

303-12-BZ

CEQR #13-BSA-037K

APPLICANT – Eric Palatnik, P.C., for Tabernacle of Praise, Inc., owner.

SUBJECT – Application October 25, 2013 – Variance (§72-21) to permit the development of a sub-cellar, cellar and three story church, with accessory educational and social facilities (*Tabernacle of Praise*), contrary to rear yard setback (§33-292), sky exposure plane and wall height (§34-432), and parking (§36-21) regulations. C8-1 zoning district.

PREMISES AFFECTED – 1106-1108 Utica Avenue, between Beverly Road and Clarendon Road, Block 4760, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 28, 2011, acting on Department of Buildings Application No. 220137233, reads, in pertinent part:

1. District boundary in rear lot line R Zone: 30’ shall be provided within C Zone, contrary to ZR Section 33-292;
2. Height and setback and sky exposure plane (slope) is contrary to ZR Section 33-432;
3. Parking is contrary to ZR Section 36-21; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C8-1 zoning district, a three-story community facility building to be occupied as a house of worship (Use Group 4), which does not comply with distance from a district boundary, height and setback, sky-exposure plane, and parking regulations, and is contrary to ZR §§ 33-292, 33-432, and 36-21; and

WHEREAS, the application is brought on behalf of Tabernacle of Praise, Inc., the owner of the site and the occupant of the proposed house of worship (the “Church”); and

WHEREAS, a public hearing was held on this application on September 10, 2013, after due notice by publication in the *City Record*, with a continued hearing on October 29, 2013, and then to decision on May 6, 2014; and

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

WHEREAS, Community Board 17, Brooklyn, recommends approval of the application; and

WHEREAS, Senator Kevin S. Parker,

Assemblyman N. Nick Perry, and Councilman Jumaane Williams testified in support of the application; and

WHEREAS, the subject site is a rectangular interior lot located on the west side of Utica Avenue between Beverly Road and Clarendon Road, within a C8-1 zoning district; and

WHEREAS, the site, which is vacant, has 160 feet of frontage along Utica Avenue and 16,000 sq. ft. of lot area; and

WHEREAS, the applicant notes that, on May 2, 2006, the Board, under BSA Cal. No. 289-05-BZ, granted a special permit to develop the site with a house of worship pursuant to ZR §§ 73-50 and 73-431; and

WHEREAS, the applicant represents that construction pursuant to the special permit did not proceed due to financial constraints; however, the Church’s current facility, located at 1274 Utica Avenue cannot accommodate its growing congregation and diverse programming, which includes substantial religious education and community outreach; and

WHEREAS, the applicant now proposes to construct a three-story house of worship (Use Group 4) with building height of 59’-11” and 36,535 sq. ft. of floor area (2.28 FAR); and

WHEREAS, the applicant states that the variance is requested due to the following non-compliances: (1) no setback from the district boundary at the rear lot line (an open space with a minimum depth of 30’-0” is required beginning at curb level because the rear lot line coincides with a boundary between the subject C8-1 district and an R4 district, per ZR § 33-292); (2) the maximum front wall height proposed is 55’-8” (a maximum wall height of 35’-0” is permitted, with a 1-to-1 sky-exposure plane, per ZR § 33-432); and (3) 34 accessory off-street parking spaces (a minimum of 40 accessory parking spaces are required, per ZR § 36-21); and

WHEREAS, the proposal would allow for a main sanctuary, a chapel, a community center, and certain accessory spaces, including an underground parking facility, a banquet hall, a Christian book store and retail shop, a dance studio, offices, a safe room, and a terrace garden; and

WHEREAS, specifically, the applicant states that the house of worship would provide the following: at the sub-cellar level, 34 off-street parking spaces, a storage room, a garbage collection room, and a restroom; at the cellar level, a 1,456 sq.-ft. dance studio, a 2,052 sq.-ft. multi-purpose room, two classrooms, a security office, separate changing rooms for men and women, storage space, and a media room; at the first story, a main lobby, two auxiliary lobbies, a 1,188 sq.-ft. chapel, a 4,290 sq.-ft. banquet hall with kitchen, restrooms, and coat check areas, a 792 sq.-ft. bookstore, and a 594 sq.-ft. retail shop; at the second story and mezzanine level, the 6,300 sq.-ft. main sanctuary and 2,625 sq.-ft. mezzanine seating area, which can accommodate a total of 854 worshippers,

