

55-13-BZ

CEQR #13-BSA-089K

APPLICANT – Stuart A. Klein, Esq., for Yeshiva Novominsk, owners.

SUBJECT – Application February 1, 2013 – Variance (§72-21) to permit the enlargement of an existing yeshiva and dormitory (*Yeshiva Novominsk*), contrary to floor area (§24-11), wall height and sky exposure plane (§24-521), and side yard setback (§24-551). R5 zoning district.

PREMISES AFFECTED – 1690 60th Street, north side of 17th Avenue between 60th and 61st Street, Block 5517, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Application granted on condition.

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0
Absent: Vice Chair Collins.....1
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 2, 2013, acting on Department of Buildings Application No. 320752912 reads, in pertinent part:

1. Proposed floor area is contrary to ZR 24-11;
2. Proposed wall height and sky exposure plane are contrary to ZR 24-521;
3. Proposed side yard setback is contrary to ZR 24-551; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R5 zoning district, a two-story enlargement of a three-story and mezzanine community facility building occupied as a religious school (Use Group 3), which does not comply with the district regulations for floor area, wall height, sky-exposure plane, and side yard setback, contrary to ZR §§ 24-11, 24-521, and 24-551; and

WHEREAS, a public hearing was held on this application on October 8, 2013, after due notice by publication in *The City Record*, with a continued hearing on November 19, 2013, and then to decision on December 10, 2013; and

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

WHEREAS, Community Board 12, Brooklyn, recommends approval of the application; and

WHEREAS, this application is brought on behalf of Yeshiva Novominsk (the “Yeshiva”); and

WHEREAS, the subject site is an irregular corner lot that spans the full length of the block on the west side of 17th Avenue between 60th Street and 61st Street, within an R5 zoning district; and

WHEREAS, the site has 140 feet of frontage along 60th Street, 200 feet of frontage along 17th Avenue, 150 feet of frontage along 61st Street, and 29,000 sq. ft. of lot area; and

WHEREAS, the site is currently occupied by a three-story plus mezzanine religious school building, with 55,290 sq. ft. of floor area (1.91 FAR); and

WHEREAS, the applicant represents that the building currently includes the following uses: (1) classrooms for the Yeshiva; (2) prayer halls; (3) a gymnasium; (4) a rabbi’s apartment; (5) conference rooms; and (6) a dormitory; and

WHEREAS, the applicant proposes to construct a two-story enlargement atop the southern wing of the existing building (61st Street frontage) in order to expand the Yeshiva’s dormitory facilities; and

WHEREAS, the applicant states that although the proposed enlargement will provide complying lot coverage and front and rear yards, it will also: (1) result in an increase in floor area from 55,290 sq. ft. (1.91 FAR) to 65,799 sq. ft. (2.27 FAR), which will exceed the maximum FAR of 2.0, contrary to ZR § 24-11; (2) increase the wall height from 37’-0” to 58’-6”, which will exceed the maximum wall height of 37’-0”; (3) eclipse the required sky exposure plane of 1:1, contrary to ZR § 24-521; and (4) not provide the required side setbacks of 22’-6” at a height of 45’-0” above the side yard level, and 27’-6” at a height of 55’-0” above the side yard level, contrary to ZR § 24-551; and

WHEREAS, the proposal would allow for an increase in the number of dormitory beds from 177 beds to 269 beds; and

WHEREAS, the applicant states that the Yeshiva’s programmatic need to provide sufficient dormitory space for its 292 students necessitates the requested variances; and

WHEREAS, in particular, the applicant asserts that providing sleeping accommodations for its student body is essential to achieving the pedagogical and religious objective of the Yeshiva; and

WHEREAS, the applicant states that students enrolled in the Yeshiva (40 ninth-graders, 41 tenth-graders, 41 eleventh-graders, 47 twelfth-graders, and 123 post-high school students) come from across the United States and Europe and attend the Yeshiva because of its uniquely rigorous secular and religious curriculum; and

WHEREAS, the applicant states that students at the Yeshiva are immersed in the curriculum—which includes prayers, meals, and recreation time—from as early as 7:30 a.m. to as late as 11:00 p.m.; thus, the Yeshiva must be able to provide sleeping accommodations for all students who do not live in the immediate vicinity; and

WHEREAS, the applicant represents that there is a direct nexus between the requested waivers and the design of the proposal; and

WHEREAS, specifically, the applicant states that vertically enlarging the building without setbacks is

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necessary due to the limitations created by the structural elements of the existing building; and

WHEREAS, in addition, the applicant represents that the two-story enlargement's floor plates and layouts mirror those of the existing dormitory at the second and third stories of the building, which provides the most efficient and structurally-sound enlargement; and

