

**235-09-BZ**

**CEQR #10-BSA-012Q**

APPLICANT – Eric Palatnik, P.C., for Calvary Baptist Church of Jamaica, owner.

SUBJECT – Application July 24, 2009 – Variance (§72-21) to permit the development of a five-story not-for-profit residence for the elderly (*Calvary Baptist Church*). Proposal is contrary to floor area and open space §23-144), number of dwelling units (§23-221), height and setback (§23-631), side yards (§23-462 (a)), and parking (§25-23). R3-2 zoning district.

PREMISES AFFECTED – 162-25 112<sup>th</sup> Road, Guy Brewer Boulevard and 112<sup>th</sup> Road, Block 12183, Lot 35 (tent), Borough of Queens.

**COMMUNITY BOARD #12Q**

**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, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION –**

WHEREAS, decisions of the Queens Borough Commissioner, dated January 22, 2010, acting on Department of Buildings Application No. 420026670, reads in pertinent part:

- “1. Proposed 5 story Grandparent (housing for the elderly) building in an R3-2 zoning district exceeds the floor area ratio and open space ratio permitted by section ZR 23-144.
2. Proposed 5 story Grandparent (housing for the elderly) building in an R3-2 zoning district exceeds the max. number of dwelling units permitted by sect. 23-221.
3. Proposed 5 story Grandparent (housing for the elderly) building in an R3-2 zoning district exceeds the maximum aggregate width of walls on one side permitted by sect. ZR 23-463.
4. Proposed 5 story Grandparent (housing for the elderly) building in an R3-2 zoning district exceeds the height and setback permitted by sect. ZR 23-631.
5. Proposed 5 story Grandparent (housing for the elderly) building in an R3-2 zoning district does not provide the amount of parking required by sect. ZR 25-25;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R3-2 zoning district, a proposed five-story non-profit residence for the elderly which does not comply with zoning regulations for floor area ratio (“FAR”), open space ratio (“OSR”), number of dwelling units, aggregate width of walls, height and parking, and is contrary to ZR §§ 23-144, 23-221, 23-463, 23-631, and 25-25; and

WHEREAS, a public hearing was held on this

application on January 26, 2010, after due notice by publication in the *City Record*, and then to decision on February 9, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, this application is brought on behalf of the Calvary Baptist Church of Jamaica (the “Church”), a not-for-profit religious entity; and

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application; and

WHEREAS, New York City Council Member Thomas White, Jr. provided testimony in support of this application; and

WHEREAS, New York City Council Member Leroy Comrie provided testimony in support of this application; and

WHEREAS, New York State Senator Shirley L. Huntley provided testimony in support of this application; and

WHEREAS, New York State Senator Malcolm A. Smith provided testimony in support of this application; and

WHEREAS, the subject site is located on the northwest corner of 112<sup>th</sup> Road and Guy R. Brewer Boulevard, within an R3-2 zoning district; and

WHEREAS, the subject lot is irregularly shaped with 226 feet of frontage along Guy R. Brewer Boulevard, 95 feet of frontage along 112<sup>th</sup> Road, and a total lot area of approximately 25,732 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant notes that there is an active study at the Department of City Planning which is considering a rezoning of the surrounding area, including the subject site, to an R5B district; as proposed, the rezoning would reduce the degree of the requested waivers, as discussed in more detail below; and

WHEREAS, the applicant originally proposed a six-story, 67-unit building with a floor area of 79,999 sq. ft. (3.11 FAR), an OSR of 14.5 percent, a total height of 59'-8", and which required additional waivers for front and side yards; and

WHEREAS, the applicant now proposes to construct a five-story 58-unit building with the following non-complying parameters: a floor area of 60,183 sq. ft. (24,445 sq. ft. is the maximum permitted); an FAR of 2.34 (the maximum permitted FAR is 0.95); an OSR of 23 percent (the minimum required OSR is 66.5 percent); 58 dwelling units (36 is the maximum permitted); a total height of 50'-0" (35'-0" is the maximum permitted); an aggregate wall width of 176'-5" along Guy Brewer Boulevard (125'-0" is the maximum permitted); and 16 parking spaces (20 is the minimum required); and

WHEREAS, the applicant states that the proposed building will be occupied by: (1) a lobby, support and social services rooms, a superintendent's apartment, and five units on the first floor; (2) 13 units on the second through fifth floors; and (3) storage, a boiler room, and mechanical space in the cellar; and

WHEREAS, the applicant states that the following is a unique physical condition which creates an unnecessary hardship in developing the site in compliance with applicable regulations: the site's subsurface soil contamination; and

WHEREAS, the applicant states that three 550 gallon underground storage tanks are located on the site; and

WHEREAS, the applicant submitted a report from an environmental consultant stating that, based on soil borings taken at the site, gasoline and fuel oil impacts were identified adjacent to the underground storage tanks; and

