sec. 72-21(d):**

***[T]hat the practical difficulties or unnecessary hardship claimed as a ground for a 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.***

Allen-Stevenson has used its Main Building continuously for school purposes since 1924 and last expanded it in 1993 by adding on the wing that fronts on East 77<sup>th</sup> Street (the Annex). It adapted the East Townhouse for its education purposes in 1978, four years before the adoption by the CPC of the first limited height district. In 2012, it purchased the West Townhouse for adaptive re-use to provide for the future growth and maturity of its educational programs. All of its buildings were originally constructed decades before the adoption of the 1961 Zoning Resolution. The School can hardly be deemed to have created a self-imposed bulk hardship for the East Townhouse when its acquisition pre-dated the zoning provision giving rise to its programmatic difficulties. The School did indeed acquire the West Townhouse for its adaptive re-use for undetermined educational purposes

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<sup>11</sup> Approved at the LPC public meeting of January 13, 2015.



understanding that any increase in its height would likely require this Application, but the plain language of the ZR Sec. 72-21(d) and the ample record of such applications before the Board make it clear that such recognition does not preclude an application for relief.

**ZR Sec. 72-21(e):**

***[T]hat within the intent and purposes of this resolution 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.***

A. There are several factors in this Application that demonstrate that the variances requested are the minimum necessary to afford relief:

- This Application demonstrates that the School cannot use the Townhouses as they are presently built, as independent structures with small floor plates, varying floor elevations (neither of which align with the Main Building) and varying floor-to-floor heights. The Application is tailored exclusively to obtain the building heights necessary to permit alignment of floors, a new fifth floor with 1,370 sf for a visual arts center appropriate to its school size and a footprint for the proposed rooftop greenhouse, which are the specific programmatic difficulties to be addressed by this Application.
- The variances are quantitatively minor, permitting a 28 in increase in the height of the East Townhouse and an 11 ft 8 in ft (6 ft above the permitted height) increase in the height of the West Townhouse.

B. The Application analyzes an as-of-right scenario to demonstrate that there is no reasonable as-of-right scenario that will produce an enlargement on the School's Zoning Lot that will permit the School to overcome its present programmatic deficiencies.

**C. The ZR Sec. 75-01 Certification Findings**

The proposed School rooftop greenhouse will be located above the 60 ft height limit imposed by ZR Sec. 24-591. However, ZR Sec. 24-51 allows a qualifying rooftop greenhouse as follows:

**75-01**

***Certification for Rooftop Greenhouses***

*A rooftop greenhouse shall be excluded from the definition of floor area and may exceed building height limits, upon certification by the Chairperson of the City Planning Commission that such rooftop greenhouse:*

- (a) *is located on the roof of a building that does not contain residences or other uses with sleeping accommodations;*
- (b) *will only be used for cultivation of plants, or primarily for cultivation of plants when accessory to a community facility use;*
- (c) *is no more than 25 feet in height;*
- (d) *has roofs and walls consisting of at least 70 percent transparent materials, except as permitted pursuant to paragraph (f)(3) of this Section;*
- (e) *where exceeding building height limits, is set back from the perimeter wall of the story immediately below by at least six feet on all sides; and*
- (f) *has been represented in plans showing:*
  - (1) *the area and dimensions of the proposed greenhouse, the location of the existing or proposed building upon which the greenhouse will be located, and access to and from the building to the greenhouse;*
  - (2) *that the design of the greenhouse incorporates a rainwater collection and reuse system; and*
  - (3) *any portions of the greenhouse dedicated to office or storage space accessory to the greenhouse, which shall be limited to 20 percent of the floor space of the greenhouse, and shall be exempt from the transparency requirement in paragraph (d) of this Section.*

*Plans submitted shall include sections and elevations, as necessary to demonstrate compliance with the provisions of paragraphs (a) through (f) of this Section, as applicable. A copy of the proposed rooftop greenhouse plan shall be delivered to the affected Community Board, which may review such proposal and submit comments to the Chairperson of the Commission. The certification of a rooftop greenhouse shall not be complete until the earlier of the date that the affected Community Board submits comments regarding such proposal to the Commission or informs the Commission that such Community Board has no comments; or 45 days from the date that such proposal was submitted to the affected Community Board.*

With regard to the proposed rooftop greenhouse included in this Application, please note the following compliance with each of the above requirements:

- (a) if approved, the rooftop greenhouse will be on a building and a zoning lot that will not contain residences or other uses with sleeping accommodations;
- (b) if approved, the rooftop greenhouse will be used by the School primarily for cultivation of plants;
- (c) Plan P-18 shows that the 18 ft 7 in rooftop greenhouse will be no more than 25 feet in height;

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- (d) Plan P-18 shows that the rooftop greenhouse will have roofs and walls consisting of at least 70 percent transparent materials;
  - (e) Plan P-19 shows that the rooftop greenhouse is set back from the perimeter wall of the story immediately below by at least six feet on all sides; and
  - (f) Plans P-03, P-18 and P-19 have been submitted with this Application showing:
    - (1) the area and dimensions of the proposed rooftop greenhouse, the location of the two Townhouses upon which the rooftop greenhouse will be located, and access to and from the stair A located in East Townhouse to the rooftop greenhouse;
    - (2) that the design of the rooftop greenhouse incorporates a rainwater collection and reuse system; and
    - (3) no portion of the greenhouse is dedicated to office or storage space accessory to the rooftop greenhouse.

Greenhouse Plans are included in referral package for this Application, which will be forwarded to Manhattan Community Board 8 within three days of filing of the Application. Our letter to the Community Board highlights this additional requested action.

Inasmuch as each and every condition of ZR Sec. 75-01 has been met, the Applicant respectfully requests that the Board provide in its Resolution its determination equivalent to a certification by CPC Chairperson to DOB that the provisions of ZR Sec. 75-01 have been met and that the proposed rooftop greenhouse shall be excluded from the definition of floor area and may exceed building height limits as shown on the plans to be approved in connection with this Application.

## **CONCLUSION**

If approved, the minor waivers of limited height and height and setback for the Townhouses will allow the School to unify its three buildings into a single purpose-built educational facility with right-sized facilities, necessary academic adjacencies and required interconnectivity both within the student body and between students and faculty. By permitting sufficient building heights to allow a common Townhouses' roofline of 66 ft, the School gains the space for a much-needed visual arts center. And by providing that common roofline, the School gains the opportunity to (1) secure necessary egress in a manner which provides for more efficient layout of educational space within its campus and (2) add a

rooftop greenhouse that will allow it to expand its curriculum into new areas of sustainability and sciences. This Application achieves these mission-critical advances through truly minimal waivers for setback and building height on a charming block where many of its existing historic buildings already have existing non-compliances for minimum setback distances and building heights.

Approval of this Application is necessary because there is no alternate as-of-right design which can address the existing buildings' programmatic hardships and no alternatives of lesser or fewer variances that can overcome these hardships. On the basis of the foregoing, the Applicant respectfully requests (1) that the Board make each of the requisite findings and grant the requested waiver of ZR Sec. 24-591 and ZR Sec. 24-522(b) and (2) that the Board find that the conditions have been met for the proposed greenhouse to qualify as a rooftop greenhouse for the purposes of ZR Sec. 75-01.

Respectfully submitted,  
FRIEDMAN & GOTBAUM, LLP

By:   
Shelly S. Friedman, Esq.

New York, New York  
September 22, 2015

**COMPENDIUM OF BOARD CASES FROM 2005 – 2014  
AND SELECTED PERTINENT LANGUAGE FROM THEIR RESOLUTIONS**

**A. 3-14-BZ**

Date of Decision: August 19, 2014  
Vote to Approve: 3-0  
Premises Affected: 12-22 East 89<sup>th</sup> Street  
Block 1500 Lot 62 (Manhattan)  
Saint David's School

With a resolution including a detailed recital of the Board's consideration of the holding in *Cornell Univ. v. Bagnardi*, 68 N.Y.2d 583 (1986), and caselaw thereafter, a variance was granted to permit, on a site partially within an R10/C1-5 zoning district within the Special Madison Avenue Preservation District (MP) and partially within an R8B zoning district, within the Carnegie Hill Historic District, the proposed conversion and enlargement of two existing buildings that does not comply with zoning parameters for rear yard, lot coverage, maximum base height and building height, front and rear setback and floor area, contrary to ZR Secs. 24-11, 24-12, 24-36, 24-552, 23-633, 23-692, 99-051, 99-054, and 54-31. The approval was granted over the objection of adjacent neighbors that programmatic needs cannot be substituted as a basis for the requested waivers.

WHEREAS, in analyzing the applicant's waiver requests, the Board notes at the outset that the School, as a nonprofit New York State chartered educational institution, may rely on its programmatic needs, which further its mission, as a basis for the requested waivers; and

WHEREAS, as noted by the applicant, under well-established precedents of the courts and this Board, applications for variances that are needed in order to meet the programmatic needs of non-profit institutions, particularly educational and religious institutions, are entitled to significant deference (see, e.g., *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986)); and

WHEREAS, the Board observes that such deference has been afforded to comparable institutions in numerous other Board decisions, certain of which were cited by the applicant in its submissions; and

\* \* \*

WHEREAS, the Board finds that the proposal has been designed to be consistent and compatible with adjacent uses and with the scale and character of the surrounding neighborhood and is, therefore, consistent with the standard established by the decision in *Cornell*; and

WHEREAS, the Board concurs that the waivers will facilitate construction that will meet the School's articulated needs; and

WHEREAS, in sum, the Board concludes that the applicant has fully explained and documented the need for the waivers to accommodate the School's programmatic needs; and

WHEREAS, the Board also acknowledges the hardship associated with the physical constraints of the buildings, which are approximately a century old, and developing the site with historic pre-existing bulk non-compliance; and the interest in preserving and respecting the buildings' historic fabric; and

WHEREAS, the Opposition argues that the applicant has failed to make the finding set forth at ZR § 72-21(a) because: (1) the site does not suffer a unique hardship and programmatic needs cannot be substituted as a basis for the requested waivers; and (2) there are negative impacts to the public welfare which are not outweighed by the proposal's benefits; and

WHEREAS, as to the absence of uniqueness, the Opposition contends that the applicant cannot satisfy the finding set forth at ZR § 72-21(a) because the Zoning Lot is not subject to a unique physical condition which creates a hardship; and

