

CORRECTION

This resolution adopted on July 15, 2014, under Calendar No. 15-14-BZ and printed in Volume 99, Bulletin Nos. 27-29, is hereby corrected to read as follows:

15-14-BZ

CEQR #14-BSA-103Q

APPLICANT – Davidoff Hutcher & Citron LLP, for Greek Orthodox Community of Whitestone Holy Cross Inc., owner.

SUBJECT – Application January 24, 2014 – Variance (§72-21) to permit the enlargement of an existing school building (*Holy Cross Greek Orthodox Church*), contrary to floor area (§24-111), sky exposure plane (§24-54), side yard (§24-35(a), lot coverage (§24-11), front yard (§24-34), and accessory parking (§25-31). R2 zoning district.

PREMISES AFFECTED – 12-03 150th Street, southeast corner of 150th Street and 12th Avenue, Block 4517, Lot 9, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 27, 2014, acting on DOB Application No. 420927475, reads, in pertinent part:

1. Community facility floor area ratio contrary to ZR Section 24-111;
2. Sky-exposure plane contrary to ZR Section 24-54;
3. Number of parking spaces contrary to ZR Section 25-31;
4. Side yard contrary to ZR Section 24-35(a);
5. Lot coverage contrary to ZR Section 24-11;
6. Front yard contrary to ZR Section 24-34; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R2 zoning district, the enlargement of a one-story community facility building to be occupied as a religious school (Use Group 3), which does not comply with regulations regarding floor area ratio (“FAR”), sky-exposure plane, parking, side and front yards, and lot coverage, contrary to ZR §§ 24-11, 24-34, 24-35, 24-54, 25-31, and 24-111; and

WHEREAS, the application is brought on behalf of Greek Orthodox Community of Whitestone

Holy Cross, Inc. (“Holy Cross”), a not-for-profit corporation, which owns and operates Valiotis Greek-American School (“Valiotis”), the existing school at the subject site; and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in the *City Record*, and then to decision on July 15, 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 7, Queens, recommends approval of the application, subject to the following conditions: (1) “One Way” signs are installed at the 12th Avenue entrance to the church parking lot for the hours of 7:30 a.m. to 6:00 p.m. on school days; (2) “One Way” signs are installed indicating “Exit Only” on at the 150th Street exit of the church parking lot for the hours of 7:30 a.m. to 6:00 p.m. on school days; (3) staff will be required to park only in the church parking lot and not on the local streets; (4) all staff cars will be required to park in a predetermined area and stacked next to each other; (5) kindergarteners and first graders will be dismissed 15 minutes early; (6) Valiotis will pursue the installation of a Stop sign at the intersection of 150th Street and 12th Avenue; and (7) Valiotis, Community Board 7, and Councilman Vallone will continue to pursue a request for a crossing guard at the intersection of 150th Street and 12th Avenue; and

WHEREAS, Councilman Paul A. Vallone, submitted testimony in support of the application; and

WHEREAS, the subject site is located on the southeast corner of the intersection of 12th Avenue and 150th Street, within an R2 zoning district; and

WHEREAS, the site has 125 feet of frontage along 12th Avenue, 100 feet of frontage along 150th Street, and 12,500 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story school (Use Group 3) with 6,030 sq. ft. of floor area (0.48 FAR) and a building height of 31’-11””; the building was completed in 2004, and, according to Certificate of Occupancy No. 400676559, includes: in the sub-cellar, a gymnasium, assembly space, a mechanical room, a kitchen, and accessory storage; on the cellar level, a child care center for up to 36 children; on the first story, classrooms, offices, and accessory storage; and at the attic level, accessory storage; the four required accessory off-street parking spaces for the building are provided across 12th Avenue in the Holy Cross church parking lot (Block 4516, Lot 1; formerly Block 4516, Lot 50), per restrictive declaration; and

WHEREAS, the applicant notes that an as-built survey revealed that the building was constructed with the following non-compliances: (1) a front yard

15-14-BZ

CEQR #14-BSA-103Q

depth of 14'-0" (a minimum front yard depth of 15'-0" is required, per ZR § 24-34); (2) two side yards with widths of 8'-0" (two side yards with minimum widths of 8'-0" and 10'-2" are required, per ZR § 24-35); and (3) a lot coverage of 66 percent (a maximum lot coverage of 60 percent is permitted, per ZR § 24-11); and