WHEREAS, the applicant submitted a financial analysis indicating that the cost to remove the underground storage tanks and approximately 750 yards of contaminated soil is \$207,450; and

WHEREAS, the applicant states that, in order to reduce the costs of construction and to offset the remediation costs, the Church is only constructing a small cellar for storage, the boiler room and related mechanical equipment; and

WHEREAS, however, the applicant notes that the cellar level is essential to the development of a non-profit residence for the elderly because it houses many of the required services and ancillary uses; and

WHEREAS, accordingly, because it is cost prohibitive to provide a cellar, a number of service related uses necessary for the operation of the non-profit residence for the elderly, which could otherwise be located underground and would not contribute to the floor area, must be accommodated on the first floor, thereby increasing the degree of non-compliance with floor area and height requirements; and

WHEREAS, additionally, the applicant states that the proposed waivers are necessary to construct a facility that meets the Church's programmatic needs of providing affordable and supportive housing for grandparents and older adults who are the sole caregivers to minors, and providing on-site social service programs to the residents; and

WHEREAS, the applicant represents that the proposed facility qualifies as a non-profit residence for the elderly pursuant to the definition set forth in ZR § 12-10; and

WHEREAS, specifically, the proposal satisfies the ZR § 12-10 criteria for a non-profit residence for the elderly in the following ways: (1) the building will have a minimum of 90 percent occupancy by elderly families, the head or spouse of which is 62 years of age

or over, or by single elderly persons who are sixty-two years of age or over; (2) it will contain non-housekeeping units especially designed for elderly persons or families; (3) it consists of one building which contains related accessory social and welfare facilities, primarily for residents, which will also be made available to the community, including community rooms, workshops and other essential service facilities, and that these facilities will occupy approximately seven percent of the total proposed floor area of the building; and (4) it will be constructed with the assistance of mortgage financing procured through the New York State Division of Housing and Community Renewal and will be maintained on a non-profit basis by Calvary Baptist Grandparent Housing, a wholly owned subsidiary of the Church; and

WHEREAS, the applicant states that the proposed development will allow the Church to increase the number of grandparents who are the sole caregivers to minors that can be served in the surrounding area and provide residents with a modern, functional facility; and

WHEREAS, the applicant represents that nearly 20 percent of young children in Queens are being raised by their grandparents, many of whom are elderly individuals on a fixed income; and

WHEREAS, the applicant further represents that in buildings where senior housing is available children are often prohibited, and that buildings that accept children often are not equipped to meet the needs of the elderly, leaving few practical options for inter-generational housing; and

WHEREAS, the applicant states that the proposed building will help to overcome the shortage of facilities for inter-generational housing by providing a non-profit residence for the elderly which is specifically oriented towards households where a minor is being cared for by a grandparent; and

WHEREAS, the applicant states that the supportive and social services conducted in the allocated space on the first floor will include parenting classes, respite care, counseling and support groups, summer programs for children, educational workshops, after-school tutoring, stress reduction and exercise classes, and referral of medical and legal services; and

WHEREAS, the applicant represents that the funding for the project will derive from the New York State Division of Housing and Community Renewal's allocation of Tax Credits and Housing Trust Fund, which will provide the necessary funding for 80 percent of the project; and

WHEREAS, the applicant further represents that it will receive funding from the New York State Housing Finance Agency ("HFA") in anticipation of the development of the facility; and

WHEREAS, by letter dated May 1, 2009, HFA stated that the proposed development is eligible for tax exempt bond and four percent "as of right" tax credit financing for 57 units which will be affordable to

households with incomes at or below 30 percent of Area Median Income and where a minor is being cared for by a grandparent; and

WHEREAS, the applicant represents that if the requested variance is not granted, the financial assistance from HFA may not be available, thereby preventing the construction of the proposed building; and

WHEREAS, the applicant represents that the proposed 57 units are necessary to generate sufficient income to fund the operating costs of both the residential component of the project as well as the social services space; and

WHEREAS, in support of this statement, the applicant submitted a report from the project's sponsor stating that the proposed 57 units are necessary to allow for a debt coverage ratio of 1.16 percent, which is acceptable for the agency that will be underwriting the tax exempt bonds that will finance the project; and

WHEREAS, the applicant states that the proposed parking waiver is necessary because providing the required 20 parking spaces would prevent the construction of a floor plate large enough to accommodate sufficient floor area to satisfy the Church's programmatic needs and to make the project financially feasible; and

WHEREAS, the applicant represents that the proposed 16 parking spaces will provide ample parking for the proposed building because many of the residents of a non-profit residence for the elderly do not own automobiles or generate any vehicular or transit trips; and

WHEREAS, the applicant states that the proposed aggregate width of walls waiver is necessary in order to minimize the height waiver required by the proposed building; and