WHEREAS, the Opposition also argues that the School is not entitled to the deference accorded educational institutions seeking variances to zoning requirements under *Cornell* because the negative impacts of the proposal outweigh the public benefits; and

WHEREAS, the Board finds that the applicant's submissions, which include statements, plans, and other evidence, provide the required specificity concerning its programmatic space requirements, establish that the requested variances are necessary to satisfy its programmatic needs consistent with *Cornell*, and that the Opposition has failed to establish that any potential negative impacts either meet the threshold set forth by the courts or outweigh the benefits; and

WHEREAS, in *Cornell*, the New York Court of Appeals adopted the presumptive benefit standard that had formerly been applied to proposals for religious institutions, finding that municipalities have an affirmative duty to accommodate the expansion needs of educational institutions; and

WHEREAS, the Board finds that the Opposition misapplies the guiding case law; and

WHEREAS, as to the guiding case law on educational deference, the Board disagrees with the Opposition and finds that the courts place the burden on opponents of a project to rebut the presumption that an educational institution's proposal is beneficial unless it is established to have an adverse effect upon the health, safety, or welfare of the community; the Board notes that courts specifically state that general concerns about traffic and disruption of the residential character of a neighborhood are insufficient basis for denying a request (see *Westchester Reform Temple v. Brown*, 22 N.Y.2d 488 (1968), *Cornell*, and *Pine Knolls*); and

WHEREAS, the Board also does not find any basis for the Opposition's assertion that the School must adopt an alternative in light of the fact that the Board finds the School's programmatic need for the requested waivers to be credible; and

WHEREAS, the Board notes that where a nonprofit organization has established the need to place its program in a particular location, it is not appropriate for a zoning board to second-guess that decision (see *Guggenheim Neighbors v. Bd. of Estimate*, June 10, 1988, N.Y. Sup. Ct., Index No. 29290/87), see also *Jewish Recons. Syn. of No. Shore v. Roslyn Harbor*, 38 N.Y.2d 283 (1975)); and

WHEREAS, furthermore, a zoning board may not wholly reject a request by an educational institution, but must instead seek to accommodate the planned use;

(see *Albany Prep. Charter Sch. v. City of Albany*, 31 A.D.3d 870 (3rd Dep't 2006); *Trustees of Union Col. v. Schenectady City Cnl.*, 91 N.Y.2d 161 (1997)); and

WHEREAS, the Board finds that the Opposition's position is contrary to the decisions of New York State courts and contrary to the Board's many variances for educational institutions which have either been upheld by New York State courts or remain unchallenged; and

WHEREAS, in sum, the Board has reviewed the Opposition's submissions, as well as the applicant's responses, and finds that the Opposition has failed to rebut the applicant's substantiated programmatic need for the proposal or to offer evidence, much less establish, that it will negatively impact the health, safety, or welfare of the surrounding community in the sense the courts envision; and

WHEREAS, accordingly, the Board finds that the applicant has sufficiently established that School's programmatic needs create an unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations

**B. 360-65-BZ (Amendment)**

Date of Decision: January 14, 2014

Vote to Approve: 5-1-0

Premises Affected: 108-114 East 89<sup>th</sup> Street

Block 1517 Lot 62 (Manhattan)

Dalton School, Inc.

With a resolution including a detailed recital regarding *Cornell Univ. v. Bagnardi*, a 1965 variance was amended to permit, on a site within an R8B zoning district, the proposed construction of a two-story addition to a school building that did not comply with zoning parameters for floor area, building height, base height and front setback regulations, contrary to ZR §§ 24-11, 24-522 and 24-522(b). The approval was granted over the objection of neighbors to the rear of the site citing, *inter alia*, the following concerns: (1) the effect of the expansion on neighboring properties with respect to natural light, ventilation, solar glare, shadows, noise, aesthetics, traffic during construction and long-term property values and (2) the failure of the applicant to examine alternatives.

"WHEREAS, the applicant states that the New York State Court of Appeals has held that in a residential district educational institutions cannot be required to show an affirmative need to expand as a condition precedent to the issuance of a discretionary approval by a zoning board. See, e.g., *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986); *Lawrence School Corp. v. Lewis*, 578 N.Y.S.2d 627 (N.Y.A.D. 2 Dept., 1992); and

WHEREAS, the applicant adds that the *Cornell* court also held that because 'schools, public, parochial and private, by their very nature, singularly serve the public's welfare and morals,' zoning boards in New York should allow schools to expand into residential areas unless a particular proposed expansion 'would unarguably be contrary to the public's health, safety or welfare.' *Id.* at 593, 595; and

WHEREAS, the applicant asserts that *Cornell* crystallized the Court of Appeals' long-standing presumption in favor of educational and religious uses in

residential areas. *See Diocese of Rochester v. Planning Bd. of Town of Brighton*, 1 N.Y.2d 508, 526 (1956) ('schools and accessory uses are, in themselves, clearly in furtherance of the public morals and general welfare'); and

WHEREAS, further, the applicant asserts that under the State's standard, the court has held that, for example, the potential adverse impacts on 'use, enjoyment and value of properties in the surrounding areas' and on 'the prevailing character of the neighborhood' are 'insufficient bas[e]s on which to preclude' the substantial expansion of a religious facility in a residential neighborhood. *Westchester Reform Temple v. Brown*, 22 N.Y.2d 488, 494 (1968);

\* \* \*

WHEREAS, as to the Opposition's claims that the applicant failed to provide an analysis of alternative sites, the applicant states that, following *Cornell*, such a discussion would be inappropriate; the court stated that '[a] requirement of a showing of need to expand, or even more stringently, a need to expand to the particular location chosen, however, has no bearing whatsoever upon the public's health, safety, welfare or morals. The imposition of such a requirement, or any other requirement unrelated to the public's health, safety or welfare, is, therefore, beyond the scope of the municipality's police power, and thus, impermissible' *Cornell* at 597 (citations omitted); and

WHEREAS, the Board also agrees with the applicant that *Cornell* does not allow for a zoning board to require an educational institution to analyze alternate sites and finds that the applicant has sufficiently satisfied its minimum requirements to accommodate its programmatic needs"

**C. 325-12-BZ (Amendment)**

Date of Decision: June 11, 2013

Vote to Approve: 5-0

Premises Affected: 1273-1285 York Avenue

Block 1463 Lots 21, 31 (Manhattan)

Royal Charter Properties, Inc., for New York Presbyterian Hospital

With a resolution including a detailed recital regarding *Cornell Univ.*, a variance was approved to permit, on a site within R8, R9 and R10 zoning districts, the proposed construction of a new teaching hospital and ambulatory diagnostic treatment care facility that did not comply with zoning parameters for floor area, lot coverage, rear yard, front wall height, sky exposure plane, front and rear setbacks and parking, contrary to ZR §§ 24-11, 24-36, 24-382, 24-522(a) and 13-133.

"WHEREAS, the Board acknowledges that NYPH, 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,"



**D. 10-13-BZ/11-13-BZ**

Date of Decision: May 21, 2013  
Vote to Approve: 5-0  
Premises Affected: 175 West 89<sup>th</sup> St/148 West 90<sup>th</sup> Streets  
Block 1220 Lots 5, 7506 (Manhattan)  
Stephen Gaynor School

Related variances were approved to permit, on a site within C1-9 and R7-2, the proposed enlargement of two school buildings, one of them an adaptive re-use, that did not comply with zoning parameters for lot coverage, rear yard, and height and setback, contrary to ZR §§ 24-11, 24-36/33-26 and 24-522.

"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,"

**E. 58-11-BZ**

Date of Decision: October 25, 2011  
Vote to Approve: 5-0  
Premises Affected: 20-22 East 91<sup>st</sup> Street  
Block 1502 Lots 59 and 12 (Manhattan)  
The Trustees of The Spence School, Incorporated

With a resolution including a detailed recital of the Board's consideration of the holding in *Cornell Univ.* and case law thereafter, a variance was granted to permit, on a site partially within an R8B zoning district and partially within an R10 zoning district, the proposed construction of a connection between the rear sides of two school buildings on a through lot that did not comply with zoning parameters for lot coverage and rear yard equivalent, contrary to ZR §§ 24-11, 24-382, and 54-31. The approval was granted over the objection of neighbors on both sides of the of the site citing, *inter alia*, the following concerns: (1) the effect of the expansion on neighboring properties with respect to natural light, ventilation, noise, aesthetics, construction and long-term property values and (2) the failure of the applicant to examine alternatives.

"WHEREAS, the applicant states that as a nonprofit educational institution, the Board must grant deference to Spence and allow it to rely on its programmatic needs to form the basis for its waiver requests; the applicant cites to the decisions of New York State courts in support of its claim that the school warrants deference; and

WHEREAS, specifically, the applicant cites to *Pine Knolls Alliance Church v. Zoning Board of Appeals of the Town of Moreau*, 6 N.Y.3d 407 (2005); the *Pine Knolls* court stated as follows:

'In assessing a special permit application, zoning officials are to review the effect of the proposed expansion on the public's health, safety, welfare or morals, concerns grounded in the exercise of police power, 'with primary consideration given to the over-all impact on the public welfare' (*Trustees of Union College*, 91 N.Y.2d at 166). Applications may not be denied based on considerations irrelevant to these concerns.

