

***CORRECTION**

The resolution adopted on January 28, 2014, under Calendar No. 292-13-BZ and printed in Volume 99, Bulletin Nos. 4-5, is hereby corrected to read as follows:

**292-13-BZ
CEQR #14-BSA-060K**

APPLICANT – Sheldon Lobel, P.C., for Congregation Bet Yaakob, Inc., owner.

SUBJECT – Application October 23, 2013 – Variance (§72-21) to allow the development of a Use Group 4A house of worship (*Congregation Bet Yaakob*), contrary to floor area, open space ratio, front, rear and side yards, lot coverage, height and setback, planting, landscaping and parking regulations. R5, R6A and R5/OP zoning districts.

PREMISES AFFECTED – 2085 Ocean Parkway, northeast corner of the intersection of Ocean Parkway and Avenue U, Block 7109, Lots 56 & 50 (Tentative Lot 56), Borough of Brooklyn.

COMMUNITY BOARD #15BK

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 October 21, 2013, acting on Department of Buildings Application No. 320345710 reads, in pertinent part:

1. Proposed Floor Area exceeds the maximum allowed pursuant to ZR Sections 113-11, 23-141b, 23-17, 24-11, 24-17, 77-22
2. Proposed Open Space is less than minimum required pursuant to ZR Sections 113-11, 23-141b, 23-17, 24-11, 24-17, 77-23
3. Proposed Lot Coverage exceeds the maximum permitted pursuant to ZR Sections 113-11, 23-141b, 23-17, 24-11, 24-17, 77-24
4. Proposed Front Yard is less than minimum required pursuant to ZR Sections 113-12, 23-45 and does not comply with planting requirements in ZR Section 23-451
5. Proposed Level of Front Yard is higher than level permitted pursuant to ZR Section 23-42
6. Proposed Front Yard does not comply with landscaping regulations per ZR

- 113-30
7. Proposed Rear Yard is less than rear yard required pursuant to ZR Sections 113-11b and 24-36
8. Proposed Side Yards are less than required pursuant to ZR Sections 113-11, 23-464
9. Proposed new building exceeds maximum Height and Setback requirements pursuant to ZR Sections 113-11, 23-631d, 24-17, 24-593, 23-633a2, 77-28
10. Proposed Side and Rear Yard Setbacks are less than required pursuant to ZR Sections 113-11 and 23-662
11. Proposed development provides less than required parking spaces pursuant to ZR Sections 113-561, 25-31, 25-35
12. Proposed clerestory exceeds max height for permitted obstructions pursuant to ZR Sections 113-11 and 23-62(l); and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts, the construction of a two- and three-story building to be occupied by a synagogue, which does not comply with the underlying zoning district regulations for floor area, open space, lot coverage, front yard, level of front yard, side yard, rear yard, height and setback, side and rear setback, special landscaping, and parking, contrary to ZR §§ 23-141(b), 23-17, 23-45, 23-451, 23-464, 23-631(a), 23-62(1), 23-633(a)2, 23-662, 24-11, 24-17, 24-36, 24-593, 25-31, 25-35, 77-22, 77-23, 77-24, 77-28, 113-11, 113-12, 113-30, 113-561 and 23-42; and

WHEREAS, a public hearing was held on this application on November 19, 2013, after due notice by publication in *The City Record*, with a continued hearing on December 11, 2013, and then to decision on January 28, 2014; and

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

WHEREAS, Community Board 15, Brooklyn, recommends approval of the application; and

WHEREAS, certain members of the community provided testimony in support of the proposal; and

WHEREAS, certain members of the community provided testimony in opposition to the proposal, citing concerns about the bulk and potential impact on light and air and potential noise impact associated with the building’s mechanicals; and

WHEREAS, this application is being brought on behalf of Congregation Bet Yaakob (the “Synagogue”), a

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non-profit religious entity which will occupy the proposed Edmond J. Safra Synagogue building; and

WHEREAS, the subject site is located on the northeast corner of Ocean Parkway and Avenue U within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts; and

