

**265-13-BZ**

**CEQR #14-BSA-036Q**

APPLICANT – Eric Palatnik P.C., for St. Albans Presbyterian Church, owner.

SUBJECT – Application September 6, 2013 – Variance (§72-21) to permit a proposed community facility and residential building (*St. Albans Presbyterian Church*), contrary to floor area (§§23-141, 24-161), maximum dwelling unit (§§23-22, 24-20), maximum building height (§23-631), and minimum parking (§25-25e) regulations. R3A zoning district.

PREMISES AFFECTED – 118-27/47 Farmers Boulevard, east side of Farmers Boulevard, 217.39 feet north of intersection of Farmers Boulevard and 119th Avenue, Block 12603, Lot(s) 58 & 63, Borough of Queens.

**COMMUNITY BOARD #12Q**

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

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez .....4  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 14, 2014, acting on DOB Application No. 420813285, reads in pertinent part:

1. Proposed mixed use multiple dwelling building is contrary to ZR 22-12;
2. Proposed residential floor area ratio exceeds the maximum permitted pursuant to ZR 23-141 and 24-161;
3. Proposed number of dwelling units exceeds maximum permitted pursuant to ZR 23-22 and 24-20;
4. Proposed building exceeds maximum permitted building height pursuant to ZR 23-631;
5. Proposed number of parking spaces is below minimum required pursuant to ZR 25-25(e); and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a R3A zoning district, the construction of a five-story mixed residential and community facility affordable housing building that does not comply with the zoning requirements for use, floor area ratio (“FAR”), density, height, and parking, contrary to ZR §§ 22-12, 23-141, 23-22, 23-631, 24-161, 24-20, and 25-25; and

WHEREAS, a public hearing was held on this application on June 24, 2014, after due notice by publication in the *City Record*, with a continued hearing on August 19, 2014, and then to decision on September 23, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by former Chair

Srinivasan, Vice-Chair Hinkson, and Commissioner Ottley-Brown; and

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

WHEREAS, Councilperson Leroy Comrie, Councilperson I. Daneek Miller, former Queens Borough President Helen Marshall, Queens Borough President Melinda Katz, and certain members of the surrounding community submitted testimony in support of the application; and

WHEREAS, Assemblyman William Scarborough, Congressman Gregory Meeks, the St. Albans Civic Improvement Association, the Addison Park Civic Association, and certain members of the surrounding community submitted testimony in opposition to the application (the “Opposition”), citing the following concerns: (1) the incompatibility of the proposed height and number of dwelling units with the surrounding neighborhood; (2) the negative effect of the proposal on traffic, parking, and critical infrastructure, including police, schools, and sewers; (3) the absence of an Environmental Impact Statement (“EIS”); (4) the inconsistency of the proposal and the recent R3A downzoning; and (5) the lack of a nexus between the programmatic needs of the church and the proposed waivers; and

WHEREAS, the application is brought on behalf of the Presbyterian Church of St. Albans (the “Church”), which is a non-profit religious organization, in partnership with Trinity Development Associated (“Trinity”), which is a for-profit developer that specializes in affordable housing projects; where referred to collectively, the Church and Trinity constitute the applicant; and

WHEREAS, the subject site an irregularly-shaped lot in the mid-block portion of the block bounded by Farmers Boulevard, 118th Avenue, 189th Street, and 119th Avenue, within an R3A zoning district; and

WHEREAS, the site comprises Tax Lots 58 and 63, has 224.03 feet of frontage along Farmers Boulevard, 129.54 feet of frontage along 189th Street, and 44,642 sq. ft. of lot area; and

WHEREAS, the site is vacant; the applicant represents that Lots 58 and 63 were historically developed separately with residential buildings; and

WHEREAS, the applicant notes that the Church has owned Lot 58 for 16 years and purchased Lot 63 jointly with Trinity in 2011; subsequently, on July 26, 2014, Trinity assigned its interest in Lot 63 to the Church; accordingly, the applicant represents the Church has title to the entire site; and

WHEREAS, the applicant proposes to construct a five-story mixed residential (Use Group 2) and community facility (Use Group 4) building with 64,718 sq. ft. of floor area (1.45 FAR) (63,897 sq. ft. of residential floor area (1.43 FAR) and 821 sq. ft. of community facility floor area (0.02 FAR)), 10,417 sq. ft.