We made clear in *Cornell University* that it is not the role of zoning officials to second-guess expansion needs of religious and educational institutions;' and

WHEREAS, in analyzing the applicant's waiver requests, the Board notes at the outset that Spence, as a nonprofit New York State chartered educational institution, may rely on its programmatic needs, which further its mission, as a basis for the requested waivers; and

WHEREAS, as noted by the applicant, under well-established precedents of the courts and this Board, applications for variances that are needed in order to meet the programmatic needs of non-profit institutions, particularly educational and religious institutions, are entitled to significant deference (*see, e.g., Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986)); and

WHEREAS, the Board observes that such deference has been afforded to comparable institutions in numerous other Board decisions, certain of which were cited by the applicant in its submissions; and

\* \* \*

WHEREAS, the Opposition argues that the applicant has failed to make the finding set forth at ZR § 72-21(a) because: (1) the site does not suffer a unique hardship and programmatic needs cannot be substituted as a basis for the requested waivers; and (2) there are negative impacts to the public welfare which are not outweighed by the proposal's benefits; and

\* \* \*

WHEREAS, the Board finds that the applicant's submissions, which include statements, plans, and other evidence, provide the required specificity concerning its programmatic space requirements, establish that the requested variances are necessary to satisfy its programmatic needs consistent with *Cornell*, and that the Opposition has failed to establish that any potential negative impacts either meet the threshold set forth by the courts or outweigh the benefits; and

WHEREAS, in *Cornell*, the New York Court of Appeals adopted the presumptive benefit standard that had formerly been applied to proposals for religious institutions, finding that municipalities have an affirmative duty to accommodate the expansion needs of educational institutions; and

\* \* \*

WHEREAS, as to the guiding case law on educational deference, the Board disagrees with the Opposition and finds that the courts place the burden on

opponents of a project to rebut the presumption that an educational institution's proposal is beneficial unless it is established to have an adverse effect upon the health, safety, or welfare of the community; [Emphasis supplied.] the Board notes that courts specifically state that general concerns about traffic and disruption of the residential character of a neighborhood are insufficient basis for denying a request (see *Westchester Reform Temple v. Brown*, 22 N.Y.2d 488 (1968), *Cornell*, and *Pine Knolls*); and

WHEREAS, the Board also does not find any basis for the Opposition's assertion that Spence must adopt an alternative in light of the fact that the Board finds Spence's programmatic need for the requested waivers to be credible; [Emphasis supplied.] and

WHEREAS, the Board notes that where a nonprofit organization has established the need to place its program in a particular location, it is not appropriate for a zoning board to second-guess that decision (see *Guggenheim Neighbors v. Bd. of Estimate*, June 10, 1988, N.Y. Sup. Ct., Index No. 29290/87), see also *Jewish Recons. Syn. of No. Shore v. Roslyn Harbor*, 38 N.Y.2d 283 (1975));"

**F. 183-11-BZ**

Date of Decision: June 19, 2012

Vote to Approve: 5-0

Premises Affected: 1133 York Avenue

Block 1456 Lot 21 (Manhattan)

S.K.I. Realty, Inc., Memorial Hospital for Cancer and Allied Diseases

With a resolution including a recital regarding *Cornell Univ.*, a variance was granted to permit within C1-9 and C-8-4 zoning districts, the construction of a new teaching ambulatory surgical building that did not comply with zoning regulations for floor area, rear yard, height and setback, and curb cuts, contrary to ZR §§ 33-123, 33-261, 33-432 and 36-682.

"WHEREAS, in *Cornell*, the New York Court of Appeals adopted the presumptive benefit standard that had formerly been applied to proposals of religious institutions, finding that municipalities have an affirmative duty to accommodate the expansion needs of educational institutions; and

\* \* \*

WHEREAS, accordingly, the Board finds that MSK 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,"

**G. 93-10-BZ**

Date of Decision: August 17, 2010

Vote to Approve: 5-0

Premise Affected: 198 Varet Street

Block and Lot: 3117 24 (Brooklyn)

Williamsburg Charter School

A variance was granted to convert the ground floor of a school building from parking to School use in an M1-2 zoning district, contrary to floor area regulations (ZR § 43-122).

"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;"

**H. 41-10-BZ**

Date of Decision: July 13, 2010  
Vote to Approve: 5-0  
Premises Affected: 522-566/596-600 First Avenue  
Block 962 Lots 80, 108 & 1001-1107 (Manhattan)  
NYU Langone Medical Center

With a resolution including a recital regarding *Cornell Univ.*, a variance was granted to permit enlargement of a teaching medical center in an R8 zoning district, contrary to rear yard and signage regulations (ZR §§ 22-321, 22-331, 24-36, 22-342).

**I. 328-09-BZ**

Date of Decision: March 16, 2010  
Vote to Approve: 5-0  
Premises Affected: 28-34 West End Avenue  
Block 1152 Lots 58 & 61 (Manhattan)  
Abraham Joshua Heschel School

With a resolution including an identical recital regarding *Cornell Univ.*, a variance was granted to permit the construction of a school building in a C6-2/C4-7 zoning district, contrary to height and setback, and rear yard requirements (ZR §§ 33-432, 23-634, 33-432).

**J. 187-08-BZ**

Date of Decision: March 16, 2010  
Vote to Approve: 5-0  
Premises Affected: 1247 38<sup>th</sup> Street (Brooklyn)  
Block 5295 Lot 52  
Congregation & Yeshiva Machzikei Hadas

With a resolution including an identical recital regarding *Cornell Univ.*, a variance was granted to permit construction of a six-story educational facility in an M2-1 zoning district, contrary to ZR § 42-00.

"WHEREAS, the Board acknowledges that the Yeshiva, 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;"

**K. 122-10-BZ**

Date of Decision: January 14, 2010  
Vote to Approve: 5-0  
Premises Affected: 163 West 78<sup>th</sup> Street  
Block 1150 Lots 6 (Manhattan)  
Rodeph Sholom School

With a resolution including an identical recital regarding *Cornell Univ.*, a variance was granted to permit the rooftop addition to a school building in an R8B zoning district, contrary to maximum height regulations (ZR § 23-692).

**L. 239-09-BZ**

Date of Decision: February 9, 2010  
Vote to Approve: 5-0  
Premises Affected: 238 Thompson Street  
Block 538 Lot 27 (Manhattan)  
NYU Center for Academic and Spiritual Life

A Special Permit was granted to allow enlargement of an educational facility in a C1-6A/C1-7A zoning district within the required rear yard equivalent, contrary to ZR § 33-283.

**M. 176-09-BZ**

Date of Decision: October 6, 2009  
Vote to Approve: 5-0  
Premises Affected: 220-236 West 28<sup>th</sup> Street  
Block 777 Lots 1, 18 & 37 (Manhattan)  
Fashion Institute of Technology

A Special Permit was granted to allow an enlargement of an educational facility in a C6-2 zoning district that did not comply with height and setback regulations, contrary to ZR § 33-432.

**N. 195-09-BZ**

Date of Decision: September 15, 2009  
Vote to Approve: 5-0  
Premises Affected: 321 Ashland Place  
Block 2111 Lot 11 (Brooklyn)  
Brooklyn Academy of Music

A variance was granted to permit construction of an education facility building in a C6-1 zoning district which did not comply with rear yard regulations (ZR § 33-26).

**O. 163-08-BZ**

Date of Decision: February 10, 2009  
Vote to Approve: 5-0  
Premises Affected: 2022 Avenue M  
Block 2111 Lot 11 (Brooklyn)  
Congregation Kol Torah

A variance was granted to permit the construction of a two-story and attic educational building in an R2 zoning district, contrary to floor area, FAR and lot coverage (front yard), side yards and minimum parking requirements (ZR §§ 24-11, 24-34, 24-35 and 25-30).

**P. 46-08-BZ**

Date of Decision: January 13, 2009  
Vote to Approve: 5-0  
Premises Affected: 491 Bedford Avenue  
Block 2173 Lot 6 (Brooklyn)  
Congregation Adas Yereim (not-for-profit educational entity)

With a resolution including an identical recital regarding *Cornell Univ.*, a variance was granted to permit the construction of an educational building in an R6 zoning district, contrary to ZR § 24-11 (floor area ratio and lot coverage) and ZR § 24-522 (front wall height, setback, sky exposure plane and number of stories).

**Q. 257-07-BZ**

Date of Decision: October 28, 2008  
Vote to Approve: 5-0  
Premises Affected: 220-236 West 28<sup>th</sup> Street  
Block 1607 Lots 3, 5 & 59 (Manhattan)  
Center for Science & Medicine/Mount Sinai Medical Center

A variance was granted to permit the construction of an eleven-story, approximately 269,000 square foot Center for Science and Medicine Building at the Mount Sinai Medical Center within an R9 zoning district, partially within the Special Park Improvement District. The proposal was contrary to ZR § 24-522 (height, setbacks, and sky exposure plane for community facility), ZR § 24-11 (community facility lot coverage), and ZR § 24-54 (community facility tower coverage).

"WHEREAS, the Board notes that where a nonprofit organization has established the need to place its program in a particular location, it is not appropriate for a zoning board to second-guess that decision (*see Guggenheim Neighbors v. Bd. of Estimate*, June 10, 1988, N.Y. Sup. Ct., Index No. 29290/87), *see also Jewish Recons. Syn. of No. Shore v. Roslyn Harbor*, 38 N.Y.2d 283 (1975)); and

WHEREAS, furthermore, a zoning board may not wholly reject a request by an educational institution, but must instead seek to accommodate the planned use; (*see Albany Prep. Charter Sch. v. City of Albany*, 31 A.D.3d 870 (3rd Dep't 2006); *Trustees of Union Col. v. Schenectady City Cnl.*, 91 N.Y.2d 161 (1997));"

**R. 74-07-BZ**

Date of Decision: August 26, 2008  
Vote to Approve: 5-0  
Premises Affected: 6-10 West 70<sup>th</sup> Street / 99-100 Central Park West  
Block 1122 Lots 36 & 37 (Manhattan)  
Congregation Shearith Israel

A variance was granted to allow construction of a nine-story residential/educational building on a zoning lot located in R8B and R10A zoning districts, contrary to the zoning regulations for lot coverage (ZR § 24-11), rear yard (ZR § 24-36), base height, building height and setback (ZR § 23-633) and rear setback (ZR § 23-663).

