

**\*CORRECTION**

This resolution adopted on October 23, 2012, under Calendar No. 93-11-BZ and printed in Volume 97, Bulletin No. 44, is hereby corrected to read as follows:

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**CEQR #11-BSA-112K**

APPLICANT – Moshe M. Friedman, P.E., for Yeshiva Ore Mordechai, owners.

SUBJECT – Application June 23, 2011 – Special Permit (§73-19) to allow the conversion of the first, mezzanine, second and third floors in an existing four-story factory and warehouse building to a Use Group 3 school (*Yeshiva Ore Mordechai*). M1-1 zoning district PREMISES AFFECTED – 1536 62<sup>nd</sup> Street, aka 1535 63<sup>rd</sup> Street, Block 5530, Lot 19, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**

**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, the decision of the Brooklyn Borough Commissioner, dated June 21, 2011, acting on Department of Buildings Application No. 320035984, reads in pertinent part:

Conversion of Existing Building for use as a school (Use Group 3) is contrary to:  
ZR 42-10 Use Group as school use (UG 3) is not permitted in a M1-1 zone.  
And requires a special permit from the Board of Standards and Appeals as per ZR § 73-19;  
and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site in an M1-1 zoning district, the proposed use of a portion of an existing three-story and mezzanine building by a Use Group 3 school, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on April 3, 2012, after due notice by publication in the *City Record*, with continued hearings on June 19, 2012, July 17, 2012 and August 21, 2012, and then to decision on October 23, 2012; and

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

WHEREAS, Community Board 11, Brooklyn, recommended disapproval of the original iteration of this application, citing concerns with additional traffic and congestion at this location; and

WHEREAS, New York City Council Members Sara M. Gonzalez and David G. Greenfield recommend approval of this application; and

WHEREAS, certain members of the community provided testimony in opposition to this application; and

WHEREAS, certain members of the community provided testimony in support of this application; and

WHEREAS, the application is brought on behalf of Yeshiva Ore Mordechai (the “Yeshiva”), a not-for-profit school; and

WHEREAS, the site is located on a through lot with frontage on 62<sup>nd</sup> Street and 63<sup>rd</sup> Street, between 15<sup>th</sup> Avenue and 16<sup>th</sup> Avenue, within an M1-1 zoning district; and

WHEREAS, the site has a lot area of 12,202 sq. ft.; and

WHEREAS, the site is currently occupied by an existing three-story and mezzanine building with a furniture store (Use Group 6) on the 62<sup>nd</sup> Street side of the first floor and a warehouse on the 63<sup>rd</sup> Street side of the first floor, storage at the mezzanine level, and with the second and third floors remaining vacant; and

WHEREAS, the applicant proposes to convert the entire second and third floors, and portions of the first floor and mezzanine to a Use Group 3 school with a floor area of 28,871 sq. ft. (2.37 FAR); the first floor and mezzanine on the 62<sup>nd</sup> Street side of the building will continue to be occupied by a furniture store (Use Group 6) and storage, respectively, resulting in a total floor area for the building of 35,113 sq. ft. (2.88 FAR); and

WHEREAS, the proposed Yeshiva will have the following uses: (1) an office, lobby, indoor play area/lunch room, and school bus parking, at the first floor (limited to the 63<sup>rd</sup> Street side of the building); (2) storage for the Yeshiva at the mezzanine level (limited to the 63<sup>rd</sup> Street side of the building); (3) offices, classrooms, a nursery, a resource room, and a lounge at the second floor; (4) offices, classrooms, a resource room, and a cafeteria at the third floor; and (5) an outdoor play area on the roof; and

WHEREAS, the applicant originally proposed for the Yeshiva to occupy only the second and third floors, while maintaining retail and warehouse uses at the entire first floor and mezzanine level, with an entrance for the Yeshiva via a stairway along 62<sup>nd</sup> Street; and

WHEREAS, in response to concerns raised by the Board and certain members of the community, the applicant revised its proposal to have the Yeshiva occupy the first floor and mezzanine on the 63<sup>rd</sup> Street side of the building, remove the warehouse use from the building, relocate the entrance to the Yeshiva to the 63<sup>rd</sup> Street side of the building, provide separation between the Yeshiva and the furniture store use, and reduce the floor space occupied at the mezzanine level; and

WHEREAS, the applicant represents that the proposal meets the requirements of the special permit under ZR § 73-19 to permit a school in an M1-1 zoning district; and

