

BSA Cal. No. ____ -11-BZ

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

Affected Premises:

The Spence School
22 East 91st Street
17 East 90th Street
Block 1502 Lots 59 & 12
Manhattan

Filed: May 3, 2011

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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 "Z.R.") and Section 666 of the New York City Charter on behalf of the Trustees of the Spence School, Inc. ("Spence" or the "School"), a nonprofit private educational institution for young women in continuous operation since 1892.¹

A. The DOB Objections

The Department of Buildings ("DOB") has issued two Objections Sheets dated April 28, 2011 with regard to this Zoning Lot because the Main Building and the E90th Building are being permitted under separate DOB Applications (Nos. 103426892 and 120504418 respectively). The objections for each are identical but for the fact that DOB cites an objection regarding the 1987 Variance that is applicable only to Lot 59.

The Lot 12 (E90th Site) objections are as follows:

1. ZR 74-11: Proposed extension of building portion exceeding 23 ft above curb level in R8B district increases degree of non-compliance with respect to lot coverage; contrary to ZR 24-11 and ZR 54-31.
2. ZR 24-382: Proposed extension of building portion exceeding 23 ft above curb level in R8B district increases degree of rear yard equivalent non-compliance for through lot portion; contrary to ZR 24-382 and ZR 54-31.

The Lot 59 (Main Building) objections are as follows:

1. ZR 74-11: Proposed extension of building portion exceeding 23 ft above curb level in R8B district increases degree of non-compliance with respect to lot coverage; contrary to ZR 24-11 and ZR 54-31.
2. ZR 24-382: Proposed extension of building portion exceeding 23 ft above curb level in R8B district increases degree of rear yard equivalent non-compliance for through lot portion; contrary to ZR 24-382 and ZR 54-31.
3. Proposed new construction is contrary to plans approved by BSA Cal No. 390-86-BZ.

B. The ZR Sec 72-21 Required Findings:

The Board's authority to grant variances is described in Z.R. 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

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

(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.

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

Z.R. 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 narrow width of the E90th Site for educational purposes, its narrow width in relation to the Main Building Site, the higher purposes of historic preservation as indicated by the Landmarks Preservation Commission approval in avoiding alterations to the scale and height of the individually landmarked E90th Building, and both previous zoning lots' existing noncompliances due to the original construction of the buildings half a century before the creation of the current Zoning Resolution create unnecessary hardships in complying strictly with the lot coverage and rear yard equivalent provisions of the Zoning Resolution. While there is no such thing as "almost compliant," the fact of the matter is that the Objections that are sought to be waived by this Application are attributable to two zoning factors and two mission-related programmatic design factors. The zoning factors are: (1) the only location for the Connector is in the non-complying rear yard equivalent on the zoning lot and (2) the existing zoning lot is already non-complying with regard to lot coverage. The two programmatic design factors are: (1) the height of the Connector needs to be at 29.75 above mean curb level rather than the permitted 23 ft above mean curb level, and (2) the Connector must provide a 51 ft by 5.5 ft passageway at the second floor to assure programmatic connectivity between the two buildings. Were there no need to provide the second floor passageway, the Connector could be built to a height of 23 ft above mean curb level and thereby qualify as a permitted rear yard obstruction, thus eliminating both the lot coverage and the rear yard equivalent Objections. **In essence then, this application is**

filed to provide for the additional 6.75 ft in the Connector's height and to provide for the 5.5 ft wide passageway. The lot coverage and rear yard noncompliances occur solely at the second floors of these buildings, which are already both noncompliant.

The resulting practical difficulties and unnecessary hardships to the School in providing a compliant Connector in an already entirely non-complying rear yard context would be significant. Its use of the buildings for its educational purposes, at least without much more significant alterations in one or both buildings, would be rendered all but impossible for the following reasons:

- The Functional Necessity for the Second-storey Passageway. The E90th Building cannot be used by the School for its intended use as an educational facility without the Connector's second floor passageway, which serves as the academic spine of the newly designed School. As described in the previous sections, both the required programmatic layout of the School and logistical considerations relating to (1) the high volumes of trips between the two buildings and (2) the need to reduce travel time between the academic floors of the two buildings require that no fewer than two floors be directly connected as "expressways" between the two buildings and that at least one of those expressways occur between the academic floors of the Main Building (Floors 2 - 10) and the closest academic floors of the E90th Building (Floors 2 - 5). Given the comparatively narrow width of the E90th Building in comparison to the Main Building and the varying floor elevations as the buildings rise, there are practical difficulties in providing academic floor interconnectivity anywhere other than in the connecting rear yards of the two buildings. No matter how narrow the passageway and regardless of whether it could be provided within an enlargement no taller than 23 ft above grade, its mere existence triggers both Objections.
- Eliminating the second floor passageway would subject the School to grave practical difficulties and unnecessary hardships in meeting its educational objectives. As demonstrated above, the modest connection between the two buildings is critical to the successful functioning of Spence's Upper and Middle Schools. The second floor passageway serves as the only and therefore critical connection between the School's two academic centers. Neither the ground floor connection provided in the enlargement nor the cellar spaces beneath it, which have been designed as rooms rather than passageways, can adequately address the programmatic needs and

functional requirements of moving students, faculty and staff between the academic floors of the two buildings in a timely and orderly manner.