"WHEREAS, the Board acknowledges that the Synagogue, as a religious institution, is entitled to substantial 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 (see *Cornell Univ. v. Bagnardi*, 68 N.Y.2d 583 (1986)); and

WHEREAS, notwithstanding that the applicant has asserted that the site is also burdened with a physical hardship that constrains an as-of-right development, discussed below, the Board notes that the Opposition ignores 50 years of unwavering New York jurisprudence holding that zoning boards must accord religious institutions a presumption of moral, spiritual and educational benefits in evaluations of applications for zoning variances (see, e.g., *Diocese of Rochester v. Planning Bd.*, 1 N.Y.2d 508 (1956) (zoning board cannot wholly deny permit to build church in residential district; because such institutions further the morals and welfare of the community, zoning board must instead seek to accommodate their needs); see also *Westchester Ref. Temple v. Brown*, 22 N.Y.2D 488 (1968); and *Islamic Soc. Of Westchester v. Foley*, 96 A.D.2D 536 (2d Dep't 1983)), and therefore need not demonstrate that the site is encumbered by a physical hardship; and

WHEREAS, the Board notes that where a nonprofit organization has established the need to place its program in a particular location, it is not appropriate for a zoning board to second-guess that decision (see *Guggenheim Neighbors v. Bd. Of Estimate*, June 10, 1988, N.Y. Sup. Ct., Index No. 29290/87), see also *Jewish Recons. Syn. of No. Shore v. Roslyn Harbor*, 38 N.Y.2D 283 (1975)); and

WHEREAS, as held in *Westchester Reform Temple v. Brown* (22 N.Y.2D 488 (1968)), a religious institution's application is entitled to deference unless significant adverse effects upon the health, safety, or welfare of the community are documented (see also *Jewish Recons. Syn. of No. Shore v. Roslyn Harbor*, 38 N.Y.2D 283 (1975)); and

WHEREAS, as held in *Westchester Ref. Temple v. Brown* (22 N.Y.2D 488 (1968)), a religious institutions application is entitled to deference unless significant adverse effects upon the health, safety, or welfare of the community are documented (see also *Jewish Recons. Syn. of No. Shore v. Roslyn Harbor*, 38 N.Y.2D 283 (1975)); and

WHEREAS, the Board notes again that a zoning board must accommodate a proposal by a religious or educational institution for a project in furtherance of its mission, unless the proposed project is shown to have significant and measurable detrimental impacts on surrounding residents (in *Westchester Ref. Temple v. Brown* (22 N.Y.2D 488 (1968)); *Islamic Soc. of Westchester v. Foley*, 96 A.D.2D 536 (2d Dep't 1983) (see also *Jewish Recons. Syn. of No. Shore v.*

*Roslyn Harbor, 38 N.Y.2D 283 (1975));"*

**S. 78-08-BZ**

Date of Decision: August 26, 2008

Vote to Approve: 5-0

Premises Affected: 611-617 East 133rd Street

Block 2546 Lot 27 (Bronx)

South Bronx Charter School for International Cultures and the Arts

With a resolution including a recital regarding *Cornell Univ.*, a variance was granted to permit development of a new community facility building located in an MX-1 (M1-2/R6A). The proposal was contrary to ZR § 123-62 (maximum floor area ratio for community facilities), ZR § 24-11 (maximum floor area ratio and percentage of lot coverage) and ZR § 123-662 (b)(4) (as it relates to street wall height for all buildings in Special Mixed-Use Districts with R6, R7, R8 and R10 district designations).

"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;"

**T. 113-06-BZ**

Date of Application: June 6, 2006

Date of Decision: September 19, 2006

Vote to Approve: 3-0

Premises Affected: 3030 Broadway

Block 1973 Lot 1 (Manhattan)

Columbia University

A variance was granted to allow a 13-story academic building to be constructed on an existing university campus in an R8 zoning district. The project required lot coverage and height and setback waivers and was contrary to ZR §§ 24-11 and 24-522.

"WHEREAS, the Board also acknowledges that Columbia, as an educational institution, is entitled to significant deference under the case 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;"



*Certificate of Occupancy*

**CO Number: 103256183F**

This certifies that the premises described herein conforms substantially to the approved plans and specifications and to the requirements of all applicable laws, rules and regulations for the uses and occupancies specified. No change of use or occupancy shall be made unless a new Certificate of Occupancy is issued. *This document or a copy shall be available for inspection at the building at all reasonable times.*

<b>A.</b>	<b>Borough:</b> Manhattan	<b>Block Number:</b> 01412	<b>Certificate Type:</b> Final
	<b>Address:</b> 128 EAST 78 STREET	<b>Lot Number(s):</b> 58	<b>Effective Date:</b> 03/12/2007
	<b>Building Identification Number (BIN):</b> 1076305	<b>Building Type:</b> Altered	
<i>For zoning lot metes &amp; bounds, please see BISWeb.</i>			
<b>B.</b>	<b>Construction classification:</b> 2-B		
	<b>Building Occupancy Group classification:</b> G		
	<b>Multiple Dwelling Law Classification:</b> None		
	<b>No. of stories:</b> 6	<b>Height in feet:</b> 80	<b>No. of dwelling units:</b> 0
<b>C.</b>	<b>Fire Protection Equipment:</b> None associated with this filing.		
<b>D.</b>	<b>Type and number of open spaces:</b> None associated with this filing.		
<b>E.</b>	<b>This Certificate is issued with the following legal limitations:</b>		
	Restrictive declaration(s) - Recording Info: Reel No.: 00000; Other Restriction: CRFN 2003000249153		
<b>Borough Comments:</b> THIS COFO IS ISSUED COMBINING ALTERATION 103256183, 103008601.			



Borough Commissioner



Commissioner

*Certificate of Occupancy*

CO Number: 103256183F

Permissible Use and Occupancy						
All Building Code occupancy group designations are 1968 designations, except RES, COM, or PUB which are 1938 Building Code occupancy group designations.						
Floor From To	Maximum persons permitted	Live load lbs per sq. ft.	Building Code occupancy group	Dwelling or Rooming Units	Zoning use group	Description of use
CEL	0	OG	D-2		0	BOILER, STORAGE AND MECHANICAL ROOMS
CEL	0	OG	D-2			KITCHEN
CEL	229		F-4		3	LUNCH ROOM
CEL	274		F-1A			MULT-PURPOSE ROOM (NON-SIMULTANEOUS OCCUPANCY)
BAS	100	50	E G G		3	OFFICE, FITNESS, LOCKER ROOMS ACCESSORY OFFICE, CLASS ROOM
001	0	50	E		6	OFFICE
001	96	60	F-1A			UPPER PART OF MULTIPURPOSE ROOM
001	0	50	C		6	FACULTY LOUNGE, OFFICE
002	6	40	G		3	ACCESSORY OFFICES
002	260	40	G		3	CLASSROOMS
002	0	60	G		3	LIBRARY, CLASSROOMS
003	267	50	G		3	ACCESSORY OFFICES
003	0	40	G		3	CLASSROOMS

  
Borough Commissioner

  
Commissioner

*Certificate of Occupancy*

CO Number: 103256183F

Permissible Use and Occupancy						
All Building Code occupancy group designations are 1968 designations, except RES, COM, or PUB which are 1938 Building Code occupancy group designations.						
Floor From To	Maximum persons permitted	Live load lbs per sq. ft.	Building Code occupancy group	Dwelling or Rooming Units	Zoning use group	Description of use
004	311	40	G		3	CLASSROOMS, STORAGE LAB
004	110	60	E		3	OFFICES
005	294	50	G		3	CLASSROOMS , ACCESSORY OFFICES
006	223	100	F-3		3	GYMNASIUM
ROF	264	100	G		3	PLAYROOF NOTE:THESE PREMISES HAVE BEEN COMBINED AS A SINGLE ZONING LOT AS PER SEC.12 -10ZR. AS FILED AND RECORDED AS CRFN2003000249153. THESE PREMISES, FORMER LOT 58,14 AND 15 HAVE BEEN COMBINED UNDER SINGLE TAX LOT#58. THIS SCHEDULE A IS A COMBINATION OF APPLICATION 103008601 AND 103256183 FIL ED FOR ALLEN STEVENSON SCHOOL TO OBTAIN C. OF O.
END OF SECTION						



Borough Commissioner

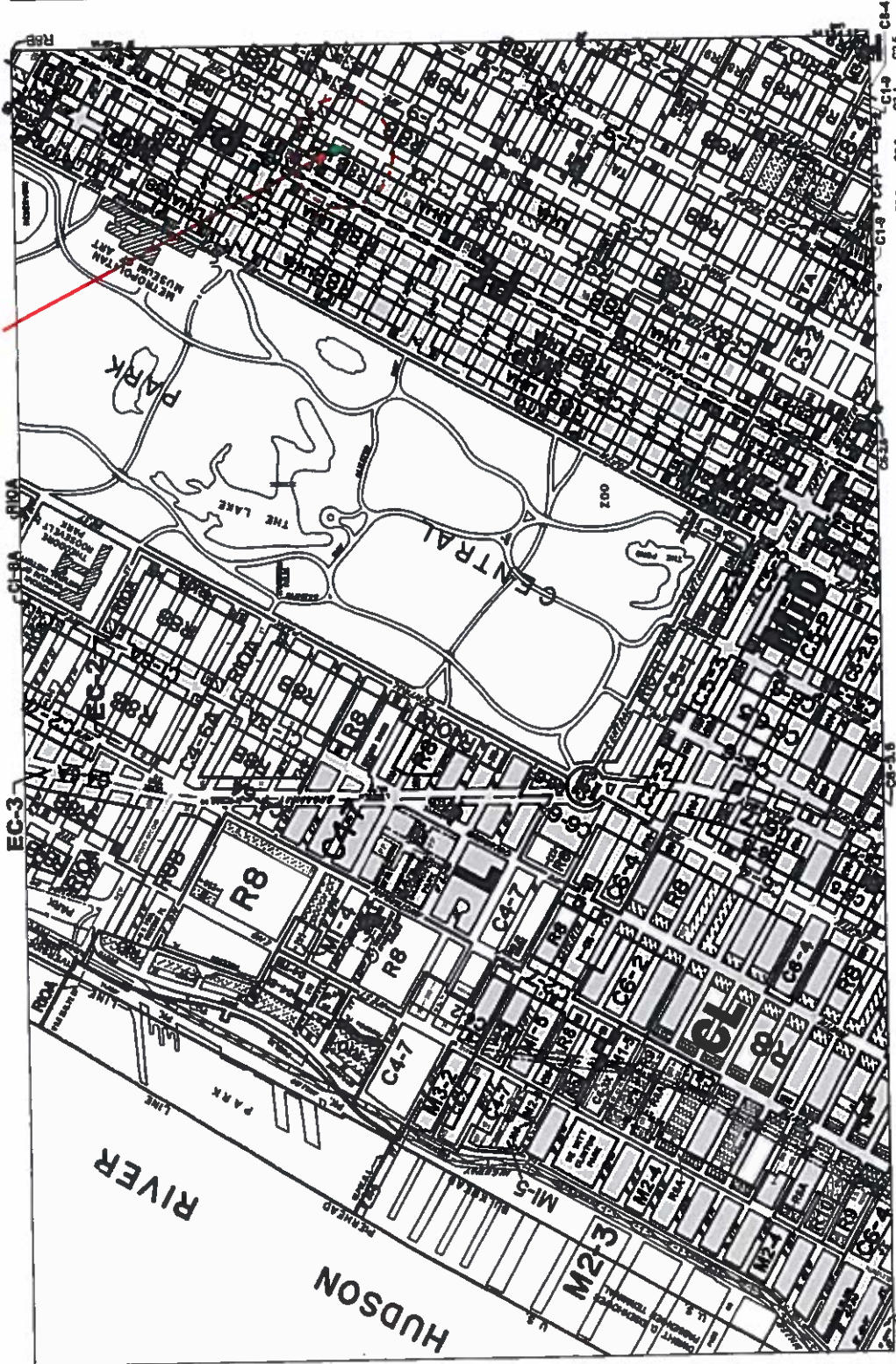


Commissioner

END OF DOCUMENT

103256183/000 1/19/2010 9:52:22 AM

**SITE**



**ZONING MAP**  
THE NEW YORK CITY PLANNED COMMISSION

**Major Zoning Classifications:**  
The number(s) and/or letter(s) that labels the R, C, or M District designation indicates use, bulk and other controls as described in the text of the Zoning Resolution.