WHEREAS, the applicant now proposes to vertically and horizontally enlarge the building, resulting in a two-story building with 13,967 sq. ft. of floor area (1.11 FAR) and building height of 34'-3"; and

WHEREAS, the applicant states that the variance is requested to legalize the above-noted non-compliances, which are maintained in the enlarged portion of the building; in addition, the following new non-compliances are proposed: (1) an FAR of 1.11 is proposed (the maximum permitted FAR is 0.5 FAR, per ZR § 24-111); (2) a sky-exposure plane of less than 1-to-1 is proposed (a 1-to-1 sky-exposure plane is required, per ZR § 24-54); and (3) four accessory off-street parking spaces (a minimum of ten accessory parking spaces are required, per ZR § 25-31); and

WHEREAS, the applicant states that Valiotis began as an afternoon Greek School Afternoon Program with three students in 1977 and currently enrolls 180 students in nursery through third grade; the applicant notes that demand for Valiotis has increased sharply since 2008, when enrollment was approximately 30 students; and

WHEREAS, the applicant represents that 35 prospective students were turned away in the 2013-2014 school year because the existing facility is too small to accommodate them; further, approximately 50 students must occupy classroom space in temporary trailers in a nearby site; and

WHEREAS, the applicant states that the proposal would allow Holy Cross to institute a comprehensive elementary school curriculum, consisting of nursery through fifth grade, with a total enrollment of 250 students; and

WHEREAS, the applicant states that the proposed 7,937 sq-ft. enlargement includes the following: on the first story, a new library, a new science lab, a new classroom, and new boys' and girls' restrooms; and on the second story, a new classroom, a new computer room, a new art room, additional storage, and new boys' and girls' restrooms; and

WHEREAS, the applicant states that the following are the primary programmatic needs of Holy Cross, which necessitate the requested variances: (1) to accommodate the needs of its growing congregation of approximately 650 members, many of whom have children enrolled at Valiotis and would like to send them to the school for fourth and fifth grade; (2) to

provide interdisciplinary teaching spaces (arts, information technology, and science) in order to prepare its students for modern intermediate and high school curricula; and (3) to provide sufficient space for Holy Cross' Greek School Afternoon and Sunday School programs; and

WHEREAS, the applicant states that there is a direct nexus between the requested waivers and the programmatic needs of Holy Cross; and

WHEREAS, in particular, the applicant asserts that a complying building could not provide adequate classroom and program space for Holy Cross; as noted above, Valiotis was built and received a certificate of occupancy despite several as-built non-compliances; thus, constructing a complying building would require costly demolition of substantial portions of the existing building, resulting in further reductions of program space; and

WHEREAS, as to the new non-compliances associated with the proposed enlargement (FAR, sky-exposure-plane, and parking), the applicant asserts that each is essential to constructing a space that will accommodate Holy Cross's needs; the FAR is necessary, as noted above, because the existing school is too small to accommodate even its existing student body (50 students must learn in temporary trailers); the sky-exposure-plane waiver is necessary to provide sufficient headroom in a new classroom on the second story; the parking waiver is necessary because the existing building was constructed without parking and providing parking would require complete renovation and a substantial loss of program space; for example, if parking were to be located in the sub-cellar and/or cellar, Valiotis would be forced to give up portions of its gymnasium and child care center; and

WHEREAS, in addition, the applicant states, as noted above, that Valiotis has four designated parking spaces in the Holy Cross church parking lot across 12th Avenue; under the proposal, the number of designated spaces will be increased to ten; and

WHEREAS, accordingly, the applicant asserts that only the proposal will provide the necessary space for Holy Cross to achieve its programmatic needs at Valiotis; and

WHEREAS, the Board acknowledges that Holy Cross, 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; and

15-14-BZ
CEQR #14-BSA-103Q

WHEREAS, accordingly, based upon the above, the Board finds that the limitations and inefficiencies of the existing building and the site, when considered in conjunction with the programmatic needs of Holy Cross, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since Holy Cross is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, impair the appropriate use or development of adjacent property, or be detrimental to the public welfare, consistent with ZR § 72-21(c); and