WHEREAS, the applicant represents that complying with the aggregate width of walls requirement would necessitate constructing a significantly taller building in order to satisfy the Church's programmatic needs; and

WHEREAS, the applicant further represents that the surrounding neighborhood is characterized by two- and three-story homes spread amongst five- and six-story developments, and that a waiver of the aggregate width of walls requirement enables the Church to provide a building which is more in keeping with the character of the neighborhood than a taller, narrower structure; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate and in conjunction with the programmatic needs of the Church, create practical difficulties and unnecessary hardships in developing the site in strict conformity with current zoning; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Church is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the

proposed building 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 represents that the land uses surrounding the site are characterized by a mix of residential, commercial, and community facility uses; and

WHEREAS, the applicant submitted an aerial study reflecting that Guy R. Brewer Boulevard is characterized by a series of two- and three-story homes spread amongst taller five- and six-story developments; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that there is an R5 zoning district one block north of the subject site, where a four- and six-story senior residence is located; and

WHEREAS, the applicant states that there is also an R6 zoning district located approximately two blocks southeast of the subject site, where two eight-story residential buildings are located; and

WHEREAS, as noted above, there is an active study at the Department of City Planning which is considering a rezoning of the surrounding area, including the subject site, to an R5B district; and

WHEREAS, the applicant submitted a zoning analysis comparison chart reflecting that a rezoning of the site to an R5B district would eliminate the need for the waivers related to the number of dwelling units and the aggregate width of walls, and would significantly reduce the degree of the FAR, OSR, height and parking waivers; and

WHEREAS, specifically, the zoning analysis comparison chart indicates that under the proposed R5B district, the maximum permitted number of dwelling units would increase from 36 to 66, the maximum permitted floor area would increase from 24,445 sq. ft. (0.95 FAR) to 50,177 sq. ft. (1.95 FAR), the minimum required OSR would decrease from 66.5 percent to 23.1 percent, the maximum permitted total height would increase from 35 feet to 40 feet, the minimum required number of parking spaces would decrease from 20 to 18, and there would be no maximum aggregate wall width requirement; and

WHEREAS, based upon the above, 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 Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the unique site conditions and the Church's programmatic needs; and

WHEREAS, as noted above, the applicant originally proposed a six-story, 67-unit building with a floor area of 79,999 sq. ft. (3.11 FAR), an OSR of 14.5 percent, a total height of 59'-8", and which required additional waivers for front and side yards; and

WHEREAS, the Board finds that the revised proposal, which reduced the waivers for FAR, OSR, number of dwelling units and height, and eliminated the waivers for front and side yards, is the minimum necessary to afford the owner relief; 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, on May 7, 2009, the applicant's consultant identified petroleum-impacted soil surrounding the three out-of-service 550 gallon underground petroleum storage tanks on the subject property; and

WHEREAS, based on that identified soil contamination, the applicant's consultant notified the New York State Department of Environmental Conservation ("DEC") and DEC assigned Spill Number 09-01810 to the subject property; and

WHEREAS, in order to address DEC's requirements and to bring the subject property back into regulatory compliance, the consultant prepared and submitted to DEC a Proposed Subsurface Investigation and Remedial Action Work Plan ("RAWP") dated July 20, 2009, and submitted a detailed proposal to DEC for the proper removal of the underground storage tanks; and

WHEREAS, DEC approved the Proposed Subsurface Investigation and RAWP in a November 17, 2009 letter to the applicant and requested that a detailed Remedial Investigation Report be submitted after the RAWP activities were completed; and

WHEREAS, the project is classified as an Unlisted action pursuant to Section 617.2 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. 10BSA132Q, dated December 22, 2009; 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, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

**A true copy of resolution adopted by the Board of Standards and Appeals, February 9, 2010.**

**Printed in Bulletin No. 7, Vol. 95.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

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 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R3-2 zoning district, a five-story 58-unit non-profit residence for the elderly which does not comply with zoning regulations for FAR, OSR, number of dwelling units, aggregate width of walls, height and parking, and is contrary to ZR §§ 23-144, 23-221, 23-463, 23-631, and 25-25, *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 27, 2010" -(9) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of approximately 60,183 sq. ft.; a maximum FAR of 2.34; an open space ratio of approximately 23 percent; a total height of 50 feet; a side yard with a width of 8'-2 1/2" along the western lot line; a side yard with a width of 21'-6" along the northern lot line; a front yard with a depth of 10'-0" along the eastern lot line; a front yard with a depth of 15'-0" along the southern lot line; two rear yards with depths of 67'-3" and 75'-6", respectively; 58 dwelling units; and 16 parking spaces, as reflected on the BSA-approved plans;

THAT construction shall proceed in accordance with ZR § 72-23;

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;

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

Adopted by the Board of Standards and Appeals, February 9, 2010.