WHEREAS, on October 16, 2012, the Board granted a variance application pursuant to ZR § 72-21, under BSA Cal. No. 168-11-BZ, to permit the construction of a four-story synagogue on Block 7109, Lot 50 (formerly Lots 48 and 50) (the "Prior Variance"); the Prior Variance reflected a building with a maximum floor area of 20,461 sq. ft. (2.3 FAR), a maximum wall height of 60'-0" and a total height of 62'-4", a minimum open space of 1,866 sq. ft., and a maximum lot coverage of 6,968 sq. ft. (79 percent); and

WHEREAS, the applicant represents that construction pursuant to the Prior Variance has not commenced; and

WHEREAS, the applicant represents that subsequent to the Prior Variance, the Congregation purchased the adjacent Lot 56, which resulted in a redesign of the building and requires a new approval for the synagogue on combined Lots 50 and 56 that more fully meets the needs of the growing Congregation; and

WHEREAS, the merged lot has a total lot area of 14,840 sq. ft.; it was formerly occupied by a two-story home on former Lot 50 and a two-story home on former Lot 48, both of which were unoccupied and sealed at the time of purchase, and the newly-acquired Lot 56 is currently occupied by a two-story residence; and

WHEREAS, the inclusion of Lot 56 increases the lot area of the zoning lot from 8,840 sq. ft. to 14,840 sq. ft., which allows for construction of a larger synagogue building with a more accommodating layout; and

WHEREAS, the applicant proposes the following parameters: two/three stories; a floor area of 22,314 sq. ft. (1.5 FAR) (a maximum community facility floor area of 21,815 sq. ft. and an aggregate between the R5 and R6A zoning districts of 1.47 FAR is permitted); a lot coverage of 63 to 72 percent (maximum permitted lot coverage ranges from 45/55 to 60 percent); an open space of 28 to 36 percent (the minimum required open space ranges from 38 to 45 percent); a maximum wall height of 47'-10" and a maximum total height of 62'-0" (the maximum permitted height ranges from 35'-0" (R5) to 50'-0" (R6A)); the clerestory (skylight over the third floor) to a height of 57'-3", which is 9'-5" above the roof of the three-story front portion of the building (exceeds the maximum height of a permitted obstruction); the proposed level of the front and rear yards 3'-4" above the permitted curb level; and no parking spaces (a minimum of 23 parking spaces are required); and

WHEREAS, under the current application, the applicant initially proposed a new building height of 70'-0"; and

WHEREAS, however, in response to concerns raised by the Board at public hearing, the applicant reduced the building height to 59'-5" at the roof ridge in the R5 corner portion of the lot and to 62'-0" in the R6A interior lot portion of the site; and

WHEREAS, as to yards, the applicant notes that the site is partially a corner lot and partially an interior lot, thus the yard requirements vary across the site; however, it will provide a front yard with the required depth of 30'-0" along Ocean Parkway but no front yard along Avenue U (a front yard with a depth of 10'-0" is required); a side yard with a width of 8'-0" on the corner portion adjacent to the neighbor on Ocean Parkway; and a rear yard with a depth of 30'-0" on the L-shaped portion of the lot within the subdistrict, but no front yard in the interior portion of the lot; and

WHEREAS, the proposal provides for the following uses: (1) a social hall, men's mikvah, and a kitchen at the cellar level; (2) the main men's sanctuary and Bet Midrash (accessory prayer room) and a Brit Milah at the first floor; (3) the women's sanctuary balcony, a kitchenette (warming pantry), boys' and girls' minyans (accessory prayer room) on the second floor; and (4) a young adult minyan, a board room, and two offices at the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate the growing congregation currently of approximately 600 worshippers; (2) to provide a separate worship space for male and female congregants; (3) to provide sufficient separation of space so that multiple activities may occur simultaneously; and (4) to provide accessory space including offices and a social hall; and

WHEREAS, the applicant states that the as-of-right building would have the following restrictions: a total height of 49'-0", a front yard of 30'-0" along Ocean Parkway, a front yard of 10'-0" along Avenue U, and a side yard of 13'-10"; it would allow for a social hall of only 3,090 sq. ft.; a main men's sanctuary of 1,250 sq. ft. (to accommodate 208 people); and a main women's sanctuary of 645 sq. ft. (to accommodate 120 people) – all of which are far too small to accommodate the Congregation; and