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WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant states that the proposed building will serve an estimated 368 students from pre-K through 11<sup>th</sup> grade; and

WHEREAS, the applicant states that the School's program requires a building with at least 20,000 sq. ft. of available space; and

WHEREAS, the applicant further states that due to the School's requirements and because the majority of the students are anticipated to live in the Borough Park community, it conducted a search for a suitable location for the School in that area; and

WHEREAS, the applicant states that the Yeshiva is currently renting space in different locations in Borough Park, as it has been unable to locate a building that was large enough to accommodate the entire student enrollment; and

WHEREAS, the applicant further states that it is necessary to locate the Yeshiva in a single building because having multiple locations is impractical and inefficient, as well as disruptive to the continuity and consistency that the children require for their optimal growth and education; and

WHEREAS, the applicant represents that it conducted a search which specifically evaluated the feasibility of five different Brooklyn buildings in nearby zoning districts where schools are permitted as-of-right: 4219 15<sup>th</sup> Avenue, 5815 20<sup>th</sup> Avenue, 4515 New Utrecht Avenue, 1774 58<sup>th</sup> Street, and 1507 42<sup>nd</sup> Street; and

WHEREAS, the applicant states that, for various reasons, it was unable to obtain any of the other five buildings it evaluated for the development of a school; and

WHEREAS, specifically, the applicant states that the buildings at 5815 20<sup>th</sup> Avenue, 1774 58<sup>th</sup> Street, and 1507 42<sup>nd</sup> Street were not feasible due to their limited size, which would have prevented the school from locating the pre-school, elementary, middle, and high school students in a single building in accordance with the Yeshiva's needs; and

WHEREAS, the applicant further states that 4219 15<sup>th</sup> Avenue was not feasible because it was occupied by an existing tenant, and 4515 New Utrecht Avenue was a much larger site than the Yeshiva required and was determined to be financially infeasible; and

WHEREAS, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right;

and

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

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as-of-right; and

WHEREAS, the applicant submitted a radius diagram which reflects that the subject site is located within 400 feet of an R5 zoning district to the southwest of the site, where the proposed use would be permitted as-of-right; and

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

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant submitted a noise assessment report based on the results of noise monitoring carried out at the site, which states that the noise levels outside the proposed site fall within marginally acceptable limits for school use; and

WHEREAS, the noise assessment report submitted by the applicant further states that adequate separation from noise, traffic and other adverse effects of the surrounding M1-1 zoning district can be provided through the installation of an alternate means of ventilation so that the Yeshiva can operate with a closed window condition; accordingly, the applicant states that it will provide central air/heating, which would allow the windows to remain closed in all weather conditions; and

WHEREAS, at hearing, the Board raised concerns about the ability to separate the Yeshiva from the effects of the furniture store use that is located in the subject building, particularly given that the furniture store has a loading dock on 63<sup>rd</sup> Street, along the frontage for the proposed Yeshiva; and

WHEREAS, in response, the applicant states that the proposed Yeshiva and the furniture store use will be completely separated, as the furniture store will be located on the first floor of the 62<sup>nd</sup> Street side of the building, with accessory storage for the furniture store located at the mezzanine level on the 62<sup>nd</sup> Street side of the building, while the Yeshiva will be located only on the 63<sup>rd</sup> Street side of the building at the first floor and mezzanine level, and will occupy the entire third and fourth floors; and

WHEREAS, the applicant further states that the Yeshiva and the furniture store will be separated by partitions at the first floor and mezzanine levels, that the only uses on the first floor of the Yeshiva will be a lobby, an office, and an indoor play area/lunch room, and that the mezzanine level of the Yeshiva will be used for accessory storage; and

WHEREAS, the applicant notes that the loading

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dock on 63rd Street that is currently used by the furniture store will be used for school bus parking by the Yeshiva, and that all loading for the furniture store use will take place on 62nd Street; and

WHEREAS, the Board finds that the conditions surrounding the site and the installation of an alternate means of ventilation will adequately separate the proposed school from noise, traffic and other adverse effects of any of the uses within the surrounding M1-1 zoning district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant states that the majority of students at the Yeshiva will travel to and from school via school buses, while a small number of students will arrive by carpool or will walk to school; and

WHEREAS, the applicant further states that a bus loading area will be provided in front of the building on 63rd Street in order to provide a safe and appropriate area for loading and unloading of passengers, without impeding the flow of traffic; and

WHEREAS, the applicant states that the Yeshiva anticipates the total enrollment in pre-K through 11th grade to reach a maximum of 368 students during the next five years, with each grade growing to approximately 30 students as adequate classroom space becomes available; and

