

68-07-BZ

**CEQR #07-BSA-069Q**

APPLICANT – Jeffrey A. Chester, Avram Babadzhanov, owner; Congregation Rubin Ben Issac Haim, lessee.

SUBJECT – Application March 22, 2007 – Under §72-21 Proposed community facility synagogue, which does not comply with front and side yard requirements.

PREMISES AFFECTED – 102-48 65<sup>th</sup> Road, southwest corner Yellowstone Boulevard and 65<sup>th</sup> Road, Block 2130, Lot 37, Borough of Queens.

**COMMUNITY BOARD #6Q**

APPEARANCES –

For Applicant: Jeffrey Chester.

**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 Queens Borough Commissioner, dated March 13, 2008, acting on Department of Buildings Application No. 402199973, reads, in pertinent part:

“Community facility (synagogue/daycare) Use Group 4 in R5 zone requires front and side yards for existing building and proposed enlargement as per Section 23-24 and Section 24-35 of the NYC Zoning Resolution.

In addition, proposed plans exceed lot coverage requirements as per ZR 24-11 and as such must be referred to the Board of Standards and Appeals for approval.”; 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 proposed enlargement and conversion of an existing two-story two-family home into a three-story and cellar building to be occupied by a synagogue and a daycare, which does not comply with front and side yards and lot coverage requirements for community facilities, contrary to ZR §§ 23-24, 24-11, and 24-35; and

HEREAS, a public hearing was held on this application on November 20, 2007, after due notice by publication in *The City Record*, with continued hearings on January 29, 2008, March 4, 2008, and April 1, 2008 and then to decision on May 6, 2008; and

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

WHEREAS, Community Board 6, Queens, recommends disapproval of the application, citing concerns about (1) the absence of a pre-existing congregation, (2) whether the application meets all of the findings of ZR § 72-21, (3) the absence of a clearly

defined program, (4) ambiguous space needs, (5) lack of parking, (6) the site’s ownership, and (7) a potential negative impact on the adjacent property; and

WHEREAS, certain members of the community provided testimony and forms of objection in opposition to the proposal, and reiterate the concerns of the Community Board and added that the proposed building is not compatible with the neighborhood context (collectively, “the Opposition”); and

WHEREAS, an adjacent neighbor raised specific concerns about the proposed building’s potential impact on access to light and air for the adjacent home and the elimination of an informal access way across the subject site to Yellowstone Boulevard; and

WHEREAS, certain members of the community provided written and oral testimony in support of the proposal and the synagogue and daycare center’s services; and

WHEREAS, this application is being brought on behalf of Rubin Ben Issac Haim Synagogue, a non-profit religious entity (the “Synagogue”); and

WHEREAS, the subject premises is located on the southwest corner of Yellowstone Boulevard and 65<sup>th</sup> Road, and is occupied by a semi-detached two-family home; and

WHEREAS, the proposal provides for the following uses: (1) a synagogue on the first floor and cellar level, and (2) a daycare, operated by the Synagogue, on the second and third floors, with a rooftop play area; and

WHEREAS, during the hearing process, the proposal was revised several times; the current proposal provides for a three-story and cellar synagogue with the following parameters: a height of 35 feet, with 4,884 sq. ft. of floor area (4,994 sq. ft. is the maximum permitted for a community facility in the subject zoning district); and an FAR of 1.95 (2.0 FAR is the maximum permitted for a community facility); and

WHEREAS, additionally, the applicant proposes 62.3 percent lot coverage (a maximum of 60 percent is permitted); one front yard with a depth of 10’-0” on 65<sup>th</sup> Road and one front yard with a depth ranging from 0’-11” to 5’-0” on (two front yards of 10’-0” each are the minimum required), one side yard with a width of 8’-0” on the southern lot line, and one partial side yard with a width of 4’-0” on the western lot line (two side yards with minimum widths of 10’-0” each are the minimum required); and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue: (1) to accommodate the congregation of approximately 80 adults; (2) to provide space for small meetings and gatherings including those for religious education and social services; and (3) to provide a free non-profit daycare center for approximately 40 students; and

WHEREAS, the applicant states that the proposed amount of space would accommodate a maximum total of

approximately 140 adults; and

WHEREAS, the applicant represents that there will not be any formal catering space and that no significant catering events are proposed to take place at the site; and

WHEREAS, the applicant represents that meeting space is required for educational programs accessory to the Synagogue and for groups to meet outside of the worship space; and

WHEREAS, in response to certain concerns raised by the Opposition, the Board acknowledges that the Synagogue, as a religious 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 NY2d 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 applicant provided a submission briefing the prevailing New York State case law on religious deference; and

WHEREAS, similarly, the Board notes that under well-established precedents of the courts and this Board, applications for variances that are needed in order meet the programmatic needs of non-profit educational and religious institutions, are entitled to significant deference (see e.g. Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986)); and

WHEREAS, the applicant represents that the proposed classroom space is required to meet standards to accommodate the projected enrollment; and

WHEREAS, the applicant notes that a rooftop play area is required to accommodate outdoor space since there is insufficient yard space, and that it will be built in strict compliance with the Building Code and any other relevant regulations; and

WHEREAS, however, in addition to the programmatic need, the applicant presents the following site conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations, as to lot coverage and yards: the corner site has a trapezoidal shape with a width ranging from 20'-5" to 31'-11" and if the required side yard of 10'-0" along the western lot line and the required front yard of 10'-0" on Yellowstone Boulevard were provided, only a triangular sliver would remain, with a maximum width of 10'-0" ranging to a width of 0'-0"; and

