

247-09-BZ

APPLICANT – Michael T. Sillerman, Esq. of Kramer Levin Naftalis & Frankel LLP, for Central Synagogue, owner.

SUBJECT – Application February 26, 2014 – Extension of Time to complete construction of a previously approved variance (§72-21) for the expansion of a UG4 community use facility (*Central Synagogue*), which expires on February 23, 2014. C5-2 & C5-2.5 (MiD) zoning district.

PREMISES AFFECTED – 123 East 55th Street, North side of East 55th Street, between park and Lexington Avenue, Block 1310, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

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, this is an application for a waiver of the Board’s Rules of Practice and Procedure, a reopening, and an extension of time to complete construction for the enlargement of an existing Use Group 4 community facility building, which does not comply with floor area and initial setback regulations, which expired on February 23, 2014; and

WHEREAS, a public hearing was held on this application on April 8, 2014, after due notice by publication in the *City Record*, and then to decision on June 10, 2014; and

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

WHEREAS, the subject is located within a C5-2 zoning district and a C5-2.5 zoning district within the Special Midtown District (MiD); and

WHEREAS, this application was brought on behalf of Congregation Ahawath Chesed Shaar Hashomayim, also known as Central Synagogue (the “Synagogue”) a not for profit religious institution; and

WHEREAS, the Board has exercised jurisdiction over the site since February 23, 2010 when, under the subject calendar number, the Board granted a variance to permit the proposed two-story enlargement of an existing nine-story Use Group 4 community facility building, which does not comply with applicable zoning requirements for floor area and initial setback, contrary to ZR §§ 33-12, 33-432, and 81-211; and

WHEREAS, substantial construction was to be completed by February 23, 2014, in accordance with ZR § 72-23; however, the applicant states that the Synagogue has been unable to raise sufficient funds to proceed with the proposal; and

WHEREAS, accordingly, the applicant now seeks

additional time to obtain funding and complete construction; and

WHEREAS, the site occupied by the subject building (Tax Lot 10), the Synagogue’s community house (the “Community House”), is part of a combined zoning lot that was created in 1981, pursuant to a Zoning Lot Declaration Agreement, and includes Tax Lots 9, 12, and 63; and

WHEREAS, Tax Lot 9 is immediately to the west of the Community House and is occupied by a townhouse (the “Townhouse”); Tax Lot 12 is immediately to the east of the Community House and is occupied by a Hotel; and Tax Lot 63 is located to the north of the Community House, with frontage on East 56th Street, and is occupied by a commercial tower (the “Commercial Tower”); and

WHEREAS, pursuant to the Board’s Rules of Practice and Procedure § 1-09.4 (*Owner’s Authorization*), every owner of record on a zoning lot which is the subject of an application must execute and submit the Board’s Affidavit of Ownership and Authorization form; and

WHEREAS, accordingly, at the April 8, 2014 public hearing, the Board inquired whether the Synagogue had obtained Affidavits from all owners on the zoning lot; and

WHEREAS, in response, the applicant stated that it had obtained Affidavits from the Townhouse and Hotel and anticipated one from the Commercial Tower; and

WHEREAS, the Board directed the applicant to submit all Affidavits by April 15, 2014 and to document the process of seeking the Affidavit from the Commercial Tower if it had not been obtained; and

WHEREAS, further, the Board noted that if the final Affidavit had not been received, the Board would re-open the hearing on April 29, 2014 to allow testimony from the Commercial Tower owner; and

WHEREAS, the applicant submitted executed Affidavits of Ownership and Authorization forms from the Synagogue, Townhouse, and Hotel; and

WHEREAS, by submission dated April 15, 2014, the applicant states that it did not obtain an executed form from the Commercial Tower and, thus, seeks a waiver of the Board’s rule; and

WHEREAS, in support of its waiver request, the applicant submitted documents to establish its efforts to obtain the Commercial Tower’s authorization; and

WHEREAS, specifically, those efforts include: (1) a letter dated February 21, 2014 to representatives of the Commercial Tower explaining the need for the subject application and requesting the execution and return of the Board’s Affidavit of Ownership and Authorization form; (2) an April 7, 2014 email and phone call to the current representative of the Commercial Tower (who replaced the earlier representatives) indicating that a public hearing would be held on April 8, 2014 and stating that absent the receipt of the Affidavit of Ownership and Authorization, the Synagogue would request a waiver of

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the Board's rule; (3) an April 10, 2014 email to the Commercial Tower representative informing him that the Board sought the document by April 15, 2014 and the final hearing was set for April 29, 2014; and (4) April 14 and 15, 2014 follow up emails and letters to the Commercial Tower representative, notifying him of the opportunity to appear and provide testimony at the April 29, 2014 hearing; and

WHEREAS, the applicant notes that the Commercial Tower owner consented to the underlying variance application; and

WHEREAS, further, the applicant notes that only the Synagogue site is subject to the discretionary relief provided by the variance and no construction is proposed for any other tax lot; and

WHEREAS, the Board notes that the Commercial Tower's representative appeared at the April 29, 2014 public hearing and requested additional time to make a submission; and

WHEREAS, the Board granted the Commercial Tower's representative time to make a submission after the hearing and set a new decision date of June 10, 2014; and

WHEREAS, subsequently, the Commercial Tower's representative communicated to Board staff that he would not be making a submission; and

WHEREAS, the Board notes that the Townhouse and the Commercial Tower provided Affidavits of Ownership and Authorization in the context of the underlying variance, but the Hotel did not; and

WHEREAS, accordingly, the applicant sought and obtained a waiver of the Board's rule (formerly § 1-03(g)) for the underlying variance application, based on the evidence it provided and the Board's conclusion about the spirit of its rule being maintained; and

WHEREAS, the Board has determined that the spirit of the Rule, to provide notification to owners on the zoning lot and to require authorization from an owner whose site is the subject of discretionary relief, is maintained, even in the absence of the Commercial Tower's authorization, because (1) the applicant sought authorization from all of the owners, in good faith; (2) all owners were notified of the application and kept apprised of the hearing schedule; (3) only the Synagogue Site was the subject of the requested discretionary relief as no construction was proposed for any of the other tax lots; and (4) pursuant to its Rule § 1-14.2 (*Waiver of the Rules*

of Practice and Procedure), the Board may waive its own rules in appropriate circumstances; and

WHEREAS, the Synagogue's proposal is limited to the enlargement of its Community House, which it owns and operates; and

WHEREAS, accordingly, the request for an extension of term focuses on the Community House Site; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens and amends the resolution, dated February 23, 2010, so that as amended the resolution reads: "to grant an extension of the time to complete construction for a term of four years from the date of this grant, to expire on June 10, 2018; *on condition*:

THAT substantial construction will be completed by June 10, 2018;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

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; 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) and/or configuration(s) not related to the relief granted." (DOB Application No. 120097849)

Adopted by the Board of Standards and Appeals, June 10, 2014.

A true copy of resolution adopted by the Board of Standards and Appeals, June 10, 2014.

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Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