WHEREAS, the applicant represents that the surrounding neighborhood is characterized by one- and two-story residential and community facility uses; south of the site along 150th Street between 12th Road and the Cross Island Parkway, the built character reflects the area's zoning designations (C1-2 and C2-2), in that one- and two-story mixed residential and commercial buildings predominate; and

WHEREAS, the applicant notes that the proposed use exists and is permitted as-of-right in the subject R2 zoning district; and

WHEREAS, as such, the applicant contends that the proposed enlargement is entirely consistent with the use and bulk of the area; and

WHEREAS, the applicant states that the proposal was designed to be sensitive to the scale of the streetscapes along both 150th Street and 12th Avenue, in that it maintains the existing yards and provides complying wall and building heights; and

WHEREAS, as to adjacent uses, the applicant states that directly south of the site is a two-story community facility building, directly east of the site is an undeveloped lot with a width of 50 feet, directly north of the site (across 12th Avenue) is the parking lot for the Holy Cross church, and directly west of the site (across 150th Street) is a school; the applicant also notes that there is a two-story church north and west of the site, on the northwest corner of the intersection of 12th Avenue and 150th Street; and

WHEREAS, the applicant also notes that the site abuts an R3-2 zoning district, where the maximum permitted FAR for a community facility is 1.0 FAR, which is consistent with the proposed 1.11 FAR; and

WHEREAS, at hearing, the Board directed the applicant to: (1) provide a site plan of the parking lot at Block 4516, Lot 1, which shows the proposed number of parking spaces, site circulation, and signage; and (2) clarify the proposed traffic mitigation and safety measures; and

WHEREAS, in response, the applicant provided the requested plan, which reflects the proposed parking lot circulation and signage, which includes a single entrance point (the 12th Avenue curb cut) and exit point (the 150th Street curb cut) for the lot; and

WHEREAS, as traffic mitigation and safety, the applicant states that security personnel will be assigned to the site during pickup and drop-off times, dismissal times for pre-kindergarten and kindergarten students will be staggered, and bus queuing and parking will be relocated from 150th Street to 12th Avenue; and

WHEREAS, accordingly, the Board finds that, in accordance with ZR § 72-21(c), 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 the hardship was not self-created and that no development that would meet the programmatic needs of Holy Cross 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, per ZR § 72-21(d); and

WHEREAS, the applicant states and the Board agrees that the requested waivers are the minimum necessary to afford relief to satisfy the Holy Cross' programmatic needs, in accordance with ZR § 72-21(e); 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 a Type II action pursuant to 6 NYCRR Part 617.5; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination 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 R2 zoning district, the enlargement of a one-story community facility building to be occupied as a religious school (Use Group 3), which does not comply with regulations regarding FAR, sky-exposure plane, parking, side and front yards, and lot coverage, contrary to ZR §§ 24-11, 24-34, 24-35, 24-54, 25-31, and 24-111; *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 June 3, 2014" – Nine (9) sheets; and "Received July 14, 2014" – One (1) sheet; and *on further condition*:

THAT the building parameters will be: two stories; a maximum building height of 34'-3"; a

15-14-BZ

CEQR #14-BSA-103Q

maximum of 13,967 sq. ft. of floor area (1.11 FAR); a minimum front yard depth of 14'-0"; two side yards with minimum widths of 8'-0"; and a maximum lot coverage of 66 percent, as illustrated on the BSA-approved plans;

THAT a deed restriction will be recorded against Block 4516, Lot 1 designating minimum of ten parking spaces for the school's use;

THAT "One Way" signs will be installed and maintained at the 12th Avenue entrance to the church parking lot for the hours of 7:30 a.m. to 6:00 p.m. on school days;

THAT "One Way" signs will be installed and maintained at the 150th Street exit of the church parking lot for the hours of 7:30 a.m. to 6:00 p.m. on school days;

THAT the 12th Avenue curb cut will only be used for entering the parking lot and the 150th Street curb cut will only be used for exiting the parking lot, and signs reflecting these restrictions will be installed and maintained;

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

THAT the approved plans are 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, July 15, 2014.

The resolution has been amended. Corrected in Bulletin No. 34, Vol. 99, dated August 27, 2014.

**A true copy of resolution adopted by the Board of Standards and Appeals, July 15, 2014.
Printed in Bulletin Nos. 27-29, Vol. 99.**

**Copies Sent
To Applicant
Fire Com'r.
Borough Com'r.**