WHEREAS, the Board agrees that no feasible building could be built on such a small footprint; and

WHEREAS, the Board notes that the existing home

at the site is semi-detached and does not provide any side yard for the majority of its western lot line, which is a permitted condition for a residential use, but not a community facility use, in the subject zoning district; and

WHEREAS, the applicant states that the required floor area cannot be accommodated within the as-of-right lot coverage and yard parameters and allow for efficient floor plates that will accommodate the Synagogue's programmatic needs, thus necessitating the requested waivers of these provisions; and

WHEREAS, the applicant argues that the requested yard and lot coverage waivers would enable the Synagogue to develop the site with a building with viable floor plates; and

WHEREAS, the applicant states that in addition to facilitating a uniform floor plate, the waivers also allow the Synagogue's height to fit into the context of the neighborhood; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical conditions, when considered in conjunction with the programmatic needs of the Synagogue, 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 Synagogue 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 building 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, the applicant notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, the Board notes that the immediate area is characterized by two- and two-and-a-half-story semi-detached homes, but that there are a significant number of other community facilities and multiple dwelling buildings of greater height; and

WHEREAS, the applicant initially proposed a building with a complying lot coverage of 59 percent, no 4'-0" setback and partial side yard and a greater height along the western lot line, and a 5'-0" side yard at the rear of the site; and

WHEREAS, the Board directed the applicant to explore other designs to improve compatibility with adjacent buildings; and

WHEREAS, specifically, the Board suggested that the applicant (1) increase the side yard at the rear to 8'-0", (2) suppress the elevation of the platform at the entrance and limit the encroachment into the front yard on 65<sup>th</sup> Road, (3) shift the bulk of the building away from the 65<sup>th</sup> Road frontage where there is a residential context, (4) eliminate any windows from the lot line façade, and (5) reduce the height of the one-story portion on the western lot line from 19'-0" to 15'-0"; and

WHEREAS, in response, the applicant re-designed the building, which resulted in an increase in lot coverage, but provided an increased side yard of 8'-0" at the rear and a 10'-0" front yard along 65<sup>th</sup> Road where there is a context for front yards; and

WHEREAS, additionally, the applicant shifted the proposed setbacks from the rear of the building to the front and agreed to reduce the height of a portion of the building at the rear to one-story and 15'-0" so as to be more compatible with the adjacent home while also providing a 4'-0" setback above the first floor along the western property line; and

WHEREAS, as to traffic impact and parking, the applicant noted that the traffic impact would be minimal as a majority of congregants live nearby and would walk to services, specifically to worship services on Fridays and Saturdays when they are not permitted to drive; 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 the hardship was not self-created and that no development that would meet the programmatic needs of the Synagogue 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, as noted, throughout the hearing process, the applicant revised the proposal to increase the size of the yards and shift the bulk across the site; and

WHEREAS, the Board considered the modifications noted above and finds the requested waivers to be the minimum necessary to afford the Synagogue the relief needed both to meet its programmatic needs and to construct a building that is compatible with the character of the neighborhood; and

WHEREAS, as to the Community Board and Opposition's concerns, the Board notes that: (1) the applicant represents that there is a large Bukharian population within walking distance of the site which is expected to form the congregation; (2) as discussed, the requirements of ZR § 72-21(a) are met by the demonstration of legitimate programmatic needs and the limitations of the site in meeting those goals; (3) the applicant has described a program and a use which are permitted as-of-right in the subject zoning district; (4) the applicant represents that the majority of the congregants will walk and that it plans to provide transportation for majority of the students; (5) the site's ownership is irrelevant to the Board's findings; and (6) the applicant has modified the proposal to provide for a building with a bulk and yards that are compatible with neighborhood context; and

WHEREAS, as to the specific concerns of the adjacent neighbor, the Board notes that the applicant reduced the height of the building and provided a setback along the common lot line to minimize any impact on access to light and air for the adjacent home; and

WHEREAS, as to the informal access way across the subject site to Yellowstone Boulevard, the Board notes that it did not receive any evidence that a legal easement exists and that making a determination as to the validity of this claim is not within its jurisdiction; 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(ak) 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. 07BSA069Q, dated March 21, 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 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 proposed three-story and cellar Use Group 4 synagogue and accessory daycare, which does not comply with lot coverage, front yard, and side yard regulations for community facilities, contrary to ZR §§ 23-24, 24-11, and 24-35, *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 April 21, 2008"—Thirteen (13) sheets; and *on further condition:*

THAT any change in control or ownership of the

68-07-BZ

CEQR #07-BSA-069Q

building shall require the prior approval of the Board;

THAT the building parameters shall be: a floor area of 4,884 sq. ft. (1.95 FAR), three stories, a total height of 35 feet, a lot coverage of 62.3 percent, one front yard of 10'-0" on 65<sup>th</sup> Road, and one side yard of 8'-0" at the rear/south lot line;

THAT the use shall be limited to a house of worship and daycare (Use Group 4);

THAT no commercial catering shall take place onsite;

THAT sound attenuation measures shall be installed and maintained to limit the maximum interior noise level from the Synagogue to the adjacent residential use to 45 dBA;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT DOB shall review and approve the rooftop play area;

THAT any rooftop mechanicals shall comply with all applicable Building Code and other legal requirements, including noise guidelines, as reviewed and approved by the Department of Buildings;

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,  
May 6, 2008.

A true copy of resolution adopted by the Board of Standards and Appeals, May 6, 2008.

~~Printed in Bulletin Nos. 18-19, Vol. 93.~~

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