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of community facility floor space in the cellar, 67 dwelling units, 17 parking spaces, a wall height of 35'-0", and a building height of 55'-0"; and

WHEREAS, the applicant states that the proposed community facility will facilitate the Church's youth- and senior-oriented programming, including life skills courses, educational training, arts instruction, adult care, and recreation facilities; and

WHEREAS, the applicant also states that the proposal is an affordable housing project, with anticipated financing from the Department of Housing Preservation and Development ("HPD"), New York State Division of Housing and Community Renewal ("DHCR"), and Community Preservation Corporation; and

WHEREAS, in order to construct the building as proposed, the applicant seeks the following waivers: (1) use (a multiple dwelling is not permitted within the subject R3A zoning district, per ZR § 22-12); (2) maximum FAR (a maximum FAR of 1.0 is permitted, per ZR §§ 23-141 and 24-161); (3) density (a maximum of 31 dwelling units is permitted, per ZR § 23-22); (4) height (a maximum wall height of 21'-0" is permitted with a maximum building height of 35'-0" is permitted, per ZR § 23-631); and (5) parking (a minimum of 34 spaces is required, per ZR § 25-25); and

WHEREAS, the applicant states that, in accordance with ZR § 72-21(a), the site's irregular shape is a unique physical condition, which creates an unnecessary hardship in developing the site in conformance and compliance with applicable regulations; and

WHEREAS, the applicant states that the site is a six-sided, irregular through lot with an arcing frontage along 189th Street, a diagonal frontage along Farmers Boulevard, a lot width varying from 224 feet to 129 feet, and a lot depth varying from 131 feet to 279 feet; and

WHEREAS, the applicant also states that the easternmost portion of the site forms a triangle along the arcing street line formed by 189th Street and that the triangle narrows from approximately 80 feet in width at its widest point to zero feet; and

WHEREAS, the applicant represents that there are no sites within 400 feet of the subject site with even a remotely similar shape; and

WHEREAS, the applicant states that despite the site's substantial lot area (44,642 sq. ft.), the shape of the site combined with the use and bulk requirements of the subject R3A zoning district results in a development with only 22 dwelling units and 30 percent lot coverage, which represents ten fewer dwelling units and 25 percent less lot coverage than is permitted as-of-right; and

WHEREAS, to further demonstrate how the site's shape constrains its development, the applicant submitted an analysis, which reflects that if the site had a standard shape, it would accommodate 16 homes (32 dwelling

units); and

WHEREAS, accordingly, the applicant states that relief is necessary to make efficient use of the site for housing; and

WHEREAS, in addition, the applicant states that in order to be competitive for certain financial programs associated with the affordable housing, it must build a minimum number of dwelling units; in support of this statement, the applicant provided letters detailing its eligibility for HPD and DHCR funding; and

WHEREAS, finally, the applicant states that the Church's programmatic needs are furthered by the proposal; and

WHEREAS, specifically, as noted above, the Church has a long-standing presence in the community and requires additional space for educational, religious, and recreational programming; likewise, the Church represents that its congregation is drawn largely from the surrounding neighborhood and that housing affordability is a substantial and persistent concern for its congregants and other members of the surrounding community; and

WHEREAS, the applicant also states, as noted above, that the majority of the proposed cellar level (10,417 sq. ft.) will be used as a community facility; the applicant contends that, absent the requested parking waiver, parking spaces, rather than community facility program space will be placed in the cellar, resulting in a significant reduction in the Church's community-oriented programming at the site; and

WHEREAS, as noted above, the Board acknowledges that the Church, 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, as to the Opposition's concerns regarding the nexus between the Church's programmatic needs and the requested relief, the Board notes that the applicant does not rely exclusively on programmatic needs to justify the requested waivers; rather, programmatic needs satisfaction is a mere component of the (a) finding under ZR § 72-21 and the primary component is the irregular shape of the site coupled with the economics of constructing affordable housing; and

WHEREAS, based upon the above, the Board finds that the shape of the site and the programmatic needs of the Church in developing community-oriented space and affordable housing units create an unnecessary hardship and a practical difficulty in developing the site in

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conformance and compliance with the applicable zoning regulations; and

WHEREAS, the applicant states that as a non-profit institution, it is exempt from establishing that there no reasonable possibility that the development of the site in strict compliance with the zoning requirements will bring a reasonable return, per ZR § 72-21(b); nonetheless, to demonstrate the need for the number of dwelling units proposed, the applicant assessed the financial feasibility of three scenarios: (1) an as-of-right development consisting of 11 two-family homes; (2) an as-of-right development on a standard lot with the same lot area; and (3) the proposal; and

WHEREAS, the applicant concluded that only the proposal provides relief for the unique conditions of the site and allows the Church to construct affordable housing units as well as space for its religious programming; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the site's unique physical conditions, there is no reasonable possibility that an affordable housing development in strict compliance with applicable zoning requirements is feasible; 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, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the surrounding neighborhood includes one- and two-family homes and large community facilities; and

