

6-13-BZ

CEQR #13-BSA-079K

APPLICANT – Sheldon Lobel, P.C., for Yeshiva Ohr Yisrael, owner.

SUBJECT – Application January 11, 2013 – Variance (§72-21) to permit the construction of a synagogue and school (*Yeshiva Ohr Yisrael*), contrary to floor area and lot coverage (§24-11), side yard (§24-35), rear yard (§24-36), sky exposure plane (§24-521), and parking (§25-31) regulations. R3-2 zoning district.

PREMISES AFFECTED – 2899 Nostrand Avenue, east side of Nostrand Avenue, Avenue P and Marine Parkway, Block 7691, Lot 13, Brooklyn of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 13, 2012, acting on Department of Buildings Application No. 320619023, reads in pertinent part:

- Proposed floor area ratio and lot coverage contrary to ZR 24-11;
- Proposed side yards contrary to ZR 24-35;
- Proposed rear yard contrary to ZR 24-36;
- Proposed sky exposure plane contrary to ZR 24-521;
- Proposed building does not provide parking contrary to ZR 25-31; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R3-2 zoning district, the construction of a four-story building to be occupied by a synagogue (Use Group 3) and a school (Use Group 4), which does not comply with the underlying zoning district regulations for floor area, lot coverage, side yard, rear yard, sky-exposure plane, and parking, contrary to ZR §§ 24-11, 24-35, 24-36, 24-521, and 25-31; and

WHEREAS, a public hearing was held on this application on September 17, 2013, after due notice by publication in *The City Record*, with continued hearings on October 29, 2013, December 10, 2013 and January 14, 2014, and then to decision on March 4, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of the application; and

WHEREAS, certain members of the surrounding community, including a representative of the Marine Park Civic Association, submitted testimony in opposition to

the application, citing concerns about: the height, bulk, and rear windows of the building; the effect of construction on neighboring soil; and increases in traffic and garbage; and

WHEREAS, this application is being brought on behalf of Yeshiva Ohr Yisrael of Marine Park (the “Congregation”), a non-profit religious entity which will occupy the proposed building; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Madison Place and Nostrand Avenue, within an R3-2 zoning district; and

WHEREAS, the site has approximately 91 feet of frontage along Nostrand Avenue and 5,440 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story community facility building with approximately 4,228 sq. ft. of floor area; and

WHEREAS, the applicant states that the Congregation uses the existing building at the site as a synagogue and school in conjunction with a nearby facility located at 2940 Avenue P; and

WHEREAS, the applicant represents that the existing facilities are unable to accommodate the growing religious and educational needs of the Congregation; as such, the Congregation seeks to develop the site with a new integrated synagogue and educational facility; and

WHEREAS, the applicant states that the proposal will result in a building with the following parameters: four stories; a floor area of 20,420 sq. ft. (3.75 FAR) (a maximum community facility floor area of 5,440 sq. ft. (1.0 FAR) is permitted); a lot coverage of 100 percent (the maximum permitted lot coverage is 60 percent); no side yards (two side yards with minimum widths of 9.18 feet are required); a rear setback of 15 feet at the third and fourth stories (a minimum rear yard depth of 30 feet is required; however, such yard may be provided above a one-story community facility with a maximum height of 23 feet); a front wall height of 52 feet with no setback (a front setback above 25 feet and a 1-to-1 sky exposure plane are required) and no parking spaces (a minimum of 21 parking spaces are required); and

WHEREAS, under the current application, the applicant initially proposed a five-story building with 27,200 sq. ft. of floor area (5.0 FAR), no rear setback, a front wall height of 70 feet, and a gymnasium with a floor-to-ceiling height of 18 feet; and

WHEREAS, however, in response to concerns raised by the Board at public hearing, the applicant reduced the FAR and building height, provided a rear setback of 15 feet at the third and fourth stories, and replaced the gymnasium with an outdoor rooftop recreation space; and

WHEREAS, the proposal provides for the following uses: (1) main sanctuary (which also serves as a postgraduate study hall), restrooms, lobby, coat rooms,