The hardships are more easily realized when one recalls that stairways will be used to navigate between the buildings for all but a handful of students. Students will be constantly moving up and down the stairways between the nine academic floors of the Main Building and the four academic floors of the E90th Building. Viewing the functional necessity for the second floor passageway anecdotally, without second floor connectivity an 11th-grade student who needs to move from the fourth floor in the E90th Building to the seventh floor in the Main Building would need to walk down 3-4 flights of stairs to the ground floor or an additional flight to the cellar, cross to the Main Building and then have to climb 7-8 stories to reach her next classroom. Current time allotments between classes, a critical factor in the School's scheduling, is 5 minutes but even a doubling of that time would leave this hapless student harried, exhausted and ill-prepared to begin her next class. The impacts would be no less severe on faculty and staff moving down, across and up using the elevators in both buildings, especially those who often have administrative duties to perform during intervals between classes.

In addition to the serious negative impacts on academic travel times, the lack of a second floor passageway would require all interconnectivity to occur on the ground floor, generating a volume of trips along that corridor that its width will simply be unable to handle without seriously impacting the function of the whole School, including the entrance functions at the Main Building. Both the School and its neighbors on East 90th Street, who have raised this issue repeatedly during the public review of the Landmarks applications, have a common interest in maintaining the Main Building entrance on East 91st Street as the School's only entrance. That interest would be quashed if the ground floor were to be the only passageway between the two buildings, as the volume of activity would all but demand use of the East 90th Street door,

- The Locational Requirement for the Second Floor Passageway. The specific site conditions of the zoning lot and the two buildings on it dictate the proposed location of the academic second floor passageway precisely as requested in this Application. While the academic interconnectivity supplied by the second floor passageway could occur at any of the buildings' academic floors, say, for instance the two fourth floors

via a sky bridge, the most sensible and minimally visible location for the passageway is at the second floors. In addition, connections at upper floors which are not at varying elevations would create passages with unacceptable pitches. Accordingly, not only does the floor of the passageway need to occur at the same elevation as both buildings' second floors, but its position in plan is the only possible position that will avoid the destruction of the E90th Building's second floor library room, a major proposed educational facility for the School. The library is the only room of significance on the second floor and as well as is one of the few rooms in the building that can be preserved for larger-scale educational classroom space. Thus relocation of the passageway laterally would result in the loss of a room critically needed by the School to conduct its educational mission

- The Height Required for the Second Floor Passageway. Given the practical difficulties associated with elimination or relocation of the second floor passageway, the position of the second floor passageway in section causes the overall height of the Connector to exceed the 23 ft height allowed for a permitted rear yard obstruction by 6.75 ft. Aside from the functional ramifications on the headroom for the passageway, limiting the height of the Connector to 23 ft above mean curb level would cause the roof of the Connector to intersect and therefore destroy the library windows, a significant architectural feature of the individually landmarked E90th Building. These four windows run from 16 ft above mean curb level to 23.25 ft above mean curb level, the architects have chosen a roof elevation at 29.75 ft above mean curb level, which equates to two brick courses above the keystone above the windows on the rear elevation, so as to permit them to be fully saved and restored within the enclosed space of the Connector. Strict compliance with the 23 ft height limitation presents a practical difficulty in meeting the preservation goals important to the School and expected by the Landmarks Preservation Commission.

Z.R. Sec. 72-21(b):

[T]hat because of such physical conditions there is no reasonable possibility that the development of 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 is not applicable because Spence is a non-profit institution and all of the uses on the zoning lot will be in support of its educational mission.