- R RESIDENTIAL DISTRICT
- C COMMERCIAL DISTRICT
- M MANUFACTURING DISTRICT
- SPECIAL PURPOSE DISTRICT  
The letter(s) within the shaded area designates the special purpose district for the letter of the Zoning Resolution.
- AREA REZONED

**Effective Date(s) of Rezoning:**  
06 26 2014 140181 ZMAM

**Special Requirements:**  
For a list of lots subject to environmental requirements, see APPENDIX  
For a list of lots subject to "D" residential declaratory see APPENDIX  
For a list of lots subject to "D" or "M" Temporary Housing designated areas on this map see APPENDIX F.

**MAP KEY**

○	5d	6b
○	8a	8c
○	8b	8d
○	9a	9b

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**8c**

**NOTE:** Zoning information shown on this map is subject to change. For the most up-to-date zoning information for the site, use the Zoning section of the Department of City Planning Data as it may vary from the information shown on this map.  
175A-5281

**MAP KEY**  
C1-1 C1-2 C1-3 C1-4 C1-5 C1-6 C1-7 C1-8 C1-9 C2-1 C2-2 C2-3 C2-4 C2-5 C2-6 C2-7 C2-8 C2-9 C2-10 C2-11 C2-12 C2-13 C2-14 C2-15 C2-16 C2-17 C2-18 C2-19 C2-20 C2-21 C2-22 C2-23 C2-24 C2-25 C2-26 C2-27 C2-28 C2-29 C2-30 C2-31 C2-32 C2-33 C2-34 C2-35 C2-36 C2-37 C2-38 C2-39 C2-40 C2-41 C2-42 C2-43 C2-44 C2-45 C2-46 C2-47 C2-48 C2-49 C2-50 C2-51 C2-52 C2-53 C2-54 C2-55 C2-56 C2-57 C2-58 C2-59 C2-60 C2-61 C2-62 C2-63 C2-64 C2-65 C2-66 C2-67 C2-68 C2-69 C2-70 C2-71 C2-72 C2-73 C2-74 C2-75 C2-76 C2-77 C2-78 C2-79 C2-80 C2-81 C2-82 C2-83 C2-84 C2-85 C2-86 C2-87 C2-88 C2-89 C2-90 C2-91 C2-92 C2-93 C2-94 C2-95 C2-96 C2-97 C2-98 C2-99 C2-100 C3-1 C3-2 C3-3 C3-4 C3-5 C3-6 C3-7 C3-8 C3-9 C3-10 C3-11 C3-12 C3-13 C3-14 C3-15 C3-16 C3-17 C3-18 C3-19 C3-20 C3-21 C3-22 C3-23 C3-24 C3-25 C3-26 C3-27 C3-28 C3-29 C3-30 C3-31 C3-32 C3-33 C3-34 C3-35 C3-36 C3-37 C3-38 C3-39 C3-40 C3-41 C3-42 C3-43 C3-44 C3-45 C3-46 C3-47 C3-48 C3-49 C3-50 C3-51 C3-52 C3-53 C3-54 C3-55 C3-56 C3-57 C3-58 C3-59 C3-60 C3-61 C3-62 C3-63 C3-64 C3-65 C3-66 C3-67 C3-68 C3-69 C3-70 C3-71 C3-72 C3-73 C3-74 C3-75 C3-76 C3-77 C3-78 C3-79 C3-80 C3-81 C3-82 C3-83 C3-84 C3-85 C3-86 C3-87 C3-88 C3-89 C3-90 C3-91 C3-92 C3-93 C3-94 C3-95 C3-96 C3-97 C3-98 C3-99 C3-100

Allen-Stevenson School. 126, 128 and 130-134 East 78th Street, Manhattan. Zoning Map

BSA CALENDAR NO.

BLOCK 1412

LOT 58,61

SUBJECT SITE ADDRESS

132 East 78th Street, New York NY, 10075

APPLICANT

The Allen-Stevenson School

COMPLIANT: "Y"

ZONING DISTRICT C18X, R8B/LH1A

PRIOR BSA # 273-04-A

IF NOT: "N" and

SPECIAL/HISTORIC DISTRICT

COMMUNITY BOARD 8

	* APPLICABLE ZR SECTION	MAXIMUM PERMITTED	MINIMUM REQUIRED	LEGAL PER C of O or BSA	EXISTING	PROPOSED	INDICATE AMT OVER/UNDER
LOT AREA	n/a		n/a	n/a	C1-8X: 11,286 R8B / LH-1A: 2,767	C1-8X: 11,286 R8B / LH-1A: 2,767	n/a
LOT WIDTH	n/a		n/a	n/a	C1-8X: 61'-9" R8B / LH-1A: 27'-1"	C1-8X: 61'-9" R8B / LH-1A: 27'-1"	n/a
USE GROUP (S)	C1-8X: 32-10 R8B / LH-1A: 22-13	C1-8X: 1-6 R8B / LH-1A: 1-4		3	3	3	Y
FA RESIDENTIAL	C1-8X: 33-123 R8B / LH-1A: 23-145	C1-8X: 101,574 R8B / LH-1A: 11,068		n/a	n/a	n/a	n/a
FA COMMUNITY FACILITY	C1-8X: 33-123 R8B / LH-1A: 24-11	C1-8X: 101,574 R8B / LH-1A: 14,112		C1-8X: 54,079 R8B / LH-1A: 7,305	C1-8X: 54,079 R8B / LH-1A: 7,305	C1-8X: 62,743 R8B / LH-1A: 8,854	Y
FA COMMERCIAL/INDUST.	C1-8X: 33-123	C1-8X: 22,572		n/a	n/a	n/a	n/a
FLOOR AREA TOTAL		C1-8X: 101,574 R8B / LH-1A: 14,112		C1-8X: 54,079 R8B / LH-1A: 7,305	C1-8X: 54,079 R8B / LH-1A: 7,305	C1-8X: 62,743 R8B / LH-1A: 8,854	Y
FAR RESIDENTIAL	C1-8X: 33-123 R8B / LH-1A: 23-145	C1-8X: 9.0 R8B / LH-1A: 4.0		n/a	n/a	n/a	n/a
FAR COMMUNITY FACILITY	C1-8X: 33-123 R8B / LH-1A: 24-11	C1-8X: 9.0 R8B / LH-1A: 5.1		C1-8X: 4.79 R8B / LH-1A: 2.64	C1-8X: 4.79 R8B / LH-1A: 2.64	C1-8X: 5.56 R8B / LH-1A: 3.20	Y
FAR COMMERCIAL/INDUST.	C1-8X: 33-123	C1-8X: 2.0		n/a	n/a	n/a	n/a
FAR TOTAL		C1-8X: 9.0 R8B / LH-1A: 5.1		C1-8X: 4.79 R8B / LH-1A: 2.64	C1-8X: 4.79 R8B / LH-1A: 2.64	C1-8X: 5.56 R8B / LH-1A: 3.20	Y
OPEN SPACE	n/a		n/a	n/a	n/a	n/a	n/a
OPEN SPACE RATIO	n/a		n/a	n/a	n/a	n/a	n/a
LOT COVERAGE (%)	C1-8X: 33-123 R8B / LH-1A: 24-11/24-12	C1-8X: 100% R8B / LH-1A: 100% up to 23' - 0" 70% above 23' - 0"		C1-8X: 97.3% R8B / LH-1A: 52.5%	C1-8X: 97.3% R8B / LH-1A: 62.5%	C1-8X: 97.3% R8B / LH-1A: 65.97%	Y
NO. DWELLING UNITS	n/a	n/a		0	0	0	n/a
WALL HEIGHT	C1-8X: 33-432(b)/35-24 R8B / LH-1A: 24-522(b)/24-63	C1-8X: 60' - 120' R8B / LH-1A: 55' - 60'		C1-8X: 80'-9" R8B / LH-1A: 43'-9"	C1-8X: 80'-9" R8B / LH-1A: 43'-9"	C1-8X: 84'-2" R8B / LH-1A: 43'-9"	C1-8X: Y R8B / LH-1A: N* - 11'-3"
TOTAL HEIGHT	C1-8X: 33-432(b)/35-24 R8B / LH-1A: 24-591	C1-8X: 160' R8B / LH-1A: 60'		C1-8X: 80'-9" R8B / LH-1A: 43'-9" 63'-8" 54'-4"	C1-8X: 80'-9" R8B / LH-1A: 43'-9" 63'-8" 54'-4"	C1-8X: 116'-1" R8B / LH-1A: 66'-0"	C1-8X: Y R8B / LH-1A: N** +6'-0"
NUMBER OF STORIES				C1-8X: 6*Playspace & 5 R8B / LH-1A: 5 & 4	C1-8X: 6*Playspace & 5 R8B / LH-1A: 5 & 4	C1-8X: 7*Playspace R8B / LH-1A: 5	Y
FRONT YARD	n/a		n/a	n/a	n/a	n/a	n/a
SIDE YARD	24-35		R8B: None required but 8' if provided	R8B: 0	R8B: 0	R8B: 0	Y
SIDE YARD	n/a		n/a	n/a	n/a	n/a	n/a
REAR YARD	C1-8X: 33-261/33-301/33-302 R8B / LH-1A: 24-36		C1-8X: 0' R8B / LH-1A: 30'	C1-8X: 0/33'-1" R8B / LH-1A: 57'-5"/33'-1"	C1-8X: 0/33'-1" R8B / LH-1A: 57'-5"/33'-1"	C1-8X: 0/33'-1" R8B / LH-1A: 33'-1"	Y
SETBACK (S)	C1-8X: 33-432(b)/35-24 R8B / LH-1A: 24-522(b)/23-61		C1-8X: 15' R8B / LH-1A: 15'	C1-8X: 0' R8B / LH-1A: 5'-7"	C1-8X: 0' R8B / LH-1A: 5'-7"	C1-8X: 49'-10" R8B / LH-1A: 5'-7"	C1-8X: Y R8B / LH-1A: N* - 9'-5"
SKY EXP. PLANE (SLOPE)	n/a	n/a		n/a	n/a	n/a	n/a
NO. PARKING SPACES	n/a	n/a	n/a	0	0	0	Y
LOADING BERTH (S)	n/a	n/a	n/a	0	0	0	Y
OTHER:	n/a	n/a	n/a	n/a	n/a	n/a	n/a

\* In Applicable ZR Section column: For RESIDENTIAL developments in non-residential districts, indicate nearest R district, e.g., R4/23-141, and contrast compliance. For COMMERCIAL or MANUFACTURING developments in residential districts, contrast proposed bulk and area elements to current R district requirements, except for parking and loading requirements (contrast to nearest district where use is permitted). For COMMUNITY FACILITY uses in districts where not permitted, contrast to nearest district where permitted. For all applications, attach zoning map and highlight subject site. Be sure that all items noted in the OCS Serial/Objection are included.

