

**302-06-BZ**

**CEQR #07-BSA-038K**

APPLICANT – Harold Weinberg, P.E., for Mirror Yeshiva Central Institute, owner.

SUBJECT – Application November 15, 2006 – Variance (§72-21) to permit the construction of a mezzanine and a two-story enlargement over the existing two-story community facility building. The premise is located in a R6 zoning district and the Ocean Parkway Special Zoning District Sub-District. The proposal is contrary to Section 24-11.

PREMISES AFFECTED – 1791 Ocean Parkway, northeast corner Avenue R, north side Avenue R between Ocean Parkway and East 77<sup>th</sup> Street, Block 6663, Lot 46, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Betty Carr.

**ACTION OF THE BOARD –**

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 21, 2006, acting on Department of Buildings Application No. 301275046, reads in pertinent part:

“The Proposed enlargement of a synagogue in Use Group 4 and a yeshiva school in Use Group 3 in an R6A zoning district in the Ocean Parkway Special Zoning District:

- (1) Increases the Floor Area Ratio above the permitted and is contrary to Sections 54-31 and 113-51 ZR.
- (2) Increases the degree of non-compliance with respect to front yards and is contrary to Section 113-542.
- (3) Increases the degree of non-compliance with respect to setback and sky exposure plane and is contrary to Section 23-631 ZR.
- (4) Creates non-compliance with respect to FAR for community facility use in Use Groups 3 & 4 and is contrary to Section 24-11 ZR.
- (5) Extends the degree of non-compliance with respect to perimeter wall height and total height and is contrary to Sections 23-631 and 54-31.”; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an R6A zoning district, within the Special Ocean Parkway District (OP), the enlargement of an existing yeshiva (Use Group 3) and synagogue (Use Group 4), which will not comply with the requirements for floor area ratio, front yards, setback, sky exposure plane, and perimeter wall and total height, contrary to ZR §§ 54-31, 113-51, 113-542, 23-631, and 24-11; and

WHEREAS, the application is brought on behalf of Mirror Yeshiva Central Institute (the “Yeshiva”), a

nonprofit religious institution; and

WHEREAS, a public hearing was held on this application on May 8, 2007, after due notice by publication in the *City Record*, and then to decision on June 12, 2007; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, City Council Member Simcha Felder provided testimony in support of the application; and

WHEREAS, the applicant submitted 24 letters in support of the application; and

WHEREAS, the site and surrounding area had a visit and examination by a committee of the Board, including Chair Srinivasan; and

WHEREAS, the through-block site is located on the north side of Avenue R, with frontage on Ocean Parkway and East 77<sup>th</sup> Street, within an R6A (OP) zoning district; and

WHEREAS, the subject site has a total lot area of 24,807.7 sq. ft.; and

WHEREAS, for zoning purposes, the site is divided into the following four components: (1) the westernmost portion of the site at the corner of Ocean Parkway and Avenue R is identified as a corner lot within the Special Ocean Parkway District; (2) the middle portion of the site, which is located on Avenue R, 100 feet from Ocean Parkway and 100 feet from East 77<sup>th</sup> Street, is identified as an interior lot; the western half is within only the Special Ocean Parkway District and the eastern half is also within the Ocean Parkway Sub-district; and (3) the easternmost portion of the site at the corner of East 77<sup>th</sup> Street and Avenue R is identified as a corner lot within both the Special Ocean Parkway District and the Ocean Parkway Sub-district; and

WHEREAS, accordingly, community facility zoning regulations apply to the two western portions of the site, which are within the Special Ocean Parkway District and residential zoning regulations apply to the two eastern portions of the site, which are also within the Ocean Parkway Sub-district; thus, not all the noted DOB objections apply across the entire site; and

WHEREAS, specifically, (1) the westernmost portion of the site does not require any waivers, (2) the second portion of the site requires waivers for front yards, and (3) the remainder of the site requires waivers for FAR, height, setback, and encroachment into the sky exposure plane since it is subject to residential zoning district regulations; and

WHEREAS, the site is occupied by a yeshiva and synagogue building with portions of heights of one, two, and four stories; the yeshiva provides facilities for nursery, elementary, and high school levels, a rabbinical seminary, a post graduate division, and a dormitory; and

WHEREAS, the Yeshiva currently occupies 56,544.43 sq. ft. of total floor area (2.28 FAR); note that the FAR is based on an average across the site; and

WHEREAS, the maximum permitted FAR within the western half of the site, which is within only the Special Ocean Parkway District is 3.0 and the maximum permitted FAR within the eastern half of the site, which is also within the Ocean Parkway Sub-district is 1.5; and

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WHEREAS, the easternmost portion of the site has pre-existing non-complying conditions from when it was built in approximately 1950; and

WHEREAS, the applicant proposes to build a two-story and mezzanine enlargement above the two-story portion of the building, which will fill in the middle of the building and result in a four-story building across the site; and

WHEREAS, the height of the middle portion of the building is designed to match the height of the western portion of the building and provides a slight increase in height from the existing eastern portion of the building; and