WHEREAS, as to adjacent uses, the applicant states that the site is surrounded on all sides by detached, two- or three-story, one- or two-family homes; and

WHEREAS, as to the use variance, the Board notes that although residences are permitted at the site, multiple dwellings are not permitted; thus, the use waiver is mitigated by the fact that residential use is contemplated at the site; further, as noted above, a multiple dwelling is necessary to achieve the number of dwelling units required for a government-funded affordable housing project; and

WHEREAS, the applicant notes that although the proposed building rises to a height of five stories, only the central portion of the building is five stories and the portions of the building immediately adjacent to the nearby homes are three or four stories in height; and

WHEREAS, the applicant also asserts that the proposed five-story building is contextual with the profile of community facility buildings in the vicinity, including the St. Albans Church and School located at 172-17 Linden Boulevard (building height of 30 feet and 22,440 sq. ft. of floor area), the VA Medical Center and Home

located at 180-20 Linden Boulevard (building height of 60 feet and 731,427 sq. ft. of floor area), PS 3 located at 187-40 Foch Boulevard (building height of 42 feet and 36,750 sq. ft. of floor area), the St. Catherine's Church and School located at 185-15 Baisley Boulevard (building height of 39 feet and 12,200 sq. ft. of floor area), PS 15 located at 121-15 Lucas Street (building height of 50 feet and 49,410 sq. ft. of floor area), Humanities and Arts High School located at 207-01 116th Avenue (building height of 56 feet and 252,655 sq. ft. of floor area), and PS 16 located at 201-15 115th Avenue (building height of 42 feet and 97,200 sq. ft. of floor area); and

WHEREAS, further, the applicant states that in order to minimize the effects of the proposed height on the adjacent residences, the design includes a perimeter wall height of 35 feet and a front yard depth consistent with adjacent properties; in addition, at the Board's request, the proposal was modified to enhance the landscaping and plantings along the perimeter of the site; and

WHEREAS, the applicant also notes that an R5D zoning district is mapped just north of the site at 118th Avenue, and that the proposed building would be complying in that district with respect to use, FAR, and density; and

WHEREAS, the applicant contends that, based on the anticipated car ownership of the residents of the building—which is expected to be lower than the average household in the area—and the availability of off-street parking in the vicinity of the site, the proposed parking waiver is appropriate; and

WHEREAS, at hearing, and in response to the concerns of the Opposition, the Board directed the applicant to submit a more comprehensive parking demand analysis; and

WHEREAS, in response, the applicant provided the requested parking demand analysis of nine nearby residences of similar size, which reflects that the proposal will not have a significant negative impact on parking in the surrounding area; and

WHEREAS, as to the Opposition's concerns regarding the lack of an EIS, the Board observes that an EIS was not required due to the scope of the proposal, as set forth below; and

WHEREAS, as to the Opposition's concerns regarding the inconsistency of the proposal with the recent downzoning of the site to R3A, the Board notes that ZR § 72-21 exists to provide relief for uniquely burdened sites where the general use and/or bulk regulations make development infeasible; thus, while the Board considers the timing of a rezoning in determining whether a proposal satisfies the (c) finding ZR § 72-21, a recent rezoning *per se* does not make a site ineligible for relief that would otherwise be appropriate; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the

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surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is due to the peculiarities of the site and the applicant's objective to provide affordable housing and community facility space for the Church's congregants; and

WHEREAS, the Board also finds that this proposal is the minimum necessary to afford the owner relief, 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 an Unlisted action pursuant to 6 NYCRR, Part 617.5; 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. 14-BSA-036Q, dated February 4, 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 Impact Statement are foreseeable; and

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

*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

**A true copy of resolution adopted by the Board of Standards and Appeals, September 23, 2014.**

**Printed in Bulletin No. 39, Vol. 99.**

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

amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site within a R3A zoning district, the construction of a five-story mixed residential and community facility affordable housing building that does not comply with the zoning requirements for use, FAR, density, height, and parking, contrary to ZR §§ 22-12, 23-141, 23-22, 23-631, 24-161, 24-20, and 25-25; *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 5, 2014"– twenty (20) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum of five stories, a maximum floor area of 64,718 sq. ft. of floor area (1.45 FAR), a maximum residential floor area of 63,897 sq. ft. (1.43 FAR), a maximum of 67 dwelling units, a minimum of 17 parking spaces, a maximum wall height of 35'-0", and a maximum building height of 55'-0", as reflected on the BSA-approved plans;

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

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, September 23, 2014.

