

16-12-BZ

CEQR #12-BSA-070K

APPLICANT – Eric Palatnik, P.C., for Congregation Adas Yereim, owner.

SUBJECT – Application January 23, 2012 – Special Permit (§73-19) to allow for a school (*Congregation Adas Yereim*) contrary to use regulations (§42-00). M1-2 zoning district.

PREMISES AFFECTED – 184 Nostrand Avenue, northwest corner of Nostrand Avenue and Willoughby Avenue, Block 1753, Lot 42, 43, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez...4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 3, 2012, acting on Department of Buildings Application No. 320416867, reads in pertinent part:

Proposed school building cannot be built in M1-2 zoning district, as per Section 42-00; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site in an M1-2 zoning district, the construction of a three-story Use Group 3 school, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on July 10, 2012, after due notice by publication in the *City Record*, with continued hearings on August 21, 2012, October 16, 2012, January 15, 2013, and April 23, 2013, and then to decision on January 14, 2014; and

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

WHEREAS, Community Board 3, Brooklyn, recommends disapproval of this application, primarily based on concerns regarding traffic; and

WHEREAS, certain members of the surrounding community testified in opposition to the application, expressing particular concerns about its impact on traffic and parking, and about its estimates regarding the number of buses anticipated based on the projected size of the student body; and

WHEREAS, certain members of the surrounding community submitted statements in support of the application; and

WHEREAS, the application is brought on behalf of the Congregation Adas Yereim (the “School”), a not-for-profit girls’ school; and

WHEREAS, the subject site is located at the

northwest intersection of Nostrand Avenue and Willoughby Avenue; it comprises Tax Lots 42 and 53; the site has 119.75 feet of frontage along Willoughby Avenue and 200 feet of frontage along Nostrand Avenue with a lot area of 21,481 sq. ft.; and

WHEREAS, Lot 42 is currently occupied by a one-story commercial building with 20,000 sq. ft. of floor area (1.00 FAR); Lot 53 is vacant; and

WHEREAS, the applicant proposes to demolish the existing building and construct a Use Group 3 school with three stories, 55,509 sq. ft. of floor area (2.58 FAR) and a building height of 48 feet; and

WHEREAS, the applicant notes that on January 13, 2009, under BSA Cal. No. 46-08-BZ, the School obtained a bulk variance to construct a six-story new building with 39,361 sq. ft. of floor area at 491 Bedford Avenue, Brooklyn; however, the building was never constructed and the School has endeavored to find a suitable site for its needs since 2009; and

WHEREAS, the applicant represents that the proposal meets the requirements of the special permit under ZR § 73-19 to permit a school in an M1-2 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant represents that the proposal will meet the School’s programmatic needs; and

WHEREAS, the applicant represents that, currently, the School has 180 pre-kindergarten and kindergarten students, 273 first through eighth grade students, and 91 high school students, for a total of 544 students distributed throughout the School’s existing facilities at 563 Bedford Avenue, 505 Bedford Avenue and 185 Wilson Street; and

WHEREAS, the applicant states that the School’s program includes classroom instruction, a head start program for children from low-income families, social service programs, child care, developmental services and health and nutritional guidance; in addition, the School holds monthly assemblies for drama and song and dance groups, and has daily programs focusing on social skills, competitive Yiddish spelling, sewing, art, home economics, gymnastics and sports; and

WHEREAS, the applicant states that the new building will include an auditorium in the cellar, a lunch room, a kitchen, offices and an auditorium on the first story, classrooms, teachers’ offices and a 2,145 sq. ft. outdoor play area for younger children on the second story, classrooms and teachers’ offices on the third story, and a rooftop activity space for older children; and

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WHEREAS, the applicant states that the new building will serve an estimated 750 students and 130 staff members; and

WHEREAS, the applicant notes that approximately 75 percent of its students live within one mile of the site; and

WHEREAS, the applicant represents that it conducted an approximately six-month search within the neighborhood and surrounding areas with the following site criteria: (1) a site with a lot area of between 7,000 and 20,000 sq. ft.; and (2) a minimum of 50,000 sq. ft. of floor area as-of-right; and

WHEREAS, the applicant states that during its search, it evaluated the feasibility of six nearby sites in Brooklyn: 55 Hope Street, 829 Kent Avenue, 520 Park Avenue, 240-246 Lynch Street, 1005 Bedford Avenue and 135 Middleton Street; the applicant notes that Use Group 3 is permitted as-of-right on each of the sites except 829 Kent Avenue and 520 Park Avenue, which are located in M1-1 zoning districts; and

WHEREAS, the applicant represents that each site was unsuitable for the School, in that: 55 Hope Street was too expensive for the School to purchase; 829 Kent Avenue and 520 Park Avenue had existing buildings that were too small to accommodate the School's programmatic needs; 240-246 Lynch Street had insufficient lot area to accommodate the School's programmatic needs in that it would not have allowed the construction of a building containing all grade levels; 1005 Bedford Street and 135 Middleton Street had similarly insufficient lot area; and 1005 Bedford Street was not for sale but for rent; and

