

2016-4152-BZ

CEQR #15-BSA-028K

APPLICANT – Law Office of Jay Goldstein, for Midyan Gate Realty No. 3 LLC, owner.

SUBJECT – Application March 28, 2016 – Special Permit (§73-19) to allow a school (UG 3) (*Yeshiva Darche Eres*) to occupy a portion of the first floor and the entirety of the second, third and fourth floors of the Premises, contrary to use regulation (§42-10). M1-1 (OP) zoning district.

PREMISES AFFECTED – 325 Avenue Y, Block 7192, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 14, 2016, acting on Alteration Application No. 321312263 reads in pertinent part:

“Proposed use group 3 school is not permitted in a Manufacturing Zoning District, as per ZR 42-10”; and

WHEREAS, this is an application, under ZR §§ 73-19 and 73-03, to legalize the operation of a school (Use Group 3) within an M1-1 zoning district and the Special Ocean Parkway District, contrary to ZR § 42-10; and

WHEREAS, the application is filed on behalf of Yehsivat Darche Eres, a non-profit religious corporation (the “School”); and

WHEREAS, a public hearing was held on this application on September 13, 2016, after due notice by publication in *The City Record*, with continued hearings on November 15, 2016, January 31, 2017, and March 7, 2017, and then to decision on April 4, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Montanez and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application, but noted board members’ concerns regarding traffic during drop off and pick up times; and

WHEREAS, the subject site is located on the north side of Avenue Y, between Shell Road and West 3rd Street, within an M1-1 zoning district and the Special Ocean Parkway District, in Brooklyn; and

WHEREAS, the subject site has approximately 240 feet of frontage along Avenue Y, 110 feet of depth, 25,800 square feet of lot area and is occupied by a four-story, with cellar, mixed- use commercial and community facility building and accessory attendant

parking for 40 cars; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 29, 2014, when, under BSA Calendar Number 311-13-BZ, the Board granted an application to permit, under ZR § 73-36, the operation of a physical culture establishment (“PCE”) for a term of ten (10) years, expiring October 1, 2023, on condition that parking for all uses within the building be as reviewed and approved by DOB, there be no change in ownership or operating control of the PCE without prior Board approval, Local Law 58/87 compliance be as reviewed and approved by DOB and fire safety measures be installed and maintained as shown on the approved plans; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR §§ 73-19 and 73-03, to legalize the existing school on a portion of the first floor and the entirety of the second through fourth floors of the existing four-story building, which has operated at the site since September 2016; and

WHEREAS, ZR § 73-19 provides as follows:

In C8 or M1 Districts, the Board of Standards and Appeals may permit *schools* which have no *residential* accommodations except *accessory* accommodations for a caretaker, provided that the following findings are made:

- (a) that within the neighborhood to be served by the proposed *school* there is no practical possibility of obtaining a site of adequate size located in a district wherein it is permitted as of right, because appropriate sites in such districts are occupied by substantial improvements;
- (b) that such *school* is located not more than 400 feet from the boundary of a district wherein such *school* is permitted as-of-right;
- (c) that an adequate separation from noise, traffic and other adverse effects of the surrounding non-*Residential Districts* is achieved through the use of sound-attenuating exterior wall and window construction or by the provision of adequate open areas along *lot lines* of the *zoning lot*; and
- (d) that the movement of traffic through the *streets* on which the *school* is located can be controlled so as to protect children going to and from the *school*. The Board shall refer the application to the Department of Traffic for its report with respect to vehicular hazards to the safety of children within the block and in the immediate vicinity of the proposed site.

2016-4152-BZ
CEQR #15-BSA-028K

The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, as a threshold matter, the Board notes that the site is located in a zoning district in which a special permit pursuant to ZR § 73-19 is available and the applicant represents that the School meets the ZR § 12-10 definition of “school” that the subject special permit is intended to permit because it provides full-time day instruction and a course of study that meets the requirements of Section 3204, 3205 and 3210 of the New York State Education Law; and

WHEREAS, the School was founded in 2011, has a total enrollment of 867 students of ages 2-17, currently operates its pre-school, boys’ elementary school and boys’ high school at other locations and its girls’ elementary school at the subject site; and

WHEREAS, at full capacity, the subject building is anticipated to accommodate 631 students, in day care through 6th grade, in 33 classrooms along with accessory rooms including an art and music room, a multi-purpose room, a library, learning center computer room, science lab and administrative offices; and

