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APPLICANT – Goldman Harris, LLC, for Bay People Inc., for Alloway Ahmed, owner.

SUBJECT – Application July 7, 2011 – Appeal Challenging Department of Buildings’ determination that accessory off- street parking under ZR §25-31 is not required. R4 Zoning District.

PREMISES AFFECTED – 2812-2814 Voorhies Avenue, south side of Voorhies Avenue between East 28th and East 29th Streets, Block 8791, Lots 5, 6 (tent 106), Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Howard Goldman.

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to the determination of the First Deputy Commissioner of the Department of Buildings (“DOB”), dated June 7, 2011, to uphold the approval of New Building Permit No. 320041129 (the “Permit”), for the construction of a house of worship at the subject site (the “Final Determination”); and

WHEREAS, the Final Determination reads, in pertinent part:

Per ZR 25-31, the parking requirements for houses of worship are applicable only to the facility’s largest room of assembly, provided that “rooms separated by movable partitions shall be considered a single room.” The term “movable partitions” means partitions that fold, pivot or retract. Such term does not mean solid partitions that are non-structural. In this case, the partitions separating the rooms are solid, non-structural partitions and are therefore not considered movable. Therefore, the parking calculations approved on 10/22/2010 by John Gallagher are compliant with the plain reading of the text of ZR 25-31; and

WHEREAS a public hearing was held on this application on November 1, 2011, after due notice by publication in *The City Record*, and then to decision on November 22, 2011; and

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

WHEREAS, the subject site is located on the south side of Voorhies Avenue, between East 28th Street and East 29th Street, within an R4 zoning district; and

WHEREAS, this appeal is brought on behalf of Bay People, Inc., an organization comprising residents

of the affected block and neighborhood, formed to oppose the proposed house of worship (the “Appellant”); and

WHEREAS, a representative for the owner of 2812-2814 Voorhies Avenue (the “Owner”) provided testimony in opposition to this appeal; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

PROCEDURAL HISTORY

WHEREAS, on November 12, 2010, DOB approved the Permit for construction of the subject three-story house of worship with no accessory off-street parking on the site; and

WHEREAS, the proposal includes a main prayer room with 1,383.5 sq. ft. of floor area on the first floor (the “Main Prayer Room”), and a secondary prayer room with 615 sq. ft. of floor area on the second floor (the “Secondary Prayer Room”); and

WHEREAS, on December 8, 2010, the Appellant submitted a Zoning Challenge and Appeal Form to the Brooklyn Borough Commissioner requesting that DOB overturn its issuance of the Permit because, *inter alia*, the plans do not provide any off street parking, contrary to ZR § 25-31; and

WHEREAS, in response, on February 10, 2011, DOB upheld its issuance of the Permit, stating that the proposed house of worship qualified for a waiver of the off-street parking requirement because the required number of parking spaces for the facility was less than ten; and

WHEREAS, subsequently, on February 25, 2011, the Appellant appealed DOB’s February 10, 2011 determination, resulting in DOB’s issuance of the Final Determination, which forms the basis of this appeal; and

THE APPELLANT’S POSITION

WHEREAS, the Appellant contends that the Final Determination should be overturned because the site does not provide the required number of parking spaces under ZR § 25-31 and does not qualify for a waiver of the parking requirement under ZR § 25-33; and

WHEREAS, the relevant provisions of the Zoning Resolution are as follows:

ZR § 25-31 – General Provisions (Required Accessory Off-Street Parking Spaces for Permitted Non-Residential Uses)

In all districts, as indicated, accessory off-street parking spaces, open or enclosed, shall be provided in conformity with the requirements set forth in the table at the end of this Section for all development after December 15, 1961, for the uses listed in the table...

Houses of worship, applicable only to the facility’s largest room of assembly; however, rooms separated by movable partitions shall be considered a single room

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None required – R6 R7 R8 R9 R10

1 per 10 persons – R1 R2 R3

1 per 15 persons – R4 R5

* * *

ZR § 25-33 – Waiver of Requirements for Spaces below Minimum Number

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

In all districts, as indicated...the parking requirements set forth in Section 25-31 (General Provisions)...shall not apply to permitted non-residential uses if the total number of accessory off-street parking spaces required for all such uses on the zoning lot is less than the number of spaces set forth in the following table:

<u>Number of Spaces</u>	<u>Districts</u>
10	R1 R2 R3 R4 R5...;

and

WHEREAS, the Appellant states that, pursuant to ZR § 25-31, the Main Prayer Room has a rated capacity of 138 occupants, which would require nine off-street parking spaces, and the Secondary Prayer Room has a rated capacity of 61 occupants, which would require four off-street parking spaces; for a total of 13 required parking spaces; and