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the safe room, offices, a waiting room, a nursery, and restrooms; and, at the third story, the 1,580 sq.-ft. terrace garden, and three offices; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Church, which necessitate the requested variances: (1) to accommodate its membership, which currently consists of approximately 1,500 members but is expected to increase to approximately 1,700 by the time the proposed building is completed; (2) to provide for regular adult religious education classes and community and youth group activity space; (3) to hold special events such as weddings, funerals, and baptisms; (4) to provide the necessary sanctuary and worship space for the members; and (5) to provide space for a Christian bookstore to further the Church's publishing work; and

WHEREAS, the applicant notes that the main sanctuary will be used for two Sunday services and for holidays, and that when the main sanctuary is filled to capacity, the chapel and the banquet space will be opened for simultaneous worship via telecast; and

WHEREAS, the applicant states that the accessory spaces are necessary as follows: (1) the banquet hall will allow members of the Church to celebrate life events in the same space in which they regularly worship; (2) the bookstore will enable the Church to provide education and dissemination of its messages to the wider community; (3) the dance studio will provide space for Church members to practice song and dance, which the applicant states are essential components of members' religious activity; (4) the offices are necessary to provide space for Church administrators and staff; (5) the community center will provide meeting and program space for community youth groups and the elderly; (6) the safe room will house the Church's vault and provide a private meeting space for Church administrators to conduct sensitive business; and (7) the terrace garden provides an intimate outdoor space for quiet reflection and worship; and

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

WHEREAS, in particular, the applicant asserts that a complying building could not provide adequate worship and program space for the Church, in that if the open space at the rear is provided and height, setback, and sky exposure plane requirements are met, only 692 worshippers would be able to gather in the main sanctuary space, which is 252 fewer than the 854 that can be accommodated under the proposal; since two prayer services are held on a typical Sunday, the loss of 252 seats amounts to a loss of worship space for as many as 504 worshippers, which represents 34 percent of the 1,500-member congregation; and

WHEREAS, accordingly, the applicant states that

the Church would have to hold a third worship service on Sundays in order to accommodate its current and projected membership, which would be costly and interfere with other Church programs and activities; and

WHEREAS, the applicant also studied the feasibility of a lesser variance scenario, in which a complying perimeter wall with a height of 30'-0" is provided and a 10'-0" setback is provided at the third story in the rear; and

WHEREAS, the applicant asserts that the lesser scenario also fails to provide sufficient space to accommodate the Church's programmatic needs, in that it results in a loss of 198 seats in the main sanctuary and 22 seats in the chapel; and

WHEREAS, to further support the relationship between the requested waivers and the Church's programmatic needs, the applicant submitted an analysis of how each program space would be affected by constructing the building without the requested waivers; based on this analysis, in addition to the reductions in the main sanctuary and the chapel discussed above, the community center, classrooms, the dance studio, the banquet hall, several offices, the safe room, the terrace garden, storage space, restrooms, and the nursery would have to be reduced in size; and

WHEREAS, accordingly, the applicant asserts that only the proposal will provide the necessary space for the Church to carry out its mission; and

WHEREAS, at hearing, the Board directed the applicant to explore a third design, in which the terrace garden was shifted to the rear of the building; and

WHEREAS, in response, the applicant demonstrated that such a configuration failed to properly address the programmatic need to be satisfied by the terrace, in that facing the rear of the site resulted in the terrace being within view of the nearby residences, which served to diminish its privacy and utility as an intimate space, and, as discussed below, increased the proposal's impact on surrounding residential uses; and

WHEREAS, turning to parking, the applicant states that providing complying parking (40 spaces instead of the proposed 34) in the cellar would require the storage and garbage collection rooms to be moved to the cellar, which would require displacement, elimination or significant reduction in the size of the dance studios, multi-purpose room, classrooms, security office, changing rooms, and media room; and

WHEREAS, the applicant represents that 50 percent of the Church's members live within walking distance (1/4 mile) of the site, and that 85 percent live within one mile, and thus are unlikely to rely on an automobile to visit the site; and

WHEREAS in addition, the applicant states that there is adequate mass transit in the surrounding area, including four city busses, two subway lines, and three local car services; and