WHEREAS, with regard to ZR § 73-19(a), the applicant submits that there is no practical possibility of obtaining a site of adequate size in the neighborhood to be served because the School’s programmatic needs require, at a minimum, 40,000 square feet of floor space; and

WHEREAS, the applicant provided a survey of sites within the area bound by Avenue S, Avenue Y, Coney Island Avenue and McDonald Avenue, the center point of their student catchment area, located within adjacent R3-1, R4, R5 or R6A zoning districts where a UG 3 school would be permitted as-of-right, able to be developed with a building containing 40,000 square feet of floor space and not occupied with substantial improvements (i.e. with buildings having a floor area ratio (“FAR”) of 1.0 or less); and

WHEREAS, the submitted survey represents that, within an adjacent R6A zoning district, where the maximum FAR for a community facilities is 3.0, one lot having 13,000 square feet of lot area or more exists, but the existing building, having 0.89 FAR, is owner-occupied; within the adjacent R3-1 zoning district, in which the maximum FAR for a community facility is 1.0, no lots having 40,000 square feet of lot area or more exist; there is one site located partially within an adjacent R3-1 zoning district and partially located within an adjacent R5 zoning district having a lot area of more than 40,000 square feet, but such lot is occupied by an active synagogue; within an adjacent R5 zoning district, where the maximum FAR for a community facility is 2.0, there are no lots having a lot area of 20,000 square feet or more without substantial

improvements; and within an adjacent R4 zoning district, where the maximum FAR for a community facility is 2.0, there are five lots having 20,000 square feet of lot area or more, but three are owner-occupied, the fourth is park occupied by athletic fields and the fifth is partially located within a C8-1 zoning district where a UG 3 school is not permitted as-of-right; and

WHEREAS, in light of the foregoing, the Board finds that the requirement of ZR § 73-19(a) has been met; and

WHEREAS, as for the finding required under ZR § 73-19(b), the applicant states that the eastern lot line of the subject site is located on the district boundary between an M1-1 and an R4 zoning district, where the School would be permitted as-of right, and that the site is within 400 feet of such R4 zoning district; and

WHEREAS, the applicant also submitted to the Board a radius map showing that the subject site is less than 400 feet from an R4 zoning district; and

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

WHEREAS, in response to the findings set forth in ZR § 73-19(c), the applicant has provided the Board with a noise study that examined both mobile and stationary noise sources and concluded that noise levels at the site fall within an acceptable range; and

WHEREAS, review of the noise study by the New York City Department of Environmental Protection (“DEP”) concluded that the building must provide composite window/wall noise attenuation of 33 dBA and an alternative means of ventilation must be incorporated into the building design and construction; and

WHEREAS, the Board adopts the recommendations of DEP with regards to noise and finds that, with compliance of those recommendations, that the requirements of ZR § 73-19(c) have been met; and

WHEREAS, with regards to meeting the requirements of ZR § 73-19(d), the applicant, in consultation with the New York City Department of Transportation (“DOT”) proposes the following: changes to the traffic signal timing at the intersection of 86th Street Shell Road and Avenue X and the intersection of Shell Road and Avenue Y; an increase in width to a nearby traffic lane; the creation of a 280-foot long “no standing” zone along the north side of Avenue Y on school days from 7:00 a.m. to 10:00 a.m. and 3 p.m. to 6 p.m.; funding a Traffic Enforcement Agent to help facilitate traffic movements near the school during peak periods; placement of two school crossing guards at the intersections of Shell Road and Avenue Y and at West 3rd Street and Avenue Y; arrival of buses from the east into the “no standing” zone; using the existing parking lot for the drop off and pick up of children by private transport; and prohibiting bus parking in front of the site; and

2016-4152-BZ
CEQR #15-BSA-028K

WHEREAS, the Board additionally referred the application to the School Safety Engineering Office of DOT, which, by letter dated February 1, 2017, states that the proposed changes to the traffic signal timing, lane restriping, modifications to the parking regulations and placement of a Traffic Enforcement Agent with two school crossing guards appear reasonable and feasible; and

WHEREAS, accordingly, 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 notes that in addition to the foregoing, its determination herein is also subject to and guided by, among other things, ZR §§ 73-01 through 73-04; and

