



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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CHRISTINE BERTHET
Chair

JESSE R. BODINE
District Manager

May 21, 2015

Hon. Margery Perlmutter, Chair
Board of Standards and Appeals
250 Broadway, 29th Floor
New York, NY 10007

Re: BSA CAL #61-15 -BZ: Special Permit for 540 West 26th Street to permit school in M1-5 district

Dear Ms. Perlmutter:

On the recommendation of its Chelsea Land Use Committee, Manhattan Community Board No. 4 (CB4), at its regular Board meeting on May 6, 2015, by a vote of 34 in favor, 3 opposed, 0 abstaining and 0 present but not eligible to vote, recommended approval by the Board of Standards and Appeals (BSA), with two conditions, a special permit for a community facility use which would allow the Avenues (Avenues) school to lease a portion of at 540 West 26th Street which is in an M1-5 zoning district. The conditions address potential noise from outdoor space and outreach to building users regarding students walking between buildings.

Background

The Avenues school opened in 2012 at 259 Tenth Avenue and occupies the entire western block front of Tenth Avenue between West 25th Street and West 26th Street. This for-profit school is intended for pre-K through high school students. In 2011 CB4 recommended approval of an application from Avenues for certain modifications to bulk and use regulations subject to two conditions. The two conditions were a request for a traffic study and implementation of mitigations identified by the study, and certain community outreach and participation issues. In addition, the school and CB4 drafted a Memorandum of Understanding (MOU) which is the subject of a separate May 2015 letter.

Due to high demand, the school's enrollment has been expanding. The initial enrollment was 749 students in nursery through 9th grade. Next year the school will include nursery through 12th grade with a projected enrollment of 1,375 students. Within the next 10 years enrollment is expected to be over 2,000 students. The school finds the existing building inadequate to meet existing and projected needs and has developed a plan for the reconfiguration of the existing building to better utilize the existing space. Additional space is being sought to accommodate ELC (Early Learning Center) and kindergarten students to separate them from older students, to create more appropriate classrooms and to improve safety in the dropoff/pickup area. Space is

also sought for an important component of the upper school curriculum known as the STEAM (science, technology, engineering, arts and mathematics education) program.

Proposal Description and BSA Findings

The owner of the property at 540 West 26th Street, located in the Special West Chelsea District in an M1-5 district, plans to demolish the existing vacant and construct a new building for art gallery and office uses. The owner also intends to rent a portion of the building to the Avenues school and is seeking a special permit because a school, a community facility (Use Group 3), is not allowed in an M1-5 district as-of-right per ZR 42-00 and 42-12. BSA, as per ZR 73-01, may grant a special permit for specified uses provided general and specific findings are met.

The owner/applicant is seeking only a special permit for the community facility use, and is not requesting any modifications to bulk, signage, parking or loading regulations. As per ZR73-19, BSA may permit schools without residential accommodations to locate within an M1 zoning district if the following four findings are met:

1. *There is no practical possibility of obtaining an appropriate site in a nearby district that would permit a school as-of-right.*

Avenues has presented evidence that a comprehensive search was conducted over the past year to find an appropriate site in a zoning district that would permit a school as-of-right. Of 28 properties researched, fourteen as-of-right sites were examined in Chelsea, Midtown, Downtown and Tribeca. These sites were deemed too far from the existing school, too costly to improve and/or not immediately available. Avenues concluded that the proposed site is the only practical site, and further, that it is the best site given a curriculum whereby older students must move between buildings. The Board accepts Avenues' determination.

2. *That the proposed site is located not more than 400 feet from the boundary of a district which would permit a school as-of-right.*

On the west the proposed site is adjacent to a C6-3 zoning district which permits schools as-of-right.

3. *That there is adequate separation from noise, traffic and other adverse effects of the surrounding non-Residential Districts – achieved through sound-attenuating exterior wall and window construction or by adequate open areas along lot lines.*

According to the CEQR Technical Manual, buildings with a school should maintain interior noise levels of 45 dBA or lower. Current nearby uses are art galleries, offices and other commercial uses that do not generate noise associated with manufacturing districts. Further, the new building will have windows made of at least one-inch insulated glass. Such windows will be sufficient to ensure interior noise levels of 45 dBA or lower. The new building's exterior has a curtain wall system and concrete slabs between floors to attenuate sound.

4. *That the movement of traffic through the street on which the school is located can be controlled so as to protect children going to and from the school. BSA will refer the*

application to the Department of Traffic to assess vehicular hazards to the safety of children.

According to Avenues representatives, the youngest (ELC) students are to be escorted into and away from the new building by parents or school personnel. Because there is lobby space for waiting, these students will not need to wait on the sidewalk. The older STEAM students (15 to 18 years old) will not have to cross a street between the existing building and the new building. This is the same route taken by students to PE classes at Chelsea Piers. These older students will move independently but will be monitored by school personnel.

In addition to the above specific findings, the applicant must satisfy the general findings as per ZR 73-03 as they relate to the new building and the school use:

...that hazards or disadvantages to the community are outweighed by the advantages . . .BSA must determine any adverse effect on privacy, quiet, light and air in the neighborhood and will be minimized.

The new building will have separate entrances for students and for the users of the rest of the building. Children thus will be protected from the general building population, and that population will have minimal exposure to the students.

On the second floor of the new building there will be a 16' wide terrace along the back of the building. This outdoor area is to be used by the young ELC students for recreation and other outdoor activities. The issue of noise from these students affecting nearby neighbors was raised by CB4. Representatives of the building's owner said that noise considerations were written into the contract with Avenues school. They explained that a 10-foot wall along the back lot line would protect neighboring users from the children's sounds, but said that if noise becomes a disturbance to nearby office and gallery users, Avenues would be obligated to mitigate the problem.

CB4 inquired about the potential impacts of students walking in front of existing businesses and galleries, particularly on deliveries to those buildings. Avenues representatives said they plan to reach out to the users of the two buildings along the route students will walk so any possible negative effects would be avoided or minimized.

CB4's Recommendation

CB4 believes that the Avenues school is a beneficial community facility use – a very high quality educational institution in CD4, but CB4 has from the start had reservations about the school's exclusive enrollment policies and has advocated for scholarships for deserving CD4 students whose families could not afford Avenues' high tuition. This issue plus other MOU topics are the subject of a separate CB4 letter to Avenues.

CB4 believes that the applicant for the special permit has substantially met BSA's findings for the special permit and therefore recommends approval of the special permit for school use for a portion of the building at 540 West 26th Street with the following conditions:

1. The applicant requires that Avenues will mitigate any sounds from its second floor outdoor space in the new building that neighbors identify as disturbing to their quality of life.
2. The applicant requires that Avenues reach out to the users of buildings between the existing and new buildings so that any potential issues with students walking in front of those buildings will be addressed as soon as possible.

Sincerely,



Christine Berthet
Chair



J. Lee Compton
Co-Chair
Chelsea Land Use Committee



Betty Mackintosh
Co-Chair
Chelsea Land Use Committee

cc: Hon. Gale A. Brewer, Manhattan Borough President
Hon. Corey Johnson, City Council
Deirdre A. Carson, Esq, Greenberg Traurig
Eric DeSimone, Vice President, Savanna Project Management
Gardner P. Dunnan, Academic Dean, Avenues: The World School