

285-01-BZ

CEQR #02-BSA-032K

APPLICANT - Harold Weinberg, P.E., Consulting Engineer, P.C., for Yeshiva Yalde Torah by Sinai Halberstam, owner.

SUBJECT - Application October 5, 2001 - under Z.R. §73-19, to permit the legalization of the first floor of the subject premises as a day care center, Use Group 3, and the enlargement of the second floor for said use, located in an M1-2 zoning district, which is contrary to §§42-00, 52-22 and 52-41.

PREMISES AFFECTED - 1045 38th Street, north side, 294'-2½," west of 10th Avenue, Block 5289, Lot 61, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES -

For Applicant: Harold Weinberg.

For Administration: Capt. Michael Maloney and John Scrofani, Fire Department.

ACTION OF THE BOARD - Application granted on condition.

THE VOTE TO GRANT -

Affirmative: Chairman Chin, Vice-Chair Babbar, Commissioner Korbey and Commissioner Caliendo.....4

Negative:.....0

Abstain: Commissioner Miele.....1

THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated September 13, 2001 acting on Application No. 300822359 reads;

- "1. The proposed use of subject premises as a day care center (school) in Use Group 3 in an M1-2 Zoning District is contrary to Section 42-00 of the Zoning Resolution (ZR).
- 2. The proposed structural alteration to a non-conforming use is contrary to Section 52-22 ZR.
- 3. The proposed additional floor area to a non-conforming use is contrary to Section 52-41 ZR."; and

WHEREAS, a public hearing was held on this application on April 16, 2002 after due notice by publication in *The City Record*, and laid over to May 21, 2002, June 11, 2002 and then to July 9, 2002 for decision; and

WHEREAS, Community Board #12 in Brooklyn has recommended approval of the subject application;

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chairman James Chin, Commissioner Mitchell Korbey, and Commissioner Peter Caliendo; and

WHEREAS, this is an application under Z.R. §73-19 to permit the legalization of the first floor of the subject premises as a day care center, Use Group 3, and the enlargement of the second floor for said use, located in an M1-2 zoning district, which is contrary to §§42-00, 52-22 and 52-41; and

WHEREAS, evidence in the record indicates that the subject site is located on the north side of 38th Street, between Fort Hamilton Parkway and 10th Avenue, and has a total lot area of 19,705.34 square feet; and

WHEREAS, the school provides educational and therapeutic services to children with handicapped conditions, and will operate from 9:00 A.M. to 2:00 P.M.; and

WHEREAS, the applicant represents that the children attending the day care will be primarily from the Borough Park area, bounded by 38th Street, 18th Avenue, 60th Street and 12th Avenue; and

WHEREAS, the applicant states that in the area of Borough Park, there is no available vacant land or existing buildings that can be modified for the purposes of the school; and

WHEREAS, the applicant has demonstrated difficulty in obtaining land for the development of a school within the neighborhood to be served by the proposed school, and with an adequate size within districts where the school is permitted as-of-right, sufficient to meet the programmatic needs of the school; and

WHEREAS, therefore, Board finds that the requirements of §73-19 (a) are met; and

WHEREAS, evidence in the record and assurances made by the applicant indicate that the proposed school is located within 400 feet of

an R6 zoning district, where the school is permitted as-of-right, thus the requirements of §73-19 (b) are met; and

WHEREAS, the record also indicates that the subject premises is surrounded by a mix of commercial and residential uses, and although auto body repair shops exist within a 400 foot proximity, the Board has determined that there are not any air quality effects or impacts on the proposed day care from these uses; and WHEREAS, the applicant represents that the walls of the subject premises will be constructed of solid masonry units, and the walls will be furred out to give an appropriate finish, thus reducing the transmission of sound emanating from and entering the school; and

WHEREAS, the Board finds that adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district is achieved through the use of sound attenuating exterior wall and window construction, as well as substantial open areas along both street frontages, thus satisfying the requirements of §73-19 ©); and

WHEREAS, the applicant represents that students will arrive and leave school by vans provided by the New York City Department of Transportation ("DOT"); and

WHEREAS, the DOT has blocked off six parking spaces in front of the school with a sign stating "NO PARKING IN FRONT OF SCHOOL ON SCHOOL DAYS FROM 8:00 A.M. TO 4:00 P.M." in order to provide space for the vans to deliver and pick up students; and

WHEREAS, based on DOT's review, the Board finds that the movement of traffic through the streets on which the school will be located can be controlled so as to protect children going to and from the school, and thus the requirements of §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 Z.R. §73-19; and

WHEREAS, the applicant represents that deliveries will occur once a day, between the hours of 9:00 -11:00 A.M., and refuse pick-ups will be done by the Department of Sanitation on Mondays and Fridays; and

WHEREAS, at the request of the Board, the applicant has provided a lease agreement between the owners of the subject property and the City of New York for use of an accessory parking lot located at Block 5289, Lot 999; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has carefully considered all relevant areas of environmental concern including potential parking and traffic impacts; and

WHEREAS, the Board finds that the hazards or disadvantages to the community at large are outweighed by the advantages to be derived from the granting of this special permit and that the application minimizes any adverse effects on privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under §73-03; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has carefully considered all relevant areas of environmental concern; and

WHEREAS, the Board has determined that the proposed action, as modified, will not result in any significant environmental effects; and

WHEREAS, the evidence demonstrates no foreseeable significant environmental impacts that would require the preparation of an Environmental Impact Statement; and *Therefore, it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration under 6 N.Y.C.R.R. Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. § 73-19 to permit the legalization of the first floor of the subject premises as a day care center, Use Group 3, and the enlargement of the second floor for said use, located in an M1-2 zoning district, which is contrary to §§42-00, 52-22 and 52-41; *on condition* that all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received March 11, 2002" - (6) sheets and "Received June 24, 2002"- (2) sheets; and *on further condition*;

THAT, fire protection measures, including an automatic wet sprinkler system, a smoke detection system, and an interior fire alarm system all connected to a Fire Department-approved central station shall be provided and maintained in the entire building;

THAT accessory parking shall be provided at Block 5289, Lot 999 and it shall be noted in the Certificate of Occupancy for Block 5289, Lot 999 that parking is reserved for the day care center;

THAT substantial construction shall be completed in accordance with Z.R. §72-23;

THAT the above conditions shall appear on the Certificate of Occupancy;

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

Adopted by the Board of Standards and Appeals, July 9, 2002.