WHEREAS, the Appellant notes that services for the house of worship will be conducted in the Main Prayer Room, which can be viewed from the Secondary Prayer Room through windows located in a solid non-structural wall which faces the Main Prayer Room below; and

WHEREAS, the Appellant contends that the Main Prayer Room will be used in conjunction with the Secondary Prayer Room, and therefore the rooms should be considered a single room of assembly for the purpose of calculating the required number of accessory parking spaces; and

WHEREAS, accordingly, the Appellant argues that the proposed house of worship has an off-street parking requirement of 13 spaces (nine spaces for the Main Prayer Room plus four spaces for the Secondary Prayer Room), and therefore does not qualify for a waiver of the parking requirement under ZR § 25-33 because more than ten spaces are required; and

WHEREAS, the Appellant claims that the capacity of the Main Prayer Room was intentionally limited in order to fall below the ten-space threshold for the parking waiver under ZR § 25-33, and that the separation of the Main Prayer Room and the Secondary Prayer Room is a subterfuge to avoid the requirement to provide off-street parking at the site; and

WHEREAS, specifically, the Appellant contends that the Secondary Prayer Room is proposed to be constructed as a separate room with a non-load bearing wall and viewing windows between it and the the Main Prayer Room below, rather than as a balcony or mezzanine, solely in order to qualify for the parking

waiver under ZR § 25-33; and

WHEREAS, the Appellant further contends that there has been no justification for the need for the wall, which suggests that its only purpose is to allow the Secondary Prayer Room to be characterized as a separate room, and notes that the non-structural wall can be removed in the future pursuant to an Alteration Type 2 application, which would not require any public review; and

WHEREAS, the Appellant argues that the Secondary Prayer Room is intended for female worshippers, and there is no land use or other rationale indicating that female worshippers should not be accounted for in determining the parking requirement; and

WHEREAS, the Appellant notes that in 2004 the City Planning Commission (“CPC”) adopted the Community Facility Zoning Text Amendment, which replaced the term “churches” with the term “houses of worship” in the Zoning Resolution, and amended ZR § 25-31 by modifying the methodology for calculating parking requirements for houses of worship by basing it on “persons rated capacity” rather than the number of “fixed seats”; and

WHEREAS, the Appellant asserts that the purpose of the 2004 text amendment was to address local traffic congestion and illegal parking that occurs at many houses of worship; and

WHEREAS, specifically, the Appellant notes that the CPC Report (N 040202 ZRY), issued at the time the 2004 text amendment was adopted (the “CPC Report”), states that houses of worship often bring “large amounts of automobile traffic to religious services and related functions. The combination of a lack of any effective parking requirement and the changing character of many houses of worship results in local traffic congestion and illegal parking;” and

WHEREAS, the Appellant argues that the separation between the Main Prayer Room and Secondary Prayer Room, and the exclusion of the Secondary Prayer Room from parking calculations, is contrary to the intent of the Zoning Resolution because it undercounts the number of people and cars coming to religious services; and

WHEREAS, finally, the Appellant argues that allowing the Secondary Prayer Room to be excluded from parking calculations will set a precedent that other houses of worship throughout the City can follow in order to avoid the off-street parking requirement; and

WHEREAS, based upon the above, the Appellant requests the following relief: (1) the Final Determination be overturned and the Main Prayer Room and the Secondary Prayer Room be counted together in determining whether accessory off-street parking is required pursuant to ZR § 25-31; (2) the matter be remanded to DOB to determine the need for

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the non-load bearing wall and the intended use of the Secondary Prayer Room; and/or (3) the Board order that the non-load bearing wall separating the Secondary Prayer Room from the Main Prayer Room may not be removed in the future unless the parking requirement is recalculated based on the combined area; and

DOB'S POSITION

WHEREAS, DOB contends that no accessory off-street parking spaces are required for the proposed house of worship, pursuant to ZR § 25-31; and

WHEREAS, at hearing, the Owner provided testimony in support of DOB's position; and

WHEREAS, specifically, DOB states that pursuant to ZR § 25-31, the parking requirements for houses of worship are only applicable to the facility's largest room of assembly, provided that rooms separated by movable partitions are considered a single room; and

WHEREAS, DOB represents that the term "movable partitions" means partitions between two rooms that fold, pivot or retract; and

WHEREAS, DOB states that, for the proposed house of worship, the assembly room on the first floor (the Main Prayer Room) is separated from the assembly room on the second floor (the Secondary Prayer Room) both horizontally and vertically, by a floor and a non-structural solid wall; and

WHEREAS, DOB further states that neither the floor nor the wall are movable partitions (they do not fold, pivot or retract), and therefore the Main Prayer Room and Secondary Prayer Room are not considered a single room for the purpose of determining the required number of parking spaces; and

