

**101-14-BZ**  
**CEQR #14-BSA-153K**

APPLICANT – Moshe M. Friedman PE, for Bais Yaakov D. Chassidei Gur, owner.

SUBJECT – Application May 8, 2015 – Variance (§72-21) to permit the vertical extension of an existing not for profit religious school. R5 zoning district.

PREMISES AFFECTED – 1975 51st Street, northwest corner of 20th Avenue and 51st Street, Block 05462, Lot 45, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT –**

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....5

Negative:.....0

**THE RESOLUTION –**

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 14, 2014, acting on Department of Buildings Application No. 320595101, reads in pertinent part:

1. ZR 24-11: Proposed vertical enlargement increases the existing degree of non-compliance for the maximum permitted floor area; contrary to ZR 24-11;
2. ZR 24-34: Proposed vertical enlargement increases the existing degree of non-compliance for required front yards; contrary to ZR 24-34;
3. ZR 24-35: Proposed vertical enlargement increases the existing degree or non-compliance for required side yards; contrary to ZR 24-35;
4. ZR 24-521: Proposed vertical enlargement increases the existing degree of non-compliance for penetration of sky exposure plane; contrary to ZR 24-521;
5. ZR 24-551: Proposed vertical enlargement increases the existing degree of non-compliance for required side setbacks; contrary to ZR 24-551; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site in an R5 zoning district, the enlargement of an existing four-story school building, contrary to ZR §§ 24-11, 24-34, 24-35, 24-521 and 24-551; and

WHEREAS, a public hearing was held on this application on June 23, 2015, after due notice by publication in *The City Record*, with continued hearings on January 22, 2016, and February 2, 2016, and then to decision on March 22, 2016; and

WHEREAS, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown performed inspections of the subject site and surrounding neighborhood; and

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

WHEREAS, the application is brought on behalf of Bais Yaakov D' Chasidei Gur, a not-for-profit religious school (the "School"); and

WHEREAS, the subject site is located on the northwest corner of 51st Street and 20th Avenue, in an R5 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 115 feet of frontage along 51st Street, 79 feet of frontage along 20th Avenue, total lot area of 9,418 sq. ft. and is improved with a four-story building; and

WHEREAS, the applicant proposes to add a fifth floor to the existing building which houses the School's pre-school, elementary, middle and high school, is run under one administration and has a current enrollment of 667 students; and

WHEREAS, the applicant represents that the School is overcrowded and proposes the expansion in order to relieve the overcrowding, allow existing space within the School to be better utilized, and accommodate the School's anticipated growth over the next five years; and

WHEREAS, the existing building has approximately 29,738 sq. ft. of floor area, a floor area ratio ("FAR") of 3.16, lot coverage of 80.4 percent, wall and total height of 44'-6", no front yard, one side yard of 15'-0" and one side yard of 0'-0", no front set back, and penetrates the sky exposure plane; and

WHEREAS, the existing building is non-compliant with the floor area (a maximum of 18,836 sq. ft. of floor area is permitted pursuant to ZR § 24-11), floor area ratio (a maximum of 2.00 FAR is permitted pursuant to ZR § 24-11), lot coverage (a maximum of 60 percent lot coverage is permitted pursuant to ZR § 24-11), wall and total height (a maximum of 35'-0" is permitted pursuant to ZR § 24-521), front yard (a minimum of 10'-0" is required pursuant to ZR § 24-34), side yard (a, additional side yard of at least 8'-0" is required pursuant to ZR § 24-35), set back (a minimum of 50 percent over 35'-0" is required pursuant to ZR § 24-551) and sky exposure plane (a maximum slope of 1:1 is required pursuant to ZR § 24-521) regulations applicable to a community facility in an R5 zoning district; and

WHEREAS, the applicant represents that the building was constructed in 1927 as a four-story apartment building and was converted to educational use in 1989; and

WHEREAS, the proposed fifth floor addition will add 7,712 sq. ft. to the floor area of the existing building and provide additional classroom, office, and library space for the School; and

WHEREAS, the addition of a fifth floor will also allow for the cellar, which had been divided into classrooms, to be restored to lunchroom and auditorium uses and for the addition of a science lab and library to the third floor and a computer room to the fourth floor; and

WHEREAS, the proposed building will have total floor area of 37,450 sq. ft., 3.98 FAR, 80.4 percent lot coverage, no front yard, one side yard of 15'-0" and no second side yard, total height of 54'-6", lack a front set back, and penetrate the sky exposure plane; and

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WHEREAS, because the proposed enlargement does not comply with the applicable bulk regulation in the subject zoning district, the School seeks the requested variance; and

WHEREAS, the School states that the variance sought is necessary to meet its programmatic needs of remaining in its current location, continuing to serve local families, keeping all of the divisions of the School in the same building, providing space for its educational and extracurricular programs, and accommodating the anticipated increases in enrollment of approximately 6 percent per year over the next 5 years resulting in a total of 704 students; and

WHEREAS, the applicant states that the size and shape of the building on the premises, which is currently obsolete and unable to meet its current programmatic needs, make a vertical expansion that follows the contours of the existing building the only viable manner in which to provide much needed classroom and accessory space; and

WHEREAS, the applicant proposes to renovate the cellar to restore the lunchroom and auditorium to their intended uses; use the first and second floors for pre-school and lower elementary grade students, providing both classroom and indoor play areas that separate these students from older students; use the third floor for elementary school classrooms with a library for preschool through third grade students, a science lab, and offices; use the fourth floor for middle and high school classrooms with a computer room and offices; and use the fifth floor solely for high school students, with classrooms, a computer room, and a dedicated library/resource room; and

