

**315-06-BZ**

**CEQR #07-BSA-042K**

APPLICANT – Eric Palatnik, P.C., for Merkaz, The Center, Inc., owner.

SUBJECT – Application December 6, 2006 – Variance (§72-21) to permit the proposed three-story religious-based pre-school, which will include an accessory synagogue. The premises is located within two zoning districts, an R5B and R2, with the vast majority (95%) resting within the R5B district. The proposal is contrary to §§24-11, 24-34, 24-35, 24-36 and 24-521. PREMISES AFFECTED – 1739 Ocean Avenue, between Avenues L and M, Block 7638, Lot 24, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

**APPEARANCES –**

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD –** Application granted on condition.

**THE VOTE TO GRANT –**

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4  
Negative:.....0  
Abstain: Commissioner Montanez.....1

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 24, 2006, acting on Department of Buildings Application No. 301914542, reads, in pertinent part:

- “Proposed development does not comply with:
- ZR 24-34 Front Yard
- ZR 24-35 Side Yard
- ZR 24-36 Rear Yard
- ZR 24-11 Floor Area Ratio
- ZR 24-11 Lot Coverage;
- ZR-24-521 Height and Setback;” and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site partially within an R5B zoning district and partially within an R2 zoning district, the construction of a three-story and cellar synagogue and accessory religious-based preschool (Use Group 4), which does not comply with the requirements for front, side and rear yards, floor area ratio, lot coverage, and height and setback, contrary to ZR §§ 24-11, 24-34, 24-35, 24-36, 24-511, and 24-521; and

WHEREAS, the application is brought on behalf of Merkaz – The Center, Inc. (“Merkaz”) a nonprofit religious institution; and

WHEREAS, a public hearing was held on this application on April 17, 2007 after due notice by publication in the *City Record*, with continued hearings on June 19, 2007, August 7, 2007, September 25, 2007, November 20, 2007 and December 11, 2007, and then to decision on January 15, 2008; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson, and Commissioner

Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends disapproval of this application; and

WHEREAS, residents of the surrounding community provided testimony in opposition to the proposal, citing concerns with impact on neighborhood character; and

WHEREAS, City Council Member Bill deBlasio provided testimony in support of the application; and

WHEREAS, certain congregation members provided testimony in support of the application; and

WHEREAS, the subject site is located on the east side of Ocean Avenue, between Avenue L and Avenue M in the Midwood section of Brooklyn and is currently vacant; and

WHEREAS, the subject lot is approximately 3,630 sq. ft. and is located partially within an R5B zoning district and partially within an R2 zoning district; and

WHEREAS, as originally proposed, the three-story and cellar synagogue with accessory preschool (UG 4) was to have the following parameters: 10,255 sq. ft. of floor area and an FAR of 2.825, a lot coverage of greater than 95.6 percent, a wall height of 36’-3”, a front yard of 3’-6”, and no rear or side yards; and

WHEREAS, during the hearing process the proposal was substantially modified; the current proposal provides for: floor area of 7,373 sq. ft., an FAR of 2.0; a lot coverage ratio of 82 percent, a wall height of 34’-6”, a front yard of 5’-0”, a rear yard of 15’-0” up to the second story and one side yard of 2’-0” on the northern lot line; and

WHEREAS, the zoning district regulations limit lot coverage to 56 percent and requires a front yard of 10’-0”, a rear yard of 30’-0” and two side yards with minimum widths of 8’-0” each; and

WHEREAS, the proposed building will have the following program: (1) a playroom/gym, kitchen, mechanical room and storage in the cellar; (2) synagogue space and rabbi’s office on the first floor; (3) nursery and pre-school classrooms on the second and third floors; and (4) outdoor play space on the roof; and

WHEREAS, the first floor will have 2,790 sq. ft. of floor area, the second floor will have 2,970 sq. ft. of floor area and the third floor will have 1,612 sq. ft. of floor area, for a total of 7,323 sq. ft. of floor area and an FAR of approximately 2.0; and

WHEREAS, the maximum permitted floor area is 7,095 sq. ft. and the maximum FAR for community facility buildings or buildings used partly for community facility uses is 1.9; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of Merkaz, which includes its mission to provide a synagogue for its new congregation, a pre-school

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school for religious and secular education to benefit children in the surrounding Orthodox Jewish community, and adult education classes; and

WHEREAS, the applicant represents that Merkaz has a congregation of approximately 20 families and has no formal place of worship; and

WHEREAS, the proposed building will also allow Merkaz to offer religious-based education for up to 80 children aged two to five; and

WHEREAS, the Board acknowledges that Merkaz, as a religious and educational 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 entitled to deference 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, religious educational institutions specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is entitled to deference 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, religious institutions are entitled to locate on their property facilities for other uses that are reasonably associated with their overall purposes and a day care center/ preschool has been found to constitute such a use. See Uni. Univ. Church v. Shorten, 63 Misc.2d 978, 982 (Sup. Ct. 1970); and