WHEREAS, further, the applicant asserts that only one Bet Midrash could be provided, instead of three, and a men's mikvah space could not be provided; and

WHEREAS, the applicant states that the height and setback waivers permit the double-height ceiling of the second floor main synagogue which is necessary to create a space for worship and respect and an adequate ceiling height for the second floor women's balcony; and

WHEREAS, the applicant states that the parking

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waiver is only related to the portion of the site within the R5 zoning district and that there is not a parking requirement for a house of worship under R6A zoning district regulations; and

WHEREAS, the applicant notes that approximately 95 percent of congregants live within walking distance of the site and must walk on certain days for reasons of religious observance; and

WHEREAS, the applicant states that 76 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 for a locally-oriented house of worship; and

WHEREAS, the applicant states that it requests a waiver of the Special Ocean Parkway District's special landscaping requirements for the front yard along Ocean Parkway as the front yard is necessary for a ramp and the main entrance; and

WHEREAS, the applicant notes that the site will be landscaped with trees and shrubbery along Avenue U, where the proposed building has 143'-0" of frontage, as well as along Ocean Parkway; and

WHEREAS, the applicant states that the congregation has occupied a nearby rental space for the past three years, which accommodates only 275 seats and is far too small to accommodate the current membership of 600 adults; and

WHEREAS, the applicant states that the requested waivers enable the Synagogue to construct a building that can accommodate its growing congregation as well as provide a separate worship space for men and women, as required by religious doctrine, space for religious counseling, and a multipurpose room for educational and social programming; and

WHEREAS, as far as the changes from the proposal associated with the Prior Variance and the current proposal, the applicant states that the current proposal decreases the relief sought for FAR from 2.3 to 1.5 (1.47 FAR is the maximum permitted), open space, and lot coverage; and

WHEREAS, the applicant asserts that the proposed more uniform floor plate allows for a more functional floor layout and better circulation between the social hall, kitchen, and accessory storage; and

WHEREAS, further, the applicant notes that the modified proposal will allow for a total occupancy of 329 people in the social hall, rather than 221 people as approved by the Prior Variance; the current proposal also allows for a larger men's mikvah to be located at the cellar level rather than the first floor, as approved by the Prior Variance; and

WHEREAS, the applicant states that Jewish Law prescribes that congregants face east while praying, thus, the circular shape and downward sloping angle of the main sanctuary is designed in such a way to observe this

religious requirement while also increasing the floor area from the main sanctuary previously approved, which was located on the second floor; and

WHEREAS, the applicant notes that the new first floor design allows for a Bet Midrash (accessory prayer room) and a Brit Milah room, which are critical spaces for an Orthodox synagogue but could not be accommodated in the smaller building approved through the Prior Variance; and

WHEREAS, the applicant states that now the women's sanctuary balcony is on the second, rather than third floor and has an increase in occupancy of 31 people from 192 to 223 people and that the new design allows for three prayer rooms for young people; and

WHEREAS, 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 Synagogue, 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, in addition to its programmatic needs, the applicant states that there are unique physical conditions of the site – including its L-shape; the narrow yet deep easternmost portion (formerly Lot 48); the location of multiple zoning district and special district boundary lines within the site; and the high groundwater condition; and the requirements for mechanical space, which contribute to the hardship at the site; and

WHEREAS, the applicant acknowledges that the Congregation created the irregular L-shape by merging two adjacent lots (former Lots 50 and 48), but that this lot area is critical to providing adequate space for a synagogue building with sufficient size to meet the programmatic needs; and

WHEREAS, further, the applicant notes that absent the lot merger, the 130'-0" depth and 18'-0" width of the easternmost portion of the site fronting on Avenue U presents unique physical conditions which support the request for waivers; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Synagogue create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the Board notes that certain of the site conditions contribute to the hardship associated with the

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site such as the irregularity of the long narrow easternmost portion; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue 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, will not substantially 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 proposed use is permitted in the subject zoning districts; and