WHEREAS, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as-of-right; and

WHEREAS, the applicant submitted a radius diagram which reflects that the subject site is located directly across the street from an R6 zoning district, less than 100 feet to the east and to the south, where the proposed use would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant states the uses

immediately adjacent to the site are: a Use Group 6 office building, two low-rise residential buildings and the neighborhood's only true manufacturing building, a metal stamping operation, at 151 Sandford Street; and

WHEREAS, the applicant notes that although the site is zoned M1-2, the surrounding area is predominantly characterized by brownstone-style townhouses, mixed-use residential and commercial buildings, schools and other community facilities; and

WHEREAS, during the hearing process, the Board raised concerns about traffic, noise attenuation and air quality due to the proximity of manufacturing uses; and

WHEREAS, in response, the applicant submitted the results of a traffic study, which concluded that because the site and approximately 67 percent of the School's students live on the south side of the Brooklyn-Queens Expressway ("BQE"), buses will continue to operate along the same streets and avenues as they currently do (while transporting the students from south of the BQE to the School's three existing sites, which are north of the BQE); and

WHEREAS, further, the applicant represents that bus drivers will not idle in front of the site except during loading and unloading and will park in the facility located at 60 Nostrand Avenue; and

WHEREAS, as to noise, the applicant also represents that an eight-foot wall will be constructed between the playground and the chiller at 151 Sandford Street in order maintain acceptable outdoor noise levels; and

WHEREAS, the applicant also represents that the exterior of the building will be constructed of masonry walls and double-paned glass, which will adequately insulate the students from any noise created by the surrounding area, including the existing noises emanating from 151 Sandford Street, and any anticipated traffic noises due to the School's busing; such materials will provide at least 31 dBA of attenuation and interior noise levels will be at 45 dBA or less; and

WHEREAS, as to air quality, the applicant's consultant concluded that there are no known air quality, air toxic or HVAC impacts and no major sources of such impacts within 1,000 feet of the site; and

WHEREAS, the Board finds that the conditions surrounding the site and the building's construction will adequately separate the proposed school from noise, traffic and other adverse effects of any of the uses within the surrounding M1-2 zoning district; thus, the Board finds that the requirements of ZR § 73-19(c) are met; and

WHEREAS, ZR § 73-19(d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and

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from the school; and

WHEREAS, the applicant represents that the site can be controlled so as to protect children traveling to and from the School, in that: (1) there will be safety personnel on site to assist students when they arrive and depart; (2) two teachers will coordinate unloading and loading of each elementary school bus and three teachers will coordinate each pre-school bus; (3) there will be sufficient space in front of the School for four buses to queue and unload along Nostrand Avenue; and (4) the removal of parking from Nostrand Avenue to accommodate an express bus service will enhance safety by creating a no-traffic zone; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation (“DOT”); and

WHEREAS, by letter dated March 1, 2012, DOT states that it has no objection to the proposal and will, upon approval of the application, prepare a safe route to school map with signs and marking; and

WHEREAS, the Board finds that the above-mentioned measures will control traffic so as to protect children going to and from the proposed school; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; as noted above, the School’s impact on traffic will be minimal and will be mitigated by: (1) the creation of an express bus service along Nostrand Avenue, which will eliminate street parking and facilitate improved bus service, loading and unloading; and (2) the School’s representation that buses will park offsite, rather than idling, when not they are not engaged in loading and unloading students; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) CEQR No. 12BSA070K, dated January 9, 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, air quality and noise impacts; and

WHEREAS, DEP reviewed and accepted the October 2012 Remedial Action Plan and the October 2012 site-specific 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, DEP reviewed the applicant’s stationary source air quality screening analysis and determined that no significant stationary source air quality impacts to the proposed project are anticipated with respect to existing HVAC sources, future cogeneration units on 156 Sandford Street, or air toxics emissions at nearby buildings; and

WHEREAS, DEP reviewed the results of noise monitoring and the design measures proposed by the consultant in the October 2013 noise study, including an alternate means of ventilation to be provided to maintain a closed window condition, and concurred they would provide sufficient window-wall attenuation levels to achieve an interior noise level of 45 dBA or less; 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, with conditions as stipulated below, 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 §§ 73-19 and 73-03 and grants a special permit, to allow, on a site in an M1-2 zoning district, the construction of a three-story Use Group 3 school, contrary to ZR § 42-00; *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 January 10, 2014” – (11) sheets and *on further condition*:

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;

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THAT the school will be limited to 55,509 sq. ft. of floor area (2.58 FAR) and a building height of 48 feet;

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

THAT interior noise levels will be maintained at 45 dBA or below within the School in accordance with the noise attenuation notes on the BSA-approved plans;

THAT bus drivers will not idle in front of the building, the School or the site;

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70;

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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 14, 2014.

A true copy of resolution adopted by the Board of Standards and Appeals, January 14, 2014.

Printed in Bulletin Nos. 1-3, Vol. 99.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

