

**224-98-A**

APPLICANT - Kurzman Karelson and Frank, LLP, for Save Our Neighborhood Association, owner; The Berkeley Carroll School.

SUBJECT - Application May 26, 1998 - an appeal challenging the Department of Buildings determination dated April 24, 1998, for its refusal to issue additional objections for subject premises (school), on the basis that the proposed addition in the rear yard equivalent is a single story rather than a multi-story, the disputed "mezzanine level" running along the property's east wall is not a story, and the play equipment to be located on the roof does not represent an additional unpermitted obstruction.

PREMISES AFFECTED - 754/68 President Street a/k/a 701 Carroll Street, south side, 192.6' east of Sixth Avenue, Block 960, Lots 62 and 16, Borough of Brooklyn.

**APPEARANCES -**

For Opposition: Gary Tarnoff.

For Administration: Kristine Hooks, Department of Buildings.

**ACTION OF THE BOARD -** Appeal Denied.

**THE VOTE TO GRANT -**

Affirmative: .....0

Negative: Chairman Chin, Vice-Chair Bonfilio, Commissioner Korbey and Commissioner Joseph.....4

**THE RESOLUTION -**

WHEREAS, the letter from the Brooklyn Commissioner of Buildings dated April 24, 1998, reads, in pertinent part:

"This is in response to your letters of February 11, 1998 and April 9, 1998 regarding the above application. After having reviewed your submission and that of Rosenbaum (sic) & Colin, dated April 15, 1998, I find no basis for additional objections.

There is no merit to your claim that the proposed addition in the rear yard equivalent is a multi-story rather than a single-story structure and thus violates Section 24-33 of the Zoning Resolution. The disputed "mezzanine level" running along the property's east wall is not a "story", as it covers a passageway outside the building. Moreover, the athletic facility is part of the Berkeley Carroll School and is a permitted use in this zoning district. Finally, the play equipment to be located on the roof does not represent an additional unpermitted obstruction." ; and

WHEREAS, a public hearing was held on this application on July 21, 1998, after due notice by publication in the Bulletin and then laid over to August 11, 1998, for decision; and

WHEREAS, the site is located within an R6 Zoning District and covers one through lot having frontage on both Carroll and President Streets; and

WHEREAS, the site has an area of area of 14,000 square feet and is presently occupied by a three story school building (Use Group 3) which is owned and operated by the Berkeley Carroll School; and

WHEREAS, on June 30, 1998 under Calendar Number 220-97-BZ a variance was granted permitting the proposed erection of an accessory athletic facility at the site; and

WHEREAS, the issues before the board are 1) whether the proposed building to be erected at the site is a permitted rear-yard obstruction, 2) whether use of the proposed building as an athletic facility is a proper accessory use on the said zoning lot, and finally 3) whether the playground equipment to be located on the roof of the proposed building is an impermissible rear-yard obstruction; and

WHEREAS, Z.R. §24-33 states in part that " in all *Residence Districts*, the following shall not be considered obstructions when located within a required *yard* or *rear yard equivalent*: . . . (b) any *building* or any portion of a *building* used for *community facility uses* . . . provided that the height of such *building* shall not exceed one *story*, nor in any event be more than 23 feet above *curb level*" (emphasis in original); and

WHEREAS, Administrative Code §27-232 defines a story as that portion of a building between a floor level and the next higher floor level or roof above; and

WHEREAS, Z.R. §12-10 states in part that a story is that part of a building between the surface of a floor and the ceiling immediately above; and

WHEREAS, Administrative Code §27-232 defines mezzanine as an intermediate floor between the floor and the ceiling of any space; and

WHEREAS, Z.R. §12-10 states in part that the floor area of a building shall not include floor space in open or roofed terraces, bridges, breezeways or porches, provided that not more than 50 percent of the perimeter of such terrace, breezeway or porch is enclosed and provided that a parapet not higher than three feet, eight inches, or a railing not less than 50 percent open and not higher than four feet, six inches shall not constitute an enclosure ; and

WHEREAS, evidence in the record indicates that within the proposed addition to the subject premises, the requisite rear yard equivalent will be occupied by a one story structure having a height of less than 23 feet; and

WHEREAS, evidence in the record further indicates that the mezzanine referred to in the approved plans is in fact an elevated space located adjacent to the main playing area of the gymnasium and does not intrude into the larger space; and

WHEREAS, the said elevated space does not lie between the floor and the ceiling of the gymnasium but is located over an exterior passageway, which is opened at both ends and opened along the lot line of the subject premises; and

WHEREAS, as less than 50 percent of the perimeter of the said passageway will be enclosed, it cannot be considered floor area; and

WHEREAS, based on the foregoing the Board finds that the exterior space at issue does not constitute a separate floor, mezzanine, or floor area; and

WHEREAS, therefore the Board finds that the proposed rear yard obstruction constitutes only one story meeting the requirements of Z.R. §24-33; and

WHEREAS, Z.R. §12-10 defines Accessory Use (in part) a use conducted on the same zoning lot as the principal use to which it is related, is a use which is clearly incidental to and customarily found in connection with such principal use, and is either in the same ownership as such principal use or is operated and maintained on the same zoning lot substantially for the benefit of or the convenience of the occupants of the principal use; and

WHEREAS, the proposed athletic facility is part of the Berkeley Carroll School which is located on the Zoning Lot; and

WHEREAS, the proposed facility will be used for physical education, a use which is customarily part of the curriculum of an educational institution and is in fact mandated in New York State; and

WHEREAS, the proposed athletic facility is owned by the Berkeley Carroll School and will be used for the convenience and benefit of the students attending classes at the site; and

WHEREAS, based on the foregoing the Board finds that the proposed facility is a proper Accessory Use to the principal educational use taking place on the subject zoning lot; and

WHEREAS, Z.R. §24-33 allows certain obstructions in required rear yards or rear yard equivalents, such as; arbors, trellises, chimneys, eaves, gutters, fences, flagpoles, open accessory off street parking spaces, non-commercial greenhouses, tool sheds, breezeways, fire escapes, recreation equipment, unenclosed balconies, and buildings used for community facilities uses, not greater than one story in height; and

WHEREAS, Z.R. §24-33 does not indicate that only one of the aforementioned permitted obstructions is allowed in a particular space; and

WHEREAS, Z.R. §24-33 does not place any height restrictions on any permitted obstructions except buildings used as community facilities; and

WHEREAS, the Board finds that the proposed rooftop recreation area and equipment do not constitute an impermissible rear-yard obstruction; and

*Therefore*, it is resolved that the decision of the Brooklyn Borough Commissioner dated April 24, 1998, is affirmed and the appeal is denied.

Adopted by the Board of Standards and Appeals, August 11, 1998.

A true copy of resolution adopted by the Board of Standards and Appeals, August 11, 1998.  
Printed in Bulletin No. 34, Vol. 83.

Copies Sent  
To Applicant  
Fire Com'r.  
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