WHEREAS, however, the applicant also presents the following site conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations as to lot coverage and yards: the site has a width of 33'-0" and if both the required 8'-0" side yards were provided, the complying building would have a width of approximately 17'-0"; and

WHEREAS, the applicant notes that this scenario, would result in a complying building which would be too narrow to accommodate the congregation; the resultant floor plates would be small and inefficient with a significant portion of both space and floor area allocated toward circulation space, egress, and exits; and

WHEREAS, the applicant states that the required floor area cannot be accommodated within the as-of-right

lot coverage and yard parameters and allow for efficient floor plates that will accommodate the Merkaz's programmatic needs, thus necessitating the requested waivers of these provisions; and

WHEREAS, the applicant argues that the requested yard, FAR and lot coverage waivers would enable Merkaz to develop the site with a building with viable floor plates; and

WHEREAS, the applicant states that in addition to facilitating a uniform floor plate, the waivers also allow the building's height to fit into the context of the neighborhood; and

WHEREAS, in response to the request of the Board, the applicant has submitted a detailed analysis of the program needs of Merkaz on a space-by-space and time-allocated basis which confirms that the daily simultaneous use of the overwhelming majority of the spaces requires the proposed floor area and layout and associated waivers; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical conditions, when considered in conjunction with the programmatic needs of Merkaz, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since Merkaz is a non-profit religious institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, 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, specifically, the applicant represents that the adjacent site to the north is developed with a six-story multiple-dwelling; and

WHEREAS, the applicant further represents that the surrounding area is developed with buildings comparable in size to the proposed building; and

WHEREAS, the applicant submitted photographic documentation in support of the proposed building's consistency with the character of the neighborhood; and

WHEREAS, during the hearing process, the proposal was substantially modified to reduce the height, floor area and lot coverage, to provide a 2'-0" side yard and a larger front yard, and a 15'-0" rear yard, which increases above the second floor to a setback of 47'-0"; and

WHEREAS, as a community facility, Merkaz would be permitted to build to the rear lot line up to a height of 23 feet; and

WHEREAS, the Board agrees that the proposed three-story with cellar building is compatible with the surrounding residential area with respect to both use

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and bulk; and

WHEREAS, concerns were raised by the Fire Department concerning the lack of a secondary means of egress from the site; and

WHEREAS, in response the applicant stated that a secondary means of egress would be provided by the adjacent property; and

WHEREAS, the Board directed the applicant to maintain an easement guaranteeing such egress; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood or 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 is inherent in the shape of the site, which renders it unsuitable for as-of-right development; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as originally proposed, the building was to have 10,255 sq. ft. of floor area and an FAR of 2.825, a lot coverage of greater than 95.6 percent, a wall height of 36'-3", a front yard of 3'-6", and no rear or side yards; and

WHEREAS, in response to concerns raised by the Board, the applicant revised the proposal to provide for 7,373 sq. ft. of floor area and an FAR of 2.0, lot coverage of 82 percent, a wall height of 34'-6", a front yard of 5'-0", a rear yard of 15'-0", and one side yard of 2'-0" on the northern lot line; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow Merkaz to fulfill 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 Sections 617.6(h) and 617.2(h) of 6 NYCRR; 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. 07BSA020K, dated November 6, 2006; 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 Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: November 6, 2006 EAS and the August 29, 2006 Phase I Environmental Site Assessment Report;

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials and Air Quality; and

WHEREAS, a DEP Restrictive Declaration (the "DEP RD") was executed on March 6, 2007 and submitted for proof of recording on March 21, 2007 and requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the DEP RD and the applicant's agreement to the conditions noted below; 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, 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 application under ZR § 72-21 to permit, within a site located partially within an R5B zoning district and partially within an R2 zoning district, the construction of a three-story and cellar synagogue and accessory religious-based preschool (Use Group 4), which does not comply with the requirements for front, side and rear yards, floor area ratio, and lot coverage, contrary to ZR §§ 24-11, 24-34, 24-35, 24-36, 24-511, and 24-521, *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 November 29, 2007" – (15) sheets; and *on further condition*:

THAT, the proposed synagogue/accessory preschool shall have a floor area of 7,373 sq. ft., an FAR of 2.0, lot coverage of 82 percent, a 2'-0" side yard along the northern lot line, a front yard of 5'-0", and a rear yard of 15'-0";

THAT any change in ownership or use of the building shall be reviewed and approved by the Board;

THAT this approval is limited to the relief granted

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by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

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

THAT, prior to the issuance of the Certificate of Occupancy, an easement to provide a secondary means of egress to the site be recorded against the title of the adjacent property located at Block 7638, Lot 22;

THAT the aforementioned condition be noted on the approved plans and on the Certificate of Occupancy; 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, January 15, 2008.

**A true copy of resolution adopted by the Board of Standards and Appeals, January 15, 2008.  
Printed in Bulletin No. 3, Vol. 93.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**