

**105-12-BZ**

**CEQR #12-BSA-118X**

APPLICANT – Zaskorski & Notaro Architects, for Alan Mucatel, owner.

SUBJECT – Application April 17, 2012 – Variance (§72-21) to permit the installation of a new elevator within an existing school (*Katharine Dodge Brownell Preschool*), contrary to front yard (§24-33) and lot coverage (§24-11) regulations. R5 zoning district.

PREMISES AFFECTED – 450 Castle Hill Avenue, southeast corner of Castle Hill and Lacombe Avenues, Block 3511, Lot 30, Borough of Bronx.

**COMMUNITY BOARD #9BX**

**APPEARANCES –**

For Applicant: Carlo Zaskorski.

**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 Montanez .....5

Negative:.....0

**THE RESOLUTION –**

WHEREAS, the decision of the Queens Borough Superintendent, dated May 29, 2012, acting on Department of Buildings Application No. 220168618, reads, in pertinent part:

    ZR 24-33 HPC elevator is not permitted obstruction in required front yard

    ZR 24-11 Increase to non-compliant lot coverage not permitted; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R5 zoning district, the installation of an elevator in an existing building occupied by a school (UG 3), which does not comply with the zoning regulations for front yards or lot coverage, contrary to ZR §§ 24-33 and 24-11; and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in the *City Record*, and then to decision on August 21, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, this application is brought on behalf of Leake and Watts Services, Inc. (“Leake and Watts”), a not-for-profit organization which provides services in child welfare, early childhood and special education, and for people with developmental disabilities; and

WHEREAS, the applicant is the parent company of the Katherine Dodge Brownell Pre-School (the “School”), which occupies the basement and first floor of the building, and Development Disabilities at Leake & Watts, which occupies the second floor; and

WHEREAS, the site is located on the northeast corner of Lacombe Avenue and Castle Hill Avenue, within an R5 zoning district; and

WHEREAS, the site has a rectangular shape with 108 feet of frontage on Lacombe Avenue, 100 feet of frontage on Castle Hill Avenue, and a total lot area of 10,833 sq. ft.; and

WHEREAS, the site is occupied by a three-story community facility building with 21,340 sq. ft. of floor area (1.97 FAR) (the “Building”); and

WHEREAS, the Building does not contain an elevator; and

WHEREAS, the applicant proposes to install an elevator to provide ADA access from the basement to the first, second and roof levels of the Building; and

WHEREAS, the applicant represents that the School is a permitted use in the underlying district; however, the proposed expansion requires a bulk variance because it does not comply with the front yard requirements and increases the degree of non-compliance with the lot coverage requirements; and

WHEREAS, specifically, the addition of the proposed elevator results in the following non-compliances: an approximately 8’-0” by 11’-0” protrusion into the front yard along Lacombe Avenue, creating a front yard with a depth of approximately 2’-0” along that portion of Lacombe Avenue (a front yard with a minimum depth of 10’-0” is required); and an increase in the lot coverage on the site from 67 percent to 68 percent (the maximum permitted lot coverage is 60 percent); and

WHEREAS, because the addition of the proposed elevator does not comply with the underlying bulk regulations in the R5 district, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant states that the programs located within the Building are targeted to children and adults with mental and physical disabilities and that, as a result, an elevator for ADA access is required on all floors to fulfill their mission; and

WHEREAS, the applicant represents that the front yard waiver is necessary to provide an elevator which can be constructed without discontinuing the operation of the facility; and

WHEREAS, the applicant states that a complying development with an elevator would require additional vestibules at each level which would result in a loss of programmatic space, and require modification of the Building’s existing joists and framing; and

WHEREAS, by letter dated September 1, 2011, New York City Councilmember Annabel Palma states that \$895,000 has been secured to support the installation of the elevator and new classrooms at the School; and

WHEREAS, the applicant represents that the Brownell School currently serves 90 children with special education needs and the Development Disabilities at Leake & Watts program serves 107 individuals and children; and

WHEREAS, at project completion, the Brownell School will serve 140 children with special education needs; and

WHEREAS, the applicant represents that the School is a NYS Department of Education approved preschool special education program under contract with the NYC Department of Education to provide special education and universal prekindergarten services; and

WHEREAS, the Board acknowledges that the School, as an 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 Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational

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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, the Board finds that the School's programmatic need to provide services for children and adults with mental and physical disabilities is legitimate, and agrees that the proposed enlargement is necessary to address its needs; and

WHEREAS, accordingly, based upon the above, the Board finds that the programmatic needs of the School 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 School is a non-profit educational institution, and the development will be in furtherance of its not-for-profit mission; 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, the applicant notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant represents that the expansion of the School into the front yard will not have an adverse impact on the surrounding neighborhood; and

WHEREAS, the applicant provided a front yard diagram indicating that the front yard of the Building is compatible with the front yards of the homes in the surrounding neighborhood, which have yards ranging in depth between ten feet and 65 feet; and

WHEREAS, the applicant states that the elevator will encroach into the required 10'-0" front yard by 8'-0" feet, resulting in a front yard with a depth of 2'-0" for a distance of only 11'-0" out of the 208'-0" of street frontage on the site; and

WHEREAS, the Board asked for landscaping and planting to be provided in front of the Building; and

WHEREAS, the applicant submitted a plan to enhance the site's front yard with landscaping; and

WHEREAS, accordingly, the Board finds that this action will not 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 school could occur given the existing conditions; 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 represents that the requested front yard and open space waiver is the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School to fulfill its programmatic needs; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R5 zoning district, on a site within an R5 zoning district, the installation of an elevator in an existing building occupied by a school (UG 3), which does not comply with the zoning regulations for front yards or lot coverage, contrary to ZR §§ 24-33 and 24-11, *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 August 6, 2012," twelve- (12) sheets; and *on further condition*:

THAT the parameters of the Building will be: a floor area of 21,198 sq. ft. (1.96 FAR); a lot coverage of 68 percent; and a front yard with a minimum depth of approximately 2'-0" along Lacombe Avenue, as illustrated on the approved plans;

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

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

THAT construction shall 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, August 21, 2012.

**A true copy of resolution adopted by the Board of Standards and Appeals, August 21, 2012.**  
**Printed in Bulletin No. 35, Vol. 97.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**