WHEREAS, as to bulk, the applicant performed a study of buildings within approximately a ½-mile radius of the site, which reflects that there are 18 buildings that are taller, contain more floor area and/or have a higher FAR than the proposed building; and

WHEREAS, specifically, the applicant states that there are eight buildings with a height of 62'-0" or greater within its study area; and

WHEREAS, further, the applicant notes that DOB has approved plans for a six-story 20-unit apartment building with a height of 70'-0" for the site adjacent to the east at 623 Avenue U; and

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

WHEREAS, specifically, the applicant notes that the former homes had non-complying yard conditions, including that the home on Lot 50 was built to the front lot line along Avenue U and the home on Lot 48 only provided a front yard with a depth of 1'-11" on Avenue U and was built to the side lot line; and

WHEREAS, further, the applicant notes that although the yards do not meet the minimum yard requirements for a community facility, the proposal does reflect a front yard with a depth of 30'-0" along Ocean Parkway, a side yard with a width of 8'-0" adjacent to the neighboring site on Ocean Parkway, and a rear yard with a depth of 30'-0" is provided on former Lot 48; and

WHEREAS, the applicant also notes that unlike in the Prior Variance, no portion of the current proposal is located in the R5 (Special Ocean Parkway Subdistrict) portion of the site located to the rear of the adjacent homes; and

WHEREAS, as to the Special Ocean Parkway District's landscaping and front yard planting requirements, the applicant asserts that it will maintain landscaping and provide trees and shrubbery along Avenue U, where the Synagogue has 143'-0" of frontage, as well as plantings along Ocean Parkway; and

WHEREAS, in response to concerns the Board raised about the planting requirement along Ocean

Parkway, the applicant increased the percentage of yard plantings from 41 percent to 50.1 percent; 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 76 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 - but for the fact that a maximum of ten spaces can be waived in the subject R5 zoning district under ZR § 25-35; and

WHEREAS, in support of this assertion, the applicant submitted evidence reflecting that at least 75 percent of the congregants live within three-quarters of a mile of the subject site; and

WHEREAS, in response to questions raised about the proposed emergency generator, the applicant responded that it will only be used in the event of an emergency (and subject to a test for functioning once per month) and the sound level will be similar to existing sound levels in the surrounding neighborhood; and

WHEREAS, the applicant also notes that it proposed baffling with a height of 12'-0", which is the minimum height to adequately buffer the HVAC equipment on the roof, thus, lowering the height is not feasible; 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 the hardship was not self-created and that no development that would meet the programmatic needs of the Synagogue 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 Board finds the requested waivers to be the minimum necessary to afford the Synagogue 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

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No. 14BSA060K, dated October 23, 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 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 R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts, the construction of a two- and three-story building to be occupied by a synagogue, which does not comply with the underlying zoning district regulations for floor area, open space, lot coverage, front yard, level of front yard, side yard, rear yard, height and setback, side and rear setback, special landscaping, and parking, contrary to ZR §§ 23-141(b), 23-17, 23-45, 23-451, 23-464, 23-631(a), 23-62(1), 23-633(a)2, 23-662, 24-11, 24-17, 24-36, 24-593, 25-31, 25-35, 77-22, 77-23, 77-24, 77-28, 113-11, 113-12, 113-30, 113-561 and 23-42; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 3, 2013" – Seventeen (17) sheets; and *on further condition*:

THAT the building parameters will be: two/three stories; a maximum floor area of 22,314 sq. ft. (1.5 FAR); a maximum wall height of 47'-10" and total

A true copy of resolution adopted by the Board of Standards and Appeals, January 28, 2014.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

height of 62'-0"; a minimum open space ratio of 36 percent on the corner portion of the lot and 28 percent on the interior portion of the lot; and a maximum lot coverage of 63 percent on the corner portion of the lot and 72 percent on the interior portion of the lot, as illustrated on the BSA-approved plans;

THAT sound attenuation measures be installed and maintained as reflected on the BSA- approved plans;

THAT landscaping be maintained as reflected on the BSA-approved plans;

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

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

THAT no commercial catering will take place onsite;

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; and

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

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, January 28, 2014.

The resolution has been amended. Corrected in Bulletin No. 11, Vo. 99, dated March 19, 2014.