WHEREAS, the proposal also includes relocating existing rooftop play area to the roof above the fifth floor, installing a 10'-0" high fence, limiting the use of the area to times between sunrise and sunset and only providing lighting required by the Building Code for emergency egress; and

WHEREAS, the School contends that the requested waivers are both modest and essential to its ability to meet its programmatic needs; and

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

WHEREAS, specifically, as held in *Cornell University v. Bagnardi*, 68 NY2d 583 (1986), an educational 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, based on the above, the Board finds that the programmatic needs of the school and the constraints of the existing building create unnecessary hardship and practical difficulty in developing the

premises in compliance with the applicable zoning regulations; and

WHEREAS, because the School is a not-for-profit institution and the variance is needed to further its not-for-profit mission, the finding set forth in ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the School represents that, pursuant to ZR § 72-21(c), the variance, if granted, will not alter the character of the neighborhood, impair the appropriate use or development of adjacent property, or be detrimental to the public welfare; and

WHEREAS, specifically, the School states that it has occupied the subject premises, and been an essential part of the character of the neighborhood, for nearly 20 years; that the expansion will be vertical only and the additional floor will be designed to fit in with the style, shape and form of the existing building; and that a five story community facility is not out of character in around a residential zone; and

WHEREAS, in support of its argument, the School has submitted a neighborhood character study concluding that, because the premises is a corner lot with avenue frontage; the existing building is already twice as tall as the neighboring row houses; there are four-story apartment houses located adjacent to the north and directly across the street to the south; the proposed height is not atypical for the area, which includes 50 to 80 feet tall buildings alongside 20 to 30 feet tall homes, or for schools or other civic institutions in the neighborhood, and none of the taller buildings in the surrounding area, most of which were constructed before the adoption of the Zoning Resolution have setbacks, the proposed enlargement will not alter the character of the neighborhood; and

WHEREAS, with regards to the proposal's effect on transportation, the School has submitted an analysis concluding that the proposed enlargement and anticipated increase in enrollment will result in a small increment in travel to and from the School that does not reach any thresholds of significance, but nevertheless recommends that steps be taken to coordinate bus loading with available curbside space and that no-standing zones and moving lanes be more strictly enforced; and

WHEREAS, specifically, the applicant has developed an operating plan for the arrival and departure of school buses including a transportation coordination system requiring bus drivers to contact the school administrator or faculty member assigned to monitor arrivals and dismissals by cell phone to ensure that buses arrive only when there is sufficient curbside space available to accommodate them; and

WHEREAS, the School has adopted staggered school hours for its students wherein, in the morning, the high school students, who either walk or take public transportation to the School, are the first to arrive at the building at 8:45 A.M., the elementary school students enter the building between 9:00 A.M. and 9:15 A.M., and the preschool students, who are expected to take the longest to be escorted from buses and into the school because of their age are the last to enter the

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building after 9:15 A.M.; and in the afternoon, the preschool students depart at 3:00 P.M., a full hour before the next group of students to ensure that they have sufficient time to be loaded onto buses, elementary school students are dismissed at 4:00 P.M., and high school students are dismissed at 5:00 P.M., except on Fridays when all students are released at 12:15 P.M. and on Sundays when the high school students are dismissed at 2:00 P.M. and the elementary school students are dismissed at 2:15 P.M.; and

WHEREAS, when they are not in use, the School's buses are parked in a commercial parking lot located at 1625 Surf Avenue, Brooklyn; and

WHEREAS, the Board agrees with the School that the proposal will not alter the essential character of the surrounding neighborhood, not impair the use or development of adjacent properties, and not be detrimental to the public welfare; and

WHEREAS, the School states that, per ZR § 72-21(d), the hardship was not self-created; and

WHEREAS, the Board finds that the hardship herein was not created by the School; and

WHEREAS, the School represents that, consistent with ZR § 72-21(e), the proposal represents the minimum variance needed to accommodate its current and projects programmatic needs; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to allow the School to fulfil its programmatic needs; and

WHEREAS, therefore, 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 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 CEQR No. 14BSA153K, dated November 26, 2014; 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

**A true copy of resolution adopted by the Board of Standards and Appeals, March 22, 2016.**

**Printed in Bulletin Nos. 12-13, Vol. 101.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant impact on the environment.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR 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 ZR § 72-21 and grants a variance, to permit, on a site in an R5 zoning district, the enlargement of an existing four-story school building, contrary to ZR §§ 24-11, 24-34, 24-35, 24-521 and 24-551, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 3, 2016" – Sixteen (16) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 37,450 sq. ft. (3.98 FAR), a maximum 80.4 percent lot coverage, minimum front yard of 0'-0", minimum side yards of 15'-0" and 0'-0", and maximum total height of 54'-6";

THAT these bulk parameters represent the maximum expansion possible on the subject site;

THAT buses shall be parked at a commercial lot located at 1625 Surf Avenue, Brooklyn when not in use;

THAT traffic monitors shall be utilized to keep all "No Standing" areas clear of obstruction;

THAT masonry at fifth floor level of the building façade will match the existing brick used on the lower floors;

THAT trash shall only be stored inside the premises in the dry waste and refrigerated storage areas and, at the earliest, moved to the street the night before morning trash pick-up;

THAT substantial construction will be completed in accordance with ZR § 72-23;

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 will be considered approved only for the portions related to the specific relief granted; and

THAT DOB 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, March 22, 2016.