WHEREAS, finally, the applicant states that the

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Church leases a nearby parking lot at 1124 Utica Avenue (Block 4760, Lot 24) to provide an additional 40 parking spaces during Sunday and holiday services; and

WHEREAS, the Board acknowledges that the Church, 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 N.Y.2d 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 Church create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Church 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 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 notes that the proposed use is permitted as-of-right in the subject C8-1 zoning district, as is the proposed FAR; and

WHEREAS, the applicant represents that the surrounding neighborhood is characterized by low- to medium-density residential, commercial and community facility uses; and

WHEREAS, in addition, the applicant states that where community facilities are found within the subject C8-1 district, they are typically three stories or more in height; in support of this statement, the applicant provided a height study, which reflects that of the 22 sites within 1/3 mile and with comparable lot area to the site, seven sites contain community facility buildings that are three stories or more in height, including: (1) 407 East 53rd Street (three-story former synagogue); (2) 5566 Kings Highway (four-story elementary school); (3) 5402 Tilden Avenue (four-story elementary school); (4) 1244 Utica Avenue (three-story house of worship); (5) 810 East 49th Street (three-story house of worship); (6) 4801 Avenue D (three-story elementary school); and (7) 4402 Avenue D (three-story house of worship); and

WHEREAS, as such, the applicant asserts that the proposal is consistent with the bulk of community facilities on similar-sized sites in the surrounding area;

and

WHEREAS, as to adjacent uses, the applicant states that one-story commercial buildings are immediately north, east, and south of the site, and that immediately west of the site are a series of two-story residential buildings, a vacant lot, and a large driveway; and

WHEREAS, the applicant notes that the proposed FAR is less than the maximum permitted as-of-right for a community facility in the C8-1 district; and

WHEREAS, in addition, the applicant asserts that with its dramatic swooping roof, modern streetwall, and "Living Green Wall" at the rear, the building has been designed to both beautify and enhance the commercial streetscape of Utica Avenue and maintain the residential character of the R4 district directly west of the site; and

WHEREAS, finally, the applicant represents that the building will be used predominantly by members of the surrounding community, including students at the nearby elementary schools, and that the application has received letters of support from many surrounding neighbors, including the adjacent business owners and three owners of the residential lots immediately west of the site; and

WHEREAS, at hearing, the Board directed the applicant to: (1) explore the feasibility of providing the terrace garden at the rear instead of at the front of the building on the third story; and (2) provide a schedule of events; and

WHEREAS, in response, the applicant provided the requested plan, but stated that a rear terrace garden would increase the building's impact on its residential neighbors, while diminishing the utility of the space for its users; as to the schedule of events, it was provided along with an analysis of how parking would be affected during large events; 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 Church 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, the applicant states and the Board agrees that the requested waivers are the minimum necessary to afford relief to satisfy the Church's 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 Unlisted

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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. 13BSA037K, dated April 21, 2014; 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 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, the New York City Department of Environmental Protection’s (“DEP”) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEP reviewed and accepted the March 2014 Remedial Action Plan and Construction Health and Safety Plan; and

WHEREAS, DEP requested that a P.E.-certified Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, the applicant conducted an air quality impact assessment and proposed an alternate means of ventilation to maintain a closed window condition, ensuring that acceptable interior air quality levels will be maintained in the building and that no significant air quality impacts to the proposed project are anticipated to occur; 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 a C8-1 zoning district, a three-story community facility building to be occupied as a house of worship (Use Group 4), which does not comply with distance from a district boundary, height and setback, sky-exposure plane, and parking regulations, and is contrary to ZR §§ 33-292, 33-432, and 36-21; *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 April 25, 2014” –(17) sheets; and *on further condition*:

THAT the building parameters will be: three stories; a maximum building height of 59’-11””; a maximum wall height of 55’-8””; a maximum floor area of 36,535 sq. ft. (2.28 FAR); and a minimum of 34 parking spaces, as illustrated on the BSA-approved plans;

THAT the use will be limited to a house of worship (Use Group 4A), and accessory uses;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided it with DEP’s approval of the Remedial Closure Report; and

THAT acceptable interior air quality levels will be maintained in accordance with the alternates means of ventilation design measures noted on the BSA-approved plans;

THAT no commercial catering or retail will occur on the site;

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

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);

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 the Department of Buildings 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, May 6, 2014.

A true copy of resolution adopted by the Board of Standards and Appeals, May 6, 2014.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