WHEREAS, the applicant represents that any hazards or disadvantages to the community at large are outweighed by the advantages to be derived by the grant of this special permit; and

WHEREAS, at hearing, the Board expressed concerns regarding the operational plan for dropping off and picking up students, parking for the PCE currently located in the subject building as well as buses utilized for the School, the number of bathrooms provided, trash storage and HVAC noise protection; and

WHEREAS, in response, the applicant represents, and DOT confirms, that a “no standing” zone was obtained in front of the School; that the School will employ staff members and security guards during hours of student arrival and departure to ensure the safe and efficient transfer of students from buses and private transport to the building; that spaces in the existing parking lot will be made available for drop-offs and pickups from private transport; that the PCE currently leases 30 parking spaces at 599 Avenue Z, one block southeast of the subject site, on a month-to-month basis, thereby allowing the School’s proposed use of the parking lot for private transport pickup and drop-off; and provided notes on the drawings that the bathrooms are compliant with applicable codes, refrigerated and dry trash storage will be located in the cellar and vinyl fencing with sound attenuation will be installed around the HVAC units located on the roof; and

WHEREAS, the Board notes that it takes no position as to the legal validity or compliance, with zoning regulations or other relevant law under DOB’s jurisdiction, of the PCE’s leasing of off-site parking spaces and, at hearing, expressed doubts that such an arrangement is necessary because the PCE and the School have different hours of peak use of the parking lot; and

WHEREAS, by letter dated August 25, 2016, the Fire Department states that the building is fully

protected by existing sprinklers, that the School will include an approved interior fire alarm and that all egress locations, egress paths, egress travel distances and roof access are acceptable; and

WHEREAS, the Board finds that any adverse effects of the School on the neighborhood will be minimized by appropriate conditions; and

WHEREAS, the applicant represents that the subject special permit will not interfere with any public improvement project; and

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR §§ 73-19 and 73-03 have been met; 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 CEQR No. 15BSA028K, dated July 11, 2014 and the Technical Memorandum submitted January 20, 2017; and

WHEREAS, the EAS and Technical Memorandum document that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by letter dated February 1, 2017, DOT states that the proposed changes to the traffic signal timing, lane restriping, modifications to the parking regulations and placement of a Traffic Enforcement Agent with two school crossing guards appear reasonable and feasible; and

WHEREAS, DEP reviewed the application with regards to air quality, hazardous material and noise; by letter dated March 8, 2016, DEP states that no significant air quality impact from the proposal are anticipated; by letter dated February 10, 2017, DEP states that it finds the results of the indoor quality survey provided by the applicant to be acceptable; and by letter dated March 30, 2017, DEP concludes that the provision of a composite window and wall noise attenuation of 33 dBA and an alternate means of ventilation incorporated into the building design and construction will be efficient to address the noise effects of the surrounding area and that, based on the number of school buses, vans and cars generated by the proposal, the proposal would not cause a significant mobile source noise impact; and

2016-4152-BZ

CEQR #15-BSA-028K

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 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 to legalize the operation of a school (Use Group 3) within a portion of the first floor and the entirety of the second, third and fourth floors of the existing four-story building, located within an M1-1 zoning district and the Special Ocean Parkway District, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received April 3, 2017"—Twelve (12) sheets; and *on further condition*:

THAT buses shall arrive from the east and pull into the no-standing zone;

THAT a "no standing" zone shall be maintained in front of the School;

THAT the opposite side of the street shall be maintained opened for businesses;

THAT a Traffic Enforcement Agent and two school crossing guards shall be employed to facilitate traffic movements and to improve pedestrian and vehicular safety and operation associated with the subject school;

THAT no parking of buses shall be permitted in front of the site;

THAT the maximum student population of the subject school shall be 631;

THAT the trash shall be stored inside the building interior at all times prior to pick up;

THAT the existing physical culture establishment at the site shall be permitted to use the on-site parking lot when the School is not in session;

THAT a composite window/wall noise attenuation of 33 dBA shall be provided in the existing building;

THAT an alternate means of ventilation shall be incorporated into the building design and construction;

THAT the above condition shall be stated on the

certificate of occupancy;

THAT an amended certificate of occupancy shall be obtained within one (1) year, by April 4, 2018;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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 plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 4, 2017.

A true copy of resolution adopted by the Board of Standards and Appeals, April 4, 2017.

Printed in Bulletin No. 15, Vol. 102.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