NOTES:

- \* Existing non-compliance to remain
- \*\* Existing non-compliance to remain with increase





**NYC Digital Tax Map**

Effective Date: 09-28-2014 11:06:18  
End Date: Current  
Manhattan Block: 1412

- Legend**
- Streets
  - Microblock Text
  - Preemption Hoops
  - Boundary Lines
  - Lot Foot Preemption Hoops
  - Regular
  - Underwater
  - Tax Lot Polygon
  - Carbide Number
  - Tax Block Polygon
  - Project Site



Allen-Stevenson School, 126, 128 and 130-134 East 78th Street, Manhattan, Tax Map

273-04-A

APPLICANT - Michael S. Gruen , Esq. for Katrina Maxtone Graham , Felix C. Ziffer, Michelle R. Yogada, Stanley Ely. adjacent neighbors.

OWNER - Allen Stevenson School.

SUBJECT - Application August 5, 2004 - An Administrative Appeal challenging the Department of Building's final determination dated August 3, 2004 in which the Department refused to revoke approvals and permits which allow an enlargement of a school that violates the rear yard requirements under ZR Sections 33-26 and 33-301.

PREMISES AFFECTED - 128/32 East 78<sup>th</sup> Street and 121/23 East 77<sup>th</sup> Street, between (but not abutting) Park and Lexington Avenues, Block 1412, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES -

For Applicant: Michael Gruen.

For Opposition: Marvin Mitzner.

For Administration: Felicia Miller, Department of Buildings.

ACTION OF THE BOARD - Appeal denied.

THE VOTE TO REOPEN HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4

Negative:.....0

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4

Negative:.....0

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4

Negative:.....0

THE RESOLUTION:

WHEREAS, the instant appeal comes before the Board in response to a final determination, set forth in a letter dated August 3, 2004, issued by the Manhattan Borough Commissioner of the New York City Department of Buildings ("DOB"), in response to inquiries by Michael S. Gruen, Esq. ("appellant") on behalf of "Neighbors for Light and Air", an organization of neighbors to the referenced premises (the "premises"); and

WHEREAS, this appeal challenges DOB's determination not to revoke approvals issued in connection with DOB Application No. 103256183 (the "application"), which authorized a proposed enlargement of floors three through five of the Allen-Stevenson School (the "school"), located at the premises; and

WHEREAS a public hearing was held on this application on November 23, 2004 after due notice by publication in The City Record, with a continued hearing on January 25, 2005, and then to decision on March 8, 2005; and

WHEREAS, both DOB and the school were represented by counsel in this appeal; and

WHEREAS, the August 3, 2004 final DOB

determination states, in relevant part:

"In response to your inquiry . . . the Department re-examined the Zoning Analysis for the applicant [the school] and finds that the approved building is acceptable, as proposed. Therefore, the Department of Buildings finds no cause to revoke any approvals or permits at this time."; and

WHEREAS, the premises is located almost entirely within a C1-8X zoning district; and

WHEREAS, the zoning lot at the premises consists of the referenced tax lots, and fronts 50 feet on East 77th Street and 70 feet, 8 inches on East 78th Street; on East 77th Street, it begins 38 feet 4 inches westerly of Lexington Avenue, and extends the entire depth of the block, which is 204'4"; and

WHEREAS, the site is currently improved upon with five separate buildings, all occupied by the School, including a five-story and two-story structure fronting on East 78th Street; the school seeks to enlarge the two story portion to five stories, and match up the floors of the enlarged portion with the existing five-story portion; and

WHEREAS, DOB represents that the school filed a job application on September 9, 2002 with the following job description: "Enlarge floors 3-5 of an existing school. New construction to comply with code. Misc. interior partitions for classrooms and hallways."; and

WHEREAS, DOB states that the plans filed with the application also show that the school intends to expand the structure into the courtyard area to the rear of the five-story portion and adjacent to the two-story portion; and

WHEREAS, the application was approved on December 12, 2003, and DOB issued a permit for the proposed alteration on October 18, 2004; and

WHEREAS, the approved plans do not show the provision of a rear yard; and

WHEREAS, appellant maintains that a rear yard is required, and that the proposed development therefore should not have been approved by DOB; and

WHEREAS, DOB states that while Z.R. § 33-26 generally requires that a 20 foot rear yard be provided for the proposed development on a zoning lot such as the subject lot, such that the space currently existing above the two-story portion of the building, as well as the courtyard, would have to be retained as a rear yard, certain exceptions exist; and

WHEREAS, specifically, Z.R. § 33-30 ("Other Special Provisions for Rear Yards") provides that in C1 zoning districts, the rear yard requirements of Z.R. §33-26 are modified in accordance with the provisions set forth at Z.R. § 33-30 et seq.; and

WHEREAS, the particular modifying provision that is the primary focus of the instant appeal is ZR §33-301 ("33-301"), which provides, "In all districts as indicated [including C1 districts], no rear yard

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shall be required within 100 feet of the point of intersection of two street lines intersecting at an angle of 135 degrees or less.”; and

WHEREAS, the fundamental inquiry of the appeal is how 33-301 should be applied; and

WHEREAS, appellant argues that 33-301 demands no interpretation, and claims instead that it is obvious that the only proper way to measure “within 100 feet of the point of intersection of two street lines” is to draw an arc of 100 feet from the point of intersection and only exempt from the rear yard requirement those portions of affected lots that fall within the area of the arc (hereinafter referred to as the “arc theory”); and

WHEREAS, DOB observes that 33-301 applies to lots that are not directly adjacent to an intersection, and thus does not provide guidance on whether the 100 feet should be measured only along the street line on which the zoning lot fronts, or whether it should be measured along two street lines as if it were a corner lot; and

WHEREAS, DOB also observes that language in other Z.R. sections concerning rear yard exemptions use dissimilar, more clearly defined language, thus reinforcing the notion that 33-301 is ambiguous and subject to interpretation; and

WHEREAS, the Board disagrees with appellant that the language of 33-301 is so clear that it must be read in the way appellant claims; and

WHEREAS, instead, the Board agrees with DOB that the language of 33-301 is ambiguous and subject to interpretation; and

WHEREAS, the Board observes that an arc measurement, had one been irrefutably intended as appellant argues, could either have been explicitly called for in the language of 33-301 or at least illustrated by the drafters of the provision; and

WHEREAS, the Board notes that many Z.R. provisions have been the subject of interpretative appeals before the Board for the precise reason that the language in said provisions is often imprecise and therefore subject to reasonable interpretation; and

WHEREAS, the Board concludes that such is the case here; and

WHEREAS, therefore, the Board rejects appellant’s arc measurement theory as the only logical reading of 33-301, and finds DOB’s efforts to interpret this section appropriate given the ambiguous language, and consonant with its authority to both interpret and administer the Z.R. subject to BSA review; and

WHEREAS, however, even assuming that 33-301 is subject to interpretation, appellant’s arc theory is still one possible interpretation, and the Board therefore carefully considered the testimony of the parties as to this theory; and

WHEREAS, appellant supports the argument that the arc theory is a reasonable way to approach 33-301 by noting that an arc measurement is a

methodology used in other provisions of the Z.R.; and

WHEREAS, specifically, appellant cites to particular Z.R. provisions where an arc measurement is indicated, such as Z.R. § 32-01 (no adult establishments within 500 feet of a church or school) or Z.R. § 81-251 (setback lines in the Special Midtown zoning district), among others; and

WHEREAS, however, DOB observes that none of the provisions cited by appellant concern rear yard requirements; and

WHEREAS, DOB states that its review of certain rear yard-related provisions in the Z.R. supports the conclusion that measurements for rear yard purposes should be taken in a manner other than an arc; and

WHEREAS, specifically, DOB cites to the definitions of “rear yard” and “rear lot line” set forth in Z.R. §12-10, neither of which indicate that an arc should be used, but instead require the drawing of lines perpendicular to lines; and

WHEREAS, DOB also notes that Z.R. §33-24 (“Measurement of Yard Width or Depth”) provides that in all commercial districts, the width or depth of a rear yard shall be measured perpendicular to lot lines; and

WHEREAS, in addition to its citation of comparable provisions, DOB notes that, as a long-standing policy, it has consistently applied 33-301 by measuring the extent of the rear yard exemption through the drawing of lines 100 feet from and parallel to the street lines, and perpendicular to each other (hereinafter referred to as the “square theory”); and

WHEREAS, additionally, the school notes that block development within the City, especially in Manhattan, is often characterized by high-density development up to 100 feet in depth from the avenues, with rear yard space typically required beyond 100 feet; and

WHEREAS, acceptance of appellant’s arc theory would, as noted by the school, obliterate this design by requiring rear yards at 60 feet from the avenue street line, assuming a 90 degree point of intersection between the street and avenue; and

WHEREAS, the Board, which consists of two former DOB commissioners, agrees that DOB has never used an arc measurement when applying 33-301, but has instead been guided by a square theory; and