WHEREAS, as to the calculation of the parking requirement, DOB states that the largest room of assembly (the Main Prayer Room) is 1,383.5 sq. ft. with a rated capacity of 138 occupants, and that the parking requirement of one space per 15 persons rated capacity results in a requirement of nine off-street parking spaces; and

WHEREAS, DOB further states that pursuant to ZR § 25-33, the parking requirements of ZR § 25-31 do not apply to permitted non-residential uses if the total number of accessory off-street parking spaces required for all the uses on the zoning lot is less than ten spaces; and

WHEREAS, accordingly, DOB concludes that no accessory off-street parking spaces are required for the proposed house of worship; and

CONCLUSION

WHEREAS, the Board is not persuaded by the Appellant's assertions that DOB erred in calculating the parking requirement for the proposed house of worship, and finds that DOB correctly considered the Main Prayer Room and Secondary Prayer Room as separate rooms of assembly because (1) the text is unambiguous, (2) DOB's interpretation was not contrary to the intent

of the Zoning Resolution, and (3) DOB may not deny a permit based on speculation that there will be future illegal use; and

WHEREAS, the Board finds that the methodology for calculating the parking requirement for a house of worship under ZR § 25-31 is clear in that it only applies "to the facility's largest room of assembly; however, rooms separated by movable partitions shall be considered a single room;" and

WHEREAS, in the subject case, the Main Prayer Room and Secondary Prayer Room are located on separate floors and are separated both horizontally and vertically by a floor/ceiling and a solid wall; and

WHEREAS, the Board notes that the Appellant has not argued that either the floor or wall separating the two rooms should be considered a "movable partition;" and

WHEREAS, accordingly, the Board finds that the Main Prayer Room and Secondary Prayer Room are properly classified as two separate rooms of assembly; and

WHEREAS, as to the Appellant's arguments based on the CPC Report and the intent of the Zoning Resolution, the Board agrees that one of the purposes of the text amendment was to address traffic and parking concerns, but notes that the CPC Report specifically contemplated that the parking calculations "would be based on 'persons rated capacity' of the largest room of assembly" (emphasis added); and

WHEREAS, the Board further notes that the Appellant's strained interpretation of the subject text is not supported by the language of the CPC Report, which expressed an intent "to provide houses of worship with flexible methods for the provision of parking," and specifically retained the existing parking waiver for houses of worship that generate a small number of parking spaces (ZR § 25-33); and

WHEREAS, the Board notes that houses of worship often have multiple prayer rooms, and that the reference to the "largest room of assembly" in ZR § 25-31 indicates that multiple rooms of assembly for prayer were contemplated and that only the largest of such rooms is intended to count toward the parking requirement for a house of worship; and

WHEREAS, accordingly, the Board finds the Appellant's arguments regarding the intent of the Zoning Resolution to be vague and unsubstantiated, and does not find any evidence in the CPC Report to support the Appellant's interpretation of the parking requirements for houses of worship; and

WHEREAS, the Board notes that the Appellant's assertion that the separation between the Main Prayer Room and Secondary Prayer Room is a subterfuge to avoid the parking requirements of ZR § 25-31 and that the rooms operate in conjunction and should therefore be considered a single room of assembly for the

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purposes of calculating the parking requirement is not supported by any evidence submitted into the record; and

WHEREAS, as to the Appellant's assertions regarding the potential for future non-compliance of the subject building by removing the wall that separates the two rooms, the Board notes that DOB is prohibited from denying a permit based on a speculative future illegal use (see Matter of Di Milia v. Bennett, 149 A.D.2d 592, 593 (2d Dep't 1989) ("[t]he standard to be applied herein is the actual use of the building in question, not its possible future use")); and

WHEREAS, the Board further notes that the plans associated with DOB's approval reflect a wall and floor between the Main Prayer Room and the Secondary Prayer Room, and the Board thus rejects the Appellant's request that it condition its decision on the parking requirement being recalculated if the wall is removed; and

WHEREAS, therefore, the Board finds that DOB properly considered the Main Prayer Room and Secondary Prayer Room to be separate rooms, and properly waived the parking requirement for the subject house of worship pursuant to ZR § 25-33 based on the Main Prayer Room's total rated capacity of 138 persons and a corresponding parking requirement of nine spaces under ZR § 25-31.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated June 7, 2011, is hereby denied.

Adopted by the Board of Standards and Appeals, November 15, 2011.

**A true copy of resolution adopted by the Board of Standards and Appeals, November 22, 2011.
Printed in Bulletin No. 48, Vol. 96.**

**Copies Sent
To Applicant
Fire Com'r.
Borough Com'r.**