WHEREAS, the applicant further states that the various grades will be arriving to and departing from the Yeshiva at different times, and therefore there will only be a need to provide up to three buses for each arrival and departure shift; and

WHEREAS, the applicant submitted a table and chart to illustrate the arrival and departure shifts, which reflect that the seventh through 11th graders, comprising 150 students, will arrive at 7:30 a.m. and depart at 5:30 p.m. or later, the first through sixth graders, comprising approximately 180 students, will arrive at 9:00 a.m. and depart at 4:30 p.m., and the kindergarteners, comprising approximately 40 students, will arrive at 9:45 a.m. and depart at 3:00 p.m.; and

WHEREAS, the applicant represents that, based on the aforementioned schedule, there will never be more than three school buses arriving at the site during any single arrival or departure shift; and

WHEREAS, the applicant notes that relocating the Yeshiva's entrance to 63rd Street also helps accommodate the loading and unloading of students by providing additional frontage space, as the 62nd Street frontage measures only 51'-3" while the 63rd Street frontage measures 71'-3"; and

WHEREAS, the applicant submitted a traffic study which reflects that there are low traffic volumes on 63rd Street and the proposed Yeshiva could operate at the site without significant traffic effects; and

WHEREAS, the applicant notes that the traffic study reflects that there are lower traffic volumes on 63rd Street than on 62nd Street, where the entrance to the Yeshiva was originally proposed to be located; and

WHEREAS, the applicant also submitted a survey reflecting that there are no commercial curb cuts for loading docks located across from the site on 63rd Street, and therefore traffic on the street will not be effected by commercial loading and unloading across from the site; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation ("DOT"); and

WHEREAS, by letter dated August 17, 2011, DOT states that it has no objection to the proposed school, and states that it will prepare a school safety map with signs and markings upon the approval and completion of the School; and

WHEREAS, the Board finds that the above-mentioned measures can control traffic so as to protect children going to and from the proposed school; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 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 ZR § 73-19; and

WHEREAS, as noted above, the applicant originally proposed to locate the entrance to the school along the 62nd Street side of the building but revised its proposal to relocate the entrance to the Yeshiva to the 63rd Street side of the building in response to concerns raised by the Board and certain members of the community; and

WHEREAS, the applicant notes that there are eight residential properties located directly across from the site on 63rd Street and fewer industrial sites than the 62nd Street side of the building, and therefore the 63rd Street side of the building is more consistent with a school use than the 62nd Street side of the building; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an

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environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 11BSA112K, dated May 31, 2011; 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; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials, air quality and noise impacts; and

WHEREAS, DEP reviewed the August 2011 Construction Health and Safety Plan (CHASP); and

WHEREAS, DEP issued a November 14, 2011 letter requesting additional information in the CHASP and stating that, upon completion of the project, a Remedial Closure Report be submitted to DEP for review and approval; and

WHEREAS, DEP reviewed the applicant's September 2012 stationary source air quality screening analysis and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, DEP reviewed the applicant's April 2012 noise assessment; and

WHEREAS, DEP determined that, with the use of the proposed central air-conditioning and heating system as an alternate means of ventilation, the proposed project is not anticipated to result in significant noise impacts; 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 §§ 73-19 and 73-03 and grants a special permit, to allow, within an M1-1 zoning district, the proposed use of a portion of an existing three-story and mezzanine building by a Use Group 3 school, contrary to ZR § 42-10; *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 August 7, 2012" - (12) sheets and *on further condition*:

THAT all loading and unloading for the non-school use on the site will take place on 62<sup>nd</sup> Street;

THAT the non-school portion of the subject building must comply with all M1 district performance regulations;

THAT the applicant will submit to DEP for review and approval a revised CHASP which incorporates comments from DEP's December 14 2011 letter;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided DOB with documentation of DEP's approval of the Remedial Closure Report;

THAT the applicant will employ central air-conditioning and heating as an alternate means of ventilation throughout the entire building to maintain a closed window condition at all times;

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 any change in the use, occupancy, or operator of the school requires review and approval by the Board;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; 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, October 23, 2012.

**\*The resolution has been revised to amend the SUBJECT. Corrected in Bulletin No. 51, Vol. 97, dated December 19, 2012.**

**A true copy of resolution adopted by the Board of Standards and Appeals, October 23, 2012.**

**Printed in Bulletin No. 44, Vol. 97.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**