WHEREAS, further, the school agrees with DOB, stating that the language of 33-301 is similar to that of the definition of corner lot in Z.R. § 12-10, which provides that a corner lot is a zoning lot “which adjoins the point of intersection of two or more streets”; and

WHEREAS, the school states, and the Board agrees, that corner lots have always been measured perpendicular and in a straight line from the street lines (in other words, by applying the square theory)



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and that there is no logical reason to treat the exemption provided for in 33-301 differently; and

WHEREAS, accordingly, the Board agrees with DOB and the school that it is appropriate to measure the area of exemption provided for in 33-301 by construing the phrase "within 100 feet of the point of intersection" to mean a square extending 100 feet in each direction, one corner of which is at the intersection, two sides of which coincide with the street lines, and two sides of which coincide with lines drawn parallel to and 100 feet from the street lines; and

WHEREAS, thus, the Board concludes that the permit was appropriately issued as to that portion of the development site that is within the 100 ft. by 100 ft. square provided for by 33-301; and

WHEREAS, appellant's second argument is that even if one assumes that the square theory is the correct interpretation of 33-301 as applied to that portion of the development site that is within the 100 ft. by 100 ft. square, since a portion of the site is beyond the 100 ft. boundary of the square-shaped area of exemption (the block is approximately 204 ft. long), a rear yard for the remaining portion of the lot (here, approximately 2 ft.) must be provided; and

WHEREAS, appellant contends that even if a square theory is accepted by the Board, DOB must revoke the issued permit on this basis; and

WHEREAS, the Board notes that, without any modification in the application of the square theory, 33-301 does allow for this 100 ft. by 100 ft. square shaped exemption regardless of lot lines, such that a zoning lot could be both within the area of exemption for a portion of the lot, and then subject to a rear yard requirement for the remainder, as appellant contends; and

WHEREAS, however, DOB states that it modifies the application of the square theory slightly for lots that are within 100 feet of the short dimension of the block; and

WHEREAS, specifically, for lots that front on one street and that are within 100 feet of a street line measuring less than 230 feet in length, DOB states that it measures the 100 feet along the street line on which the zoning lot fronts (where the zoning lot fronts on only one street.); and

WHEREAS, DOB further states that this 100 feet defines the frontage area for which no rear yard is required, meaning that for that portion of the zoning lot that is within 100 feet of said intersection, no rear yard is required for the entire depth of the zoning lot; and

WHEREAS, thus, DOB exempts from the rear yard requirement all area within one hundred feet from the avenue so long as the street in question is less than 230 ft.; and

WHEREAS, DOB states that it bases this interpretation of 33-301 on its review of other sections of the Z.R., so that its interpretation is

consistent in terms of intent and results with such sections; and

WHEREAS, in particular, DOB points to ZR § 33-302 ("33-302"), which provides that in C1 districts, whenever a front lot line of a zoning lot coincides with all or part of a street line measuring less than 230 feet in length between two intersecting streets, no rear yard shall be required within 100 feet of such front lot line; and

WHEREAS, DOB states that 33-302 thus permits a rectangle of build-up measuring 100 ft. up to 230 ft. along the corners of blocks that measure less than 230 feet by specifically exempting such area from the rear yard requirement; and

WHEREAS, DOB observes that the beginning of Z.R. § 33-30 provides that, "In all districts, as indicated, the rear yard requirements set forth in Z.R. § 33-26 shall be modified as set forth in this Section" and that 33-302 is part of ZR § 33-30; and

WHEREAS, DOB also argues that the situations are comparable, because both Z.R. sections apply to the rear yard requirements for lots with area falling within 100 feet of intersecting street lines; and

WHEREAS, further, DOB observes that 33-302 is also consistent with the full coverage construction within 100 feet of corners that is described in other Z.R. sections; and

WHEREAS, DOB cites to Z.R. §33-26, which exempts corner lots from the rear yard requirement; and

WHEREAS, DOB also cites to ZR § 12-10's definition of "corner lot", which provides that "The portion of such zoning lot subject to the regulations for corner lots is that portion bounded by the intersecting street line and lines parallel to and 100 feet from each intersecting street line."; and

WHEREAS, DOB also notes that the school could merge its lot with one that fronts on the avenue, and thus utilize 33-302 to eliminate all rear yard requirements; and

WHEREAS, the Board observes that if a yard requirement could be eliminated through an as-of-right merger, than the import of the provision purportedly triggering the yard requirement is diminished; and

WHEREAS, the Board finds that this supports the logic of DOB's interpretation; and

WHEREAS, the Board also notes that 33-302 and 33-301 were enacted at the same time; thus, it is appropriate to utilize 33-302 as a guide in interpreting 33-301; and

WHEREAS, thus, the Board finds DOB's arguments persuasive, and logical in light of the goals of zoning and yard regulations within the City; and

WHEREAS, the Board notes, however, that it reaches this conclusion based on the logic of interpreting provisions in light of each other, rather than on the theory that the DOB-interpretation avoids objectionable results; while the interpretation may in fact avoid objectionable results as applied to the facts

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at hand, it may not do so in all cases; and

WHEREAS, in sum, the Board agrees with DOB's application of Z.R. § 33-301 when the block length is less than 230 feet, as the resulting area of exemption is the same as would arise under 33-302; and

WHEREAS, the appellant, in subsequent submissions, cites to hypothetical examples of block and lot configurations that allegedly show that DOB's interpretation would not work under all circumstances; and

WHEREAS, the Board, in reviewing the instant appeal, is limited to the facts at hand and the final DOB determination, and need not determine the appropriateness of applying DOB's interpretation to every possible fact pattern; and

WHEREAS, the Board observes in passing that certain of the examples cited, if the site was developed in the way appellant illustrates, could conceivably lead to a requirement for a small segment of rear yard, but this does not necessarily mean that a full rear yard would not be actually built; and

WHEREAS, as noted above, the Board is concerned about whether an interpretation of the relevant provision is logical and consistent with comparable Z.R. provisions, notwithstanding the fact that it may occasionally lead to results that are arguably questionable; and

WHEREAS, during the course of this appeal, appellant made numerous statutory interpretation arguments, alleging that the Board must approach its analysis of the appeal in a particular way; and

WHEREAS, DOB and the school responded with statutory interpretation arguments of their own; and

WHEREAS, the Board recognizes the inherent complexity of the City's Zoning Resolution, and thus looks to certain guiding principles when a Z.R. provision is before it; and

WHEREAS, specifically, the Board is guided in large measure by the past practice of the agency administering the Z.R. (DOB) and the logic of the arguments presented in light of what other comparable provisions exist in the Z.R.; and

WHEREAS, the Board observes that DOB has consistently applied the presented interpretations, and draws upon the personal experience of two of its members, both former DOB commissioners, in

support of this observation; and

WHEREAS, moreover, given the other Z.R. provisions that allow for rear yard exemptions for lots in relation to corners or along avenues shorter than 230 ft. in length, DOB's interpretation of 33-301, made in light of said provisions, makes more sense than appellant's, which relies not on comparable provisions but on wholly unrelated provisions; and

WHEREAS, in sum, the Board finds that DOB's interpretation is reasonable; therefore, the exemption of the school's development proposal from any rear yard requirement, as reflected in the DOB-approved plans, was correct, and the approval and permit were appropriately issued; and

WHEREAS, appellant made other supplemental arguments in support of this appeal, all of which the Board finds unpersuasive in light of the counter-arguments proffered by DOB and the school, as reflected in the record.

Therefore it is resolved that the final determination of the New York City Department of Buildings, dated August 3, 2004, is upheld and this appeal is denied.

Adopted by the Board of Standards and Appeals, March 8, 2005.

A true copy of resolution adopted by the Board of Standards and Appeals, March 8, 2005.  
Printed in Bulletin No. 12, Vol. 90.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.