Z.R. Sec. 72-21(c):

[T]hat the variance, if granted, will not alter the essential character of the neighborhood or distract in which the zoning lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

The Connector is all but invisible to the public. It will be built in a close urban context in which there are no standard-sized open and greened open spaces among the surrounding rear yards creating a central greenspace, a/k/a doughnut. None of the midblock tax lots provide complying rear yards. All are paved and below grade, serving as terraces for basement floors or as lightwells. Most hold tool boxes, air handling equipment, ladders or the occasional outdoor grill. Of the two buildings on this block facing the avenues, the eastern building is a 14-storey multiple dwelling with a pleasant rear yard with two trees and paving. It will be largely unaffected by the Connector because presently its entire shared property line with the School is occupied by the non-complying E90th Building extension, which is a nearly windowless dark 23 ft tall² brick rear wall running along the shared property's line's entire length to the E90th Building's rear lot line. It will be demolished and replaced with the east elevation of the Connector, which will have an initial height of 26 ft because the Connector roof will be sloped until reaching its full height of 29.75 ft above grade. Hence the full impact of the proposed enlargement will be a replacement that rises an additional 6.75 ft. The Landmarks Commission found that the shape and translucency of the Connector was appropriate to its surroundings and, "will not detract from the streetscape of this Historic District." The building on the western end of the block is the Cooper-Hewitt, which has a similar connector of its own. The western terminus of the rear yards on this block ends at this connector and at the Cooper-Hewitt's paved service area and loading stations.

The Connector will also address a community concern heard during the LPC review process. Concerns were raised by the School's neighbor at 15 East 90th Street regarding the potential impacts due to School employees, students and visitors using the front entrance of the E90th Building to enter the School, creating noise and congestion on the block. As the drawings accompanying this Application demonstrate, the floorplans for the Connector and second-floor passageway have been designed to permit the use of the Main Building's existing entrance on East 91st Street as the sole point of entry to and non-emergency exit from the School. This reflects the School's longstanding traditions as well

² This height bears no relationship to the Zoning Resolution, as the extension was built half a century before the enactment of the 1961 Zoning Resolution and in any event for residential purposes.

as provides the best level of security. The E90th Building entrance will be updated and altered to assure accessibility, but it will not be used on a daily basis. This one-door egress pattern would be impossible in the event that only the ground floors were interconnected, as the resulting congestion along that single corridor would require the use of the door on East 90th Street for entry and exit on a daily basis.

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 for nearly 82 years. The case is even stronger with respect to this institution, which has proved itself to be a good steward for two of the most important architecturally significant landmarks in this neighborhood and looks forward to extending its stewardship to yet a third significant historic building.

Z.R. 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.

The buildings, along with all the buildings on this block, were built in the 1920's, decades before the adoption of the 1961 Zoning Resolution. But for the addition of the Osborne Wing in 1987 there have been no apparent changes to either building or their zoning lots until this Application. Spence can hardly be accused of creating a self-imposed hardship when every midblock building including its own on this unique block already fails to comply with nearly every bulk provision in the current Zoning Resolution applicable to R8B districts. Spence clearly purchased the E90th Building recognizing that the Connector requested in this Application could not be built as a matter of right and that any possible design alternative for using the E90th Building other than "as-found and as-is" would require some form of zoning relief, but the plain language of the Z.R. 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

Z.R. 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.

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

- The academic connection provided by the second floor passageway could be located between any of the academic floors of the buildings. Providing a 5.5 ft wide passageway through the Connector at the second floor clearly generates the most minimal level of zoning objections. The width of the second floor passageway and the height of the Connector through which it will run have been minimized to those dimensions absolutely necessary to accommodate the School's educational mission.
- Designing a height for the Connector that is only 6.75 ft in excess of that permitted yet allows for inclusion of the academic passageway provides the most minimal degree of noncompliance. The Connector's first 23 ft of height is available as-of-right and replaces a non-complying residential rear yard extension of that height. In addition, allowing the proposed height of the Connector protects from destruction important architectural elements of both landmarked buildings. The chosen height is no higher than necessary to provide headroom for the second floor passageway and clear the keystone of the second floor rear library window of the E90th Building. Hence the height of the Connector is the minimum necessary to provide for the efficient flow of student, faculty and staff circulation for academic purposes between the two buildings and for compliance with best preservation practices for these two important buildings.
- A request to increase the extent of existing lot coverage and rear yard noncompliances should be considered less dramatic than requesting new variances that do not address the existing noncompliances and add new variances for major height and setback waivers to build additional floors on the E90th Building. Such variances would be required were the School forced to limit interconnectivity between the two buildings and instead enlarge one or both buildings to provide redundant facilities to make up for the lack of the proposed level of interconnectivity. Any such further development to the E90th Building would violate R8B height and setback provisions and would be a highly visible addition to one or both buildings that already exceed their allowable building height and are both protected landmarks within an historic building.

On the basis of the foregoing, the Applicant respectfully requests that the Board make the requisite findings and grant the requested variances.

Respectfully submitted,

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By: 

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New York, New York
May 3, 2011