WHEREAS, the building is currently under construction, at the westernmost portion, pursuant to as of right building plans approved by DOB; and

WHEREAS, the applicant represents that the Yeshiva's needs have changed since the first enlargement was contemplated; and

WHEREAS, therefore, the applicant now proposes to modify the plans to remove a small portion of the approved building and add the components which are the subject of this application (the existing building with the enlargement is hereinafter the "New Building"); and

WHEREAS, the New Building will provide for a total floor area of 66,148.04 sq. ft. (2.67 FAR); this includes an additional 3,552.49 sq. ft. on the third floor, a new 3,025.56 sq. ft. third-floor mezzanine, and an additional 3,025.56 sq. ft. on the fourth floor; and

WHEREAS, the enlargement increases the degree of non-compliance as to yards; and

WHEREAS, the applicant proposes to maintain the wall and total height of the existing and approved four-story portions of the building at 56'-2" and 58'-0", respectively; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the Yeshiva, which seeks to expand and reconfigure its existing facilities in order to accommodate its current enrollment; and

WHEREAS, specifically, the applicant states that the following are the programmatic space needs of the Synagogue: (1) a need to better accommodate the current student enrollment and relieve overcrowding; (2) a need to provide additional classroom space; (3) a need to reduce class size; (4) a need to provide additional dormitory space; (5) a need to permit students to traverse from the eastern and western ends of the building without having to exit and re-enter the building; and (6) the establishment of a Holocaust memorial; and

WHEREAS, as to enrollment, the applicant states that the Yeshiva now serves approximately 1200 students and has a waiting list; and

WHEREAS, the applicant represents that this enrollment cannot be accommodated in the existing classrooms and that portions of the gym and library are being used as classrooms; and

WHEREAS, the applicant represents that the proposed enlargement would permit classes to be held

in classrooms and to resume the intended use of the gym and library; and

WHEREAS, as to class size, the applicant represents that a goal of the school is to alleviate overcrowding of classes by reducing class size from 27 to 25 students; and

WHEREAS, as to the dormitory space, the applicant represents that the current facilities, including two off-site dormitories, cannot accommodate the demand for beds; and

WHEREAS, the proposal provides for 14 additional dorm rooms, which would alleviate overcrowding of the existing dorm rooms and provide additional space for those on the waiting list; and

WHEREAS, the applicant represents that there is a waiting list of approximately 40 students for the dormitory; and

WHEREAS, as to student circulation within the building, because the eastern and western portions of the building, as approved, are both four stories and the middle portion is only two stories, students must exit the building on the Avenue R frontage and re-enter across the site; and

WHEREAS, the proposal which would match the height of the two end portions of the building would permit smooth circulation within the building and eliminate the need to exit to get across the site; and

WHEREAS, the applicant represents that the Yeshiva will provide a Holocaust memorial within the New Building; and

WHEREAS, the Board finds that the noted programmatic needs are legitimate, and agrees that the enlargement of the building is necessary to address the Yeshiva's needs, given the limitations of the existing building; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the existing building, when considered in conjunction with the programmatic needs of the Yeshiva, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Yeshiva is a non-profit religious institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; 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, specifically, the applicant represents that the context of the immediate neighborhood includes two- and three-story dwellings, and five- and six-story multiple dwellings, and several community facilities and schools of comparable heights; and

WHEREAS, the applicant notes that the height of the new portion of the building will closely match that of the existing building; and

WHEREAS, additionally, the applicant notes that the Yeshiva is a permitted use which already exists at

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the site; and

WHEREAS, further, the applicant asserts that the larger capacity of the Yeshiva will accommodate the existing enrollment and will relieve overcrowding, while permitting incremental enrollment increases; and

WHEREAS, additionally, the vast majority of students and congregants live within a close proximity of the Yeshiva and walk to the site, so there is no discernible impact on traffic; and

WHEREAS, the Board agrees that the proposed enlargement, which will relieve overcrowding conditions, is compatible with the surrounding neighborhood; 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 as of right development at the site would meet the programmatic needs of the Yeshiva; 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 waivers are the minimum necessary to accommodate the current and projected needs of the Yeshiva; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Yeshiva to fulfill its programmatic needs; 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, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) 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. 07-BSA-038K, dated February 1, 2007; 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

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, with conditions as stipulated below, 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, within an R6A zoning district, within the Special Ocean Parkway District, the enlargement of an existing yeshiva (Use Group 3) and synagogue (Use Group 4), which will not comply with the requirements for floor area ratio, front yards, setback, sky exposure plane, and perimeter wall and total height, contrary to ZR §§ 54-31, 113-51, 113-542, 23-631, 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 March 28, 2007"-(-4) sheets and "May 29, 2007"-(-4) sheets; and *on further condition*:

THAT the new building will have the following parameters: a total floor area of 66,148.04 sq. ft. (2.67 FAR); and a wall and total height of 58'-0", as illustrated on the BSA-approved plans;

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,  
June 12, 2007.

**A true copy of resolution adopted by the Board of Standards and Appeals, June 12, 2007.**

**Printed in Bulletin No. 23, Vol. 92.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**