**Lexington Avenue**

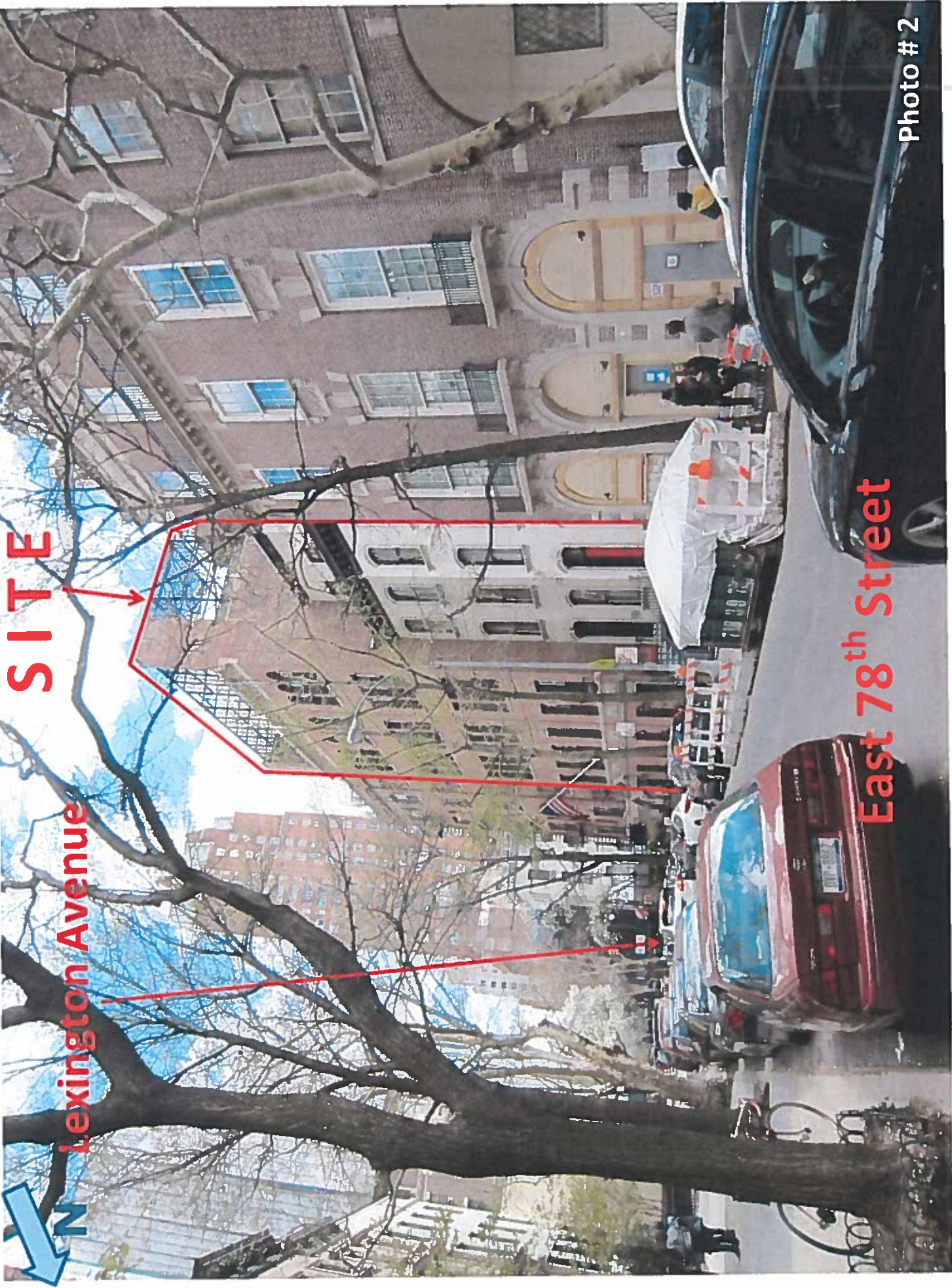
**SITE**

**East 78<sup>th</sup> Street**

**Photo # 1**

**Site: 126-134 East 78<sup>th</sup> Street, Manhattan**

**Date: April 24, 2015**



**SITE**

**Lexington Avenue**

**East 78<sup>th</sup> Street**

Photo # 2

Site: 126-134 East 78<sup>th</sup> Street, Manhattan

Date: April 24, 2015



**Main Building**

**Townhouses**

**SITE**

**130-134  
East 78<sup>th</sup> Street**

**128 (East)  
126 (West)**

**Photo # 3**

**Site: 126-134 East 78<sup>th</sup> Street, Manhattan**

**Date: April 24, 2015**



WINDSOR FLORIST  
FLOWERS OF DISTRICTION 212-734-4540

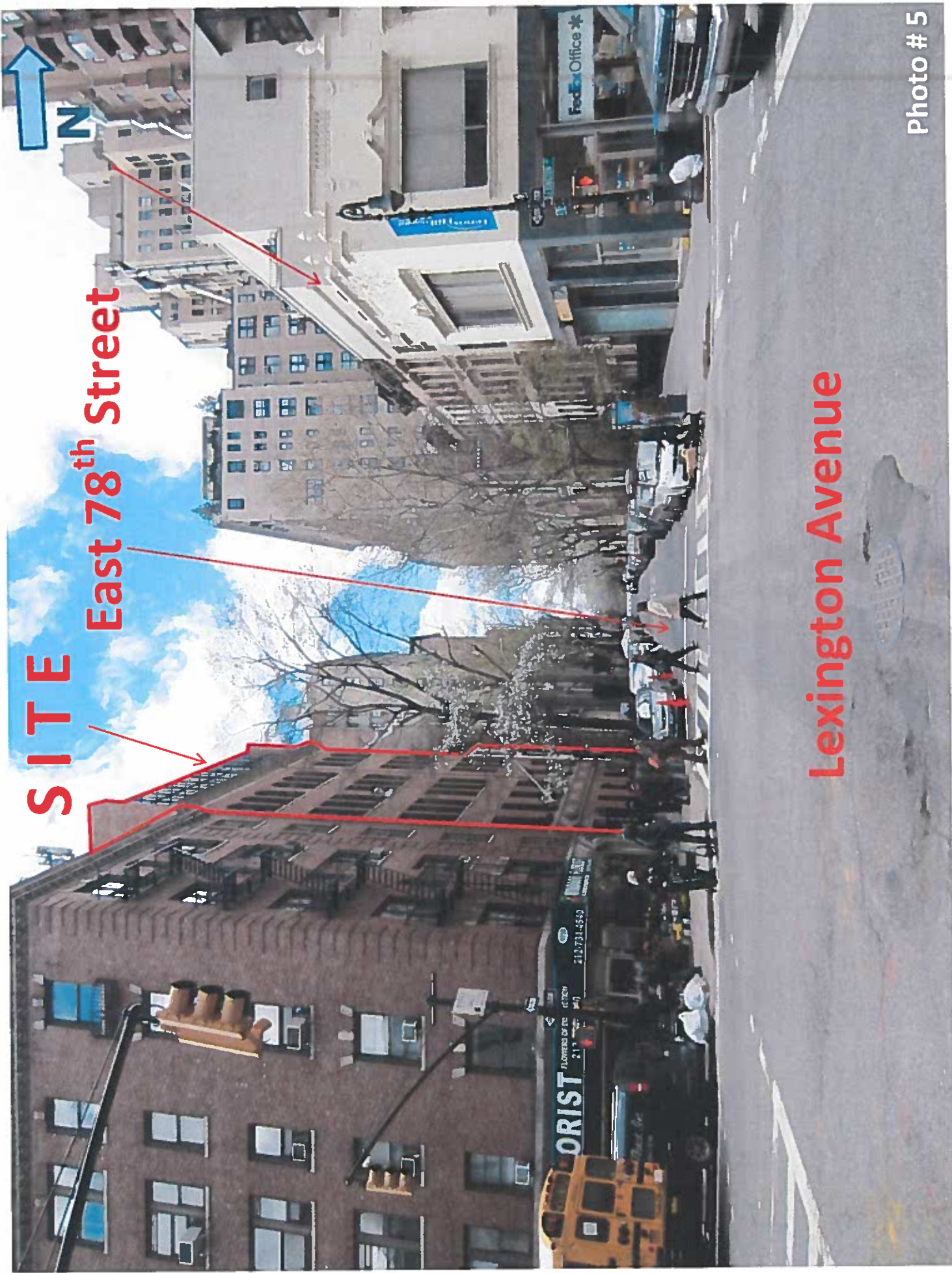
SITE

Photo # 4

East 78<sup>th</sup> Street

Site: 126-134 East 78<sup>th</sup> Street, Manhattan

Date: April 24, 2015



**SITE**

**East 78<sup>th</sup> Street**

**Lexington Avenue**

Photo # 5

Site: 126-134 East 78<sup>th</sup> Street, Manhattan

Date: April 24, 2015



**SITE**  
**(Annex)**

**East 77<sup>th</sup> Street**

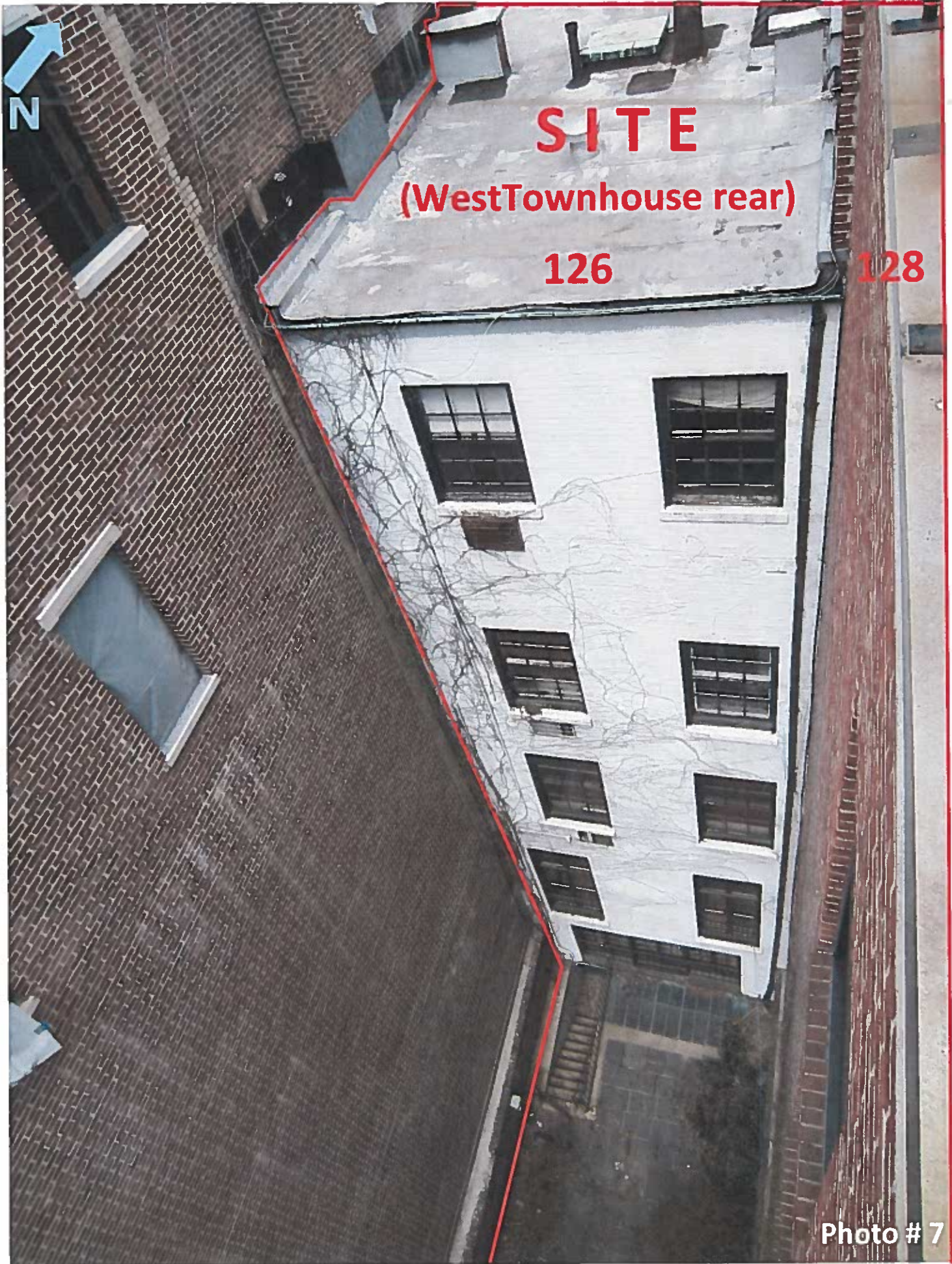
**Lexington Avenue**

Photo #6

Site: 126-134 East 78<sup>th</sup> Street, Manhattan

Date: April 24, 2015





**SITE**

**(WestTownhouse rear)**

**126**

**128**



**Photo # 7**