6-13-BZ

CEQR #13-BSA-079K

pantry, rabbi's study, and offices at the first story; (2) women's balcony, three college-level Shiur classrooms, teachers' lounge, offices, kitchenette (warming pantry), and restrooms at the second story; (3) a study room, open lounge area, restroom, and one Shiur room at the third story; (4) six classrooms (including a science and computer lab), an office and restrooms at the fourth story; and (5) atop the fourth story roof, a fenced recreation area; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Congregation which necessitate the requested variances: (1) to accommodate the growing congregation currently of approximately 200 members; (2) to provide a separate worship space for male and female congregants; (3) to locate the synagogue within the Marine Park neighborhood, which allows congregants to walk to services, as required for reasons of religious observance; (4) to provide space for hosting special events for congregants, such as Bar/Bat Mitzvahs; (5) to provide an integrated educational facility for high school, college and post-graduate studies; and (6) to consolidate the recreation space for the school, which is currently dispersed among three rented sites; and

WHEREAS, the applicant states that it currently operates a four-year college offering a degree in Talmudic Studies at the existing building at the site, and that it has operated the college for approximately ten years; and

WHEREAS, the applicant states that the enrollment of the college is approximately 80 students (approximately 20 per class), and that although it expects only modest growth in the coming years, the existing building at the site is wholly unsuitable due to its limited space and dual use as a synagogue; and

WHEREAS, in addition, the applicant states that in 2012, the Congregation started a high school program at its Avenue P facility; the high school began with 20 ninth graders and is anticipated to increase in enrollment each year until a full, four-year high school is operating with approximately 80 students; and

WHEREAS, the applicant represents that the proposal will also provide: (1) a secure place where students can enjoy an educational experience that is carefully designed to develop their intellectual and social skills; (2) a safe place where students can engage in activities and special projects, and develop positive character traits, including teamwork, respect for others, self-discipline, and individual responsibility; (3) an institution for advanced religious learning; and (4) a community center where families can spend time together in an environment that is respectful of their religious identity; and

WHEREAS, the applicant states that the as-of-right building would have only two stories and 5,440 sq. ft. of

floor area (1.0 FAR), and be only marginally better than the current one-story facility, which only has 4,228 sq. ft. of floor area (0.8 FAR) and is far too small to satisfy the Congregation's programmatic needs; and

WHEREAS, likewise, the applicant explored the feasibility of a lesser variance scenario in which the floor-to-floor heights were reduced in order to bring the building height to 49 feet; however, this scenario resulted in floor-to-ceiling heights of eight feet, which, the applicant notes would be well below the standard heights for classrooms according to the School Construction Authority; and

WHEREAS, the applicant states that the floor area, lot coverage, yards, and sky-exposure plane waivers allow for the double-height ceiling of the main sanctuary (which is necessary to create a space for worship and respect), an adequate ceiling height for the second story women's balcony, and sufficient program space (classrooms, offices, and study areas) for the Congregation to carry out its educational programs, as described above; and

WHEREAS, as to parking, the applicant states that 88 percent of the congregation lives within a three-quarter-mile radius of the site, which exceeds the 75 percent required under ZR § 25-35 to satisfy the City Planning Commission certification waiving parking for a locally-oriented house of worship; and

WHEREAS, therefore, the applicant states that the requested waivers are necessary to provide enough space to meet the programmatic needs of the congregation; and

WHEREAS, the Board acknowledges that the Congregation, as a religious 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 Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Congregation create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations, in accordance with ZR § 72-21(a); and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Congregation is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that, per ZR § 72-21(c), the proposed building will not alter the essential character of the neighborhood, will not substantially

6-13-BZ
CEQR #13-BSA-079K

impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the surrounding area is characterized by its diversity, both in terms of use and bulk; and

WHEREAS, the applicant states, that Nostrand Avenue, the main local thoroughfare in the vicinity, is zoned R3-2, R4 and R5 and there are a variety of commercial overlays, resulting in a mixture of residential, community facility and commercial uses, including several multiple dwellings and mixed use buildings; and

WHEREAS, the applicant notes that that the proposed use is permitted as-of-right in the subject zoning district and that, as such, only bulk waivers are necessary; and