WHEREAS, the applicant represents that extending the enlargement horizontally across the roof instead of vertically above the existing dormitory would require: (1) demolition of the existing beams and columns above the *Batei Midrash* (study hall) and portions of the roof slab; (2) reinforcement of the transfer girders, which were only designed to carry the loads imposed by the roof and exterior wall; and (3) demolition and reconstruction of the some walls and ceilings of the study hall spaces, which the applicant states are the most intricately-finished spaces in the building; and

WHEREAS, thus, the applicant represents that alternative designs expanding the existing footprint of the building or providing some or all of the required setbacks would be infeasible due to the extensive structural and plumbing work that would be required, at significant cost; and

WHEREAS, further, the applicant notes that an off-site dormitory would be both costly and impractical given the comprehensive nature of the Yeshiva's curriculum; the Yeshiva does not bus students and it does not want its students taking public transportation late into the evening due to safety concerns; and

WHEREAS, finally, the applicant represents that if the Yeshiva is unable to increase the size of its dormitory, it may be forced to turn away prospective students who do not live in the immediate vicinity of the school; and

WHEREAS, the Board acknowledges that the Yeshiva, as a religious and educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 N.Y.2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the Board accepts that the Yeshiva's programmatic needs are furthered by the construction of the proposed dormitory; and

WHEREAS, the Board also recognizes that the proposed enlargement above the existing dormitory is the most efficient, practical, and cost-effective to construct the dormitory and that such proposal cannot be

accomplished without the requested height, setback, and floor area waivers; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Congregation create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Yeshiva 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 enlargement will not alter the essential character of the neighborhood, impair the appropriate use or development of adjacent property, or be detrimental to the public welfare, consistent with ZR § 72-21(c); and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by a diverse mix of low- to medium density residential, community facility and manufacturing uses; and

WHEREAS, as to height, the applicant states that although other nearby uses include, across 61st Street, two-story industrial buildings, across 60th Street, a one-story warehouse and a two-story residence, and, across 17th Avenue, a two-story branch of the Brooklyn Public Library, and two-story residences, there are a number of nearby community facility buildings that are similar in height and FAR to the subject building, including: (1) the Edward B. Shallow Junior High School (four stories, 184,000 sq. ft. of floor area (2.2 FAR) within an R5 district); (2) The Seeall Academy (five stories, 157,261 sq. ft. of floor area (2.12 FAR) partially within an R5 district and partially within an R6 district); (3) Bais Sarah School (three stories, 61,148 sq. ft. of floor area (2.04 FAR) within an M1-1 district); and (4) Public School 48 (five stories, 72,400 sq. ft. of floor area (1.81 FAR) within an R5 district); and

WHEREAS, the applicant also states that it chose to locate the enlargement on the 61st Street frontage of the lot, so as to minimize its impact upon the R5 district; and

WHEREAS, as to bulk, the applicant states, as noted above, that the enlargement maintains the complying front and rear yards, does not increase the building's complying lot coverage, and only exceeds the permitted FAR by 0.27, which represents a 13.5 percent increase over the maximum permitted 2.0 FAR; and

WHEREAS, the applicant notes that although there is a two-story residence directly west of the site along 61st Street, it is a total of 13 feet away from the Yeshiva building and no windows are proposed in the enlarged portion of the school facing that residence; and

WHEREAS, at hearing, the Board requested clarification regarding the proposed occupant load and questioned whether enrollment was anticipated to increase; and

WHEREAS, in response, the applicant submitted

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amended plans indicating that occupant loads would be subject to DOB approval; in addition, the applicant submitted a statement confirming that enrollment is expected to remain at current levels; and

WHEREAS, accordingly, the Board finds that this action will neither 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, per ZR § 72-21(d), the hardship was not self-created and that no development that would meet the programmatic needs of the Yeshiva could occur on the existing lot; 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 states and the Board agrees that the requested waivers are the minimum necessary to afford relief to satisfy the Congregation's programmatic needs, in accordance with ZR § 72-21(e); 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 Unlisted 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 (EAS) CEQR No. 13BSA090K, dated January 27, 2013; 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, 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

A true copy of resolution adopted by the Board of Standards and Appeals, December 10, 2013.

Printed in Bulletin Nos. 49-50, Vol. 98.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

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 R5 zoning district, a two-story enlargement of a three-story and mezzanine community facility building occupied as a religious school (Use Group 3), which does not comply with the district regulations for floor area, wall height, sky-exposure plane, and side-yard setback, contrary to ZR §§ 24-11, 24-521, and 24-551; *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 November 4, 2013" – Eight (8) sheets; and *on further condition*:

THAT the building parameters will be: a floor area of 65,799 sq. ft. (2.27 FAR); a maximum wall height of 58'-6"; and five stories, as illustrated on the BSA-approved plans;

THAT any change in the control or ownership of the building will require the prior approval of the Board;

THAT the above conditions will be listed 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);

THAT the approved plans are considered approved only for the portions related to the specific relief granted; and

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

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, December 10, 2013.

