

**49-14-A**

APPLICANT – Jesse Masyr, Esq of Fox Rothschild LLP, for Archdiocese of New York, owner.

SUBJECT – Application March 25, 2014 – Proposed enlargement to an existing community facility, contrary to General City Law Section 35. R1-1 zoning district. PREMISES AFFECTED – 5655 Independence Street, Arlington Avenue to Palisade Avenue between West 256<sup>th</sup> Street and Sigma Place. Block 5947, Lot 120. Borough of Bronx.

**COMMUNITY BOARD #8BX**

**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 20, 2014, acting on DOB Application No. 220211937, reads in pertinent part:

1. The proposed horizontal enlargement is not permitted in the bed of the mapped street Approval from the Board of Standards and Appeals of Standards as per GCL 35.
2. The proposed enlargement encroaches into the front yard required from Independence Avenue contrary to ZR 24-34.
3. The proposed enlargement encroaches into the sky exposure plane from Independence Avenue contrary to ZR 24-521; and

WHEREAS, a public hearing was held on this application on July 22, 2014, after due notice by publication in *The City Record*, hearing closed and then to decision on July 29, 2014; and

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

WHEREAS, Community Board 8, Bronx, recommends approval of this application; and

WHEREAS, this is an application to allow the construction of an enlargement to an existing community facility, which will be partially located within the bed of the mapped but unbuilt portion of Independence Avenue; and

WHEREAS, the subject site comprises contiguous lots (Block 5947, Lot 120 and Block 5952, Lot 120) partially within an R1-1 zoning district and partially within an R1-2 zoning district, within a Special Natural Area District; and

WHEREAS, Independence Avenue is mapped to a width of 60 feet, with 30 feet of width within Block 5947 and 30 feet of width within Block 5952; and

WHEREAS, the site has a lot area of approximately 356,417 sq. ft. and is entirely owned by the Archdiocese

of New York; it is occupied by a three-story community facility building with approximately 75,600 sq. ft. of floor area, which was constructed in the early 1900s for retired priests; the facility is commonly known as the O’Connor Residence; and

WHEREAS, the applicant states that approximately 25,188 sq. ft. of lot area is located within the bed of Independence Avenue, and approximately 3,136 sq. ft. of the proposed enlargement will lie within the bed of mapped Independence Avenue; and

WHEREAS, the applicant also state that due to the steeply sloping nature of the site, it is considered a Tier II site within the Special Natural Area District; because the proposal includes modifications to the botanic environment and alters trees, the proposal requires a Special Natural Area District authorization from the Department of City Planning; the applicant notes that an application was submitted under Application No. N140311ZAX on March 17, 2014 and approved on June 11, 2014; and

WHEREAS, by letter dated September 24, 2013, the Fire Department states that it has reviewed the site plan and has no objection to the proposal, subject to the following conditions: (1) the entire building must be fully-sprinklered; (2) the building must be provided with interconnected smoke alarms; (3) at least one hydrant must be located within 100 feet of any and all building Siamese connections; (4) a Fire Department access road including a 70-ft. diameter turnaround must be provided; (5) “No Parking Anytime Fire Zone” signs must be installed every 75 feet along the access road; and (6) there shall be no parking anywhere along the fire access road from the public street to the turnaround; and

WHEREAS, by letter dated April 15, 2014, the Department of Environmental Protection (“DEP”) states that: (1) there are no sewers or water mains at the above referenced location; and (2) Modified City Drainage Plan No. 40-1 dated June 14, 1955, calls for a future 15-inch diameter combined sewer in Independence Avenue between West 256th Street and Arlington Avenue; and

WHEREAS, DEP further stated that it requires the applicant to submit a survey/plan showing the width of mapped portion of Independence Avenue, dimensions of the property and distance from the nearest intersection; and to provide the 32-ft. wide sewer corridor for the 15-inch diameter future combined sewer, crossing the property or the applicant has an option to amend the drainage plan; and

WHEREAS, in response to DEP’s request, the applicant submitted a revised survey, dated May 15, 2014; the revised survey depicts the width of Independence Avenue, the metes and bounds of the property, the distances to West 256th Street and Arlington Avenue, and the point of vertical intersection of Independence Avenue, approximately 125 feet south of the northerly property line; and

WHEREAS, the applicant states that due to the fact

**49-14-A**

that the proposed high point of Independence Avenue is on the property, property to the north can be served by the future 15-inch diameter future combined sewer that flows to the north; therefore, a sewer corridor across the property is not necessary and requests that DEP rescind their request for a sewer corridor; and

WHEREAS, by letter dated May 29, 2014, DEP states that, based on its review of the applicant's response, it has no objections to the proposal; and

WHEREAS, by correspondence dated June 18, 2014, the Department of Transportation ("DOT") states that: (1) according to the Bronx Borough President's Topographical Bureau, Independence Avenue at this location is mapped at a 60-ft. width on the Final City Map and is not titled to the City; and (2) construction within the bed of Independence Avenue is not presently included in DOT's Capital Improvement Program; and

WHEREAS, the Board notes that pursuant to GCL § 35, it may authorize construction within the bed of the mapped street subject to reasonable requirements; and

WHEREAS, the Board notes that pursuant to ZR § 72-01(g), the Board may waive bulk regulations where construction is proposed in part within the bed of a mapped street; such bulk waivers will be only as necessary to address non compliances resulting from the location of construction within and outside of the mapped street, and the zoning lot will comply to the maximum extent feasible with all applicable zoning regulations as if the street were not mapped; and

WHEREAS, therefore, consistent with GCL § 35 and ZR § 72-01(g), the Board finds that applying the bulk regulations across the portion of the subject lot within the mapped street and the portion of the subject lot outside the mapped street as if the lot were unencumbered by a mapped street is both reasonable and necessary to allow the proposed construction; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved,* that the Board modifies the decision of the DOB, dated May 20, 2014, acting on DOB Application No. 220211937, by the power vested in it by Section 35 of the General City Law, and also waives the bulk regulations associated with the presence of the mapped but unbuilt street pursuant to Section 72-01(g) of the Zoning Resolution to grant this appeal, limited to the decision noted above *on condition* that construction will substantially conform to the drawing

**A true copy of resolution adopted by the Board of Standards and Appeals, July 29, 2014.**

**Printed in Bulletin No. 31, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

filed with the application marked "Received July 24, 2014"-(1) sheet; and *on further condition:*

THAT DOB will review and approve plans associated with the Board's approval for compliance with the underlying zoning regulations as if the unbuilt portion of the street were not mapped;

THAT the entire building must be fully-sprinklered;  
THAT the building must be provided with interconnected smoke alarms;

THAT at least one hydrant must be located within 100 feet of any and all building Siamese connections;

THAT a fire department access road including a 70-foot diameter turnaround must be provided;

THAT "No Parking Anytime Fire Zone" signs must be installed every 75 feet along the access road;

THAT there will not be parking anywhere along the fire access road from the public street to the turnaround;

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 DOB will review and approve plans associated with the Board's approval for compliance with the underlying zoning regulations as if the unbuilt street were not mapped;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; 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 on July 29, 2014.