WHEREAS, as to bulk, the applicant identified several buildings in the immediate vicinity that are similar in bulk to the proposed building, including: (1) the four- and seven-story multiple dwellings that are directly across Nostrand Avenue from the site, which do not provide side yards (the four-story building was authorized by variance from the Board under BSA Cal. No. 25-06-BZ); (2) the Kingsway Jewish Center at the intersection of Nostrand Avenue and Kings Highway (a sprawling campus of two-, three- and four-story buildings); (3) five- and six-story multiple dwellings and mixed use buildings along Kings Highway; and (4) the Madison Jewish Center, which has a (non-complying) floor area of 24,107 sq. ft. (0.74 FAR); and

WHEREAS, as to the immediately adjacent uses, the applicant states that a car wash facility is directly north of the site, a light manufacturing building (wood flooring) is directly south, and east of the site, are accessory garages and rear yards of the two-story residences that front on Marine Parkway; and

WHEREAS, as to yards, the applicant notes that the side yard and front yard conditions were existing longstanding non-compliances with the historic commercial use of the site; and

WHEREAS, as to parking, the applicant notes that the majority of congregants will walk to the site and that there is not any demand for parking; and

WHEREAS, further, as noted above, the applicant represents that 88 percent of congregants live within a three-quarter-mile radius of the site and thus are within the spirit of City Planning's parking waiver for houses of worship; and

WHEREAS, the Board notes that, based on the applicant's representation, this proposal would meet the requirements for a parking waiver at the City Planning Commission, pursuant to ZR § 25-35 (Waiver for Locally Oriented Houses of Worship); and

WHEREAS, in support of this assertion, the applicant submitted evidence reflecting that at least 88

percent of the congregants live within three-quarters of a mile of the subject site; and

WHEREAS, in response to concerns raised by community residents and neighbors, at hearing, the Board directed the applicant to clarify the following aspects of the application: (1) the condition of the residential yards to the rear of the site; (2) whether there would be roof access above the second story roof; (3) how garbage will be stored and collected; (4) the occupant loads of the various spaces; and (5) the extent of soil disturbance proposed; and

WHEREAS, in response, the applicant provided: (1) clear photographs showing the condition of the abutting residential yards; (2) amended plans showing the elimination of the door to the second story roof, a garbage storage room at the first story, and occupant loads for all rooms; and (3) a report from an environmental consultant, which indicates that contamination from the adjacent site could not have affected the soil at the site; and

WHEREAS, in addition, the applicant represents that garbage collection will occur no fewer than three times per week (two City collections and one from a private hauler); and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that, per ZR § 72-21(d), the hardship was not self-created and that no development that would meet the programmatic needs of the Congregation could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as noted above, through the hearing process, the proposal was reduced in height and floor area and was modified in order to minimize its impacts on adjacent uses; accordingly, the Board finds that, consistent with ZR § 72-21(e), the requested waivers are the minimum necessary to afford the Congregation the relief needed to meet its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA079K, dated January 11, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open

6-13-BZ

CEQR #13-BSA-079K

Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R3-2 zoning district, the construction of a four-story building to be occupied by a synagogue (Use Group 3) and a school (Use Group 4), which does not comply with the underlying zoning district regulations for floor area, lot coverage, side yard, rear yard, sky-exposure plane, and parking, contrary to ZR §§ 24-11, 24-35, 24-36, 24-521, and 25-31; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 28, 2014" – Ten (10) sheets; and *on further condition*:

THAT the building parameters will be: four stories; a maximum floor area of 20,420 sq. ft. (3.75 FAR); a maximum wall height of 52 feet; and a rear setback with a minimum depth of 15 feet at the third and fourth stories, as illustrated on the BSA-approved plans;

THAT any change in use or ownership of the building will require the prior approval of the Board;

THAT the use will be limited to a school (Use Group 3) and a house of worship (Use Group 4);

THAT no commercial catering will take place onsite;

THAT garbage will be stored within the building until pickup;

THAT the above conditions will be listed on the

certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT construction will proceed in accordance with ZR § 72-23; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 4, 2014.

A true copy of resolution adopted by the Board of Standards and Appeals, March 4, 2014.

Printed in Bulletin No. 10, Vol. 99.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

