

**277-13-BZ**

**CEQR #14-BSA-048M**

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for SoBro Development Corporation, owner.

SUBJECT – Application September 27, 2013 – Variance (§72-21) to permit a proposed development of a 12-story, 125 unit residential building with two floors of community facility/church space, contrary to floor area (§23-145), lot coverage (§23-145), and base and building height (§23-633). R7-2 zoning district.

PREMISES AFFECTED – 1769 Fort George Hill, bounded by Fort George Hill to the east an NYCTA No.1 train tracks to the west, Block 2170, Lots 180 & 190, Borough of Manhattan.

**COMMUNITY BOARD #12M**

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

**THE VOTE TO GRANT** –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez .....3

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 18, 2013, acting on DOB Application No. 120024534, reads in pertinent part:

ZR 23-145 – Proposed building exceeds maximum allowable floor area ratio of 4.0 for residential portion;

ZR 23-145 – Proposed lot coverage exceeds maximum allowable lot coverage of 65 percent;

ZR 23-52 – Proposed building does not meet the minimum rear yard requirement;

ZR 23-633 – Proposed building does not comply with the maximum height and setback regulations; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a R7-2 zoning district, the construction of a 12-story mixed residential and community facility affordable housing building that does not comply with the zoning requirements for floor area ratio (“FAR”), lot coverage, rear yards, and height and setback, contrary to ZR §§ 23-145, 23-52, and 23-633; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in the *City Record*, with continued hearings on June 17, 2014, and July 15, 2014, and then to decision on August 19, 2014; and

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

WHEREAS, Community Board 12, Manhattan, recommends disapproval of this application, citing concerns regarding the proposed height, the affordability of the units, and the increased parking demand that will

be created by the proposed building; and

WHEREAS, certain members of the surrounding community submitted testimony in opposition to the application (the “Opposition”), citing the following concerns: (1) the proposed height, which the Opposition contends is incompatible with the neighborhood context; (2) the excessive number of studio apartments; (3) the lack of sufficient parking in the neighborhood and the increased parking demand as a result of the proposal; (4) the amount of “green space” to be eliminated in connection with the proposal; (5) the suitability of the bedrock to carry the loads of the proposed building; (6) the risk of harm to persons and property associated with construction near a subway line; (7) the shadows that will be cast by the proposed building; and (8) the lack of affordability of the proposed apartments; and

WHEREAS, the application is brought on behalf of SoBro Development Corporation, the real estate development arm of the South Bronx Overall Economic Development Corporation, a not-for-profit organization, whose stated mission is to enhance the quality of life in the South Bronx by strengthening business and creating innovative economic, housing, educational, and career development programs for youth and adults; and

WHEREAS, the subject site is a narrow, crescent-shaped lot located on the west side of Fort George Hill approximately 155 feet south of the intersection of Nagle Avenue and Fort George Hill, within an R7-2 zoning district; and

WHEREAS, the site comprises Tax Lots 180 and 190, has approximately 456 feet of frontage along Fort George Hill, and 20,444 sq. ft. of lot area; and

WHEREAS, the site is vacant; available records indicate that it has never been developed; and

WHEREAS, the applicant proposes to construct a 12-story mixed residential (Use Group 2) and community facility (Use Group 4) building with 142,195 sq. ft. of floor area (6.97 FAR) (131,848 sq. ft. of residential floor area (6.46 FAR) and 10,347 sq. ft. of community facility floor area (0.51 FAR)), 73 percent lot coverage, 113 dwelling units, 57 parking spaces, a rear yard depth of 10’-0”, and a building height of 146’-1” with no setback; and

WHEREAS, the applicant notes that the proposal is an affordable housing project, with an income range for the dwelling units of 40 percent to 130 percent of area median income, and financing primarily through the New York City Housing Development Corporation, with additional subsidies through the participation of the Department of Housing Preservation and Development, the New York State Energy Research and Development Authority, and Enterprise Community Partners; and

WHEREAS, in order to construct the building as proposed, applicant seeks the following waivers: (1) residential FAR (a maximum residential FAR of 4.0 is permitted, per ZR § 23-145); (2) lot coverage (a maximum residential lot coverage of 65 percent is

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permitted, per ZR § 23-145); (3) rear yard (a minimum rear yard depth of 15'-0" is required, per ZR § 23-52); and (4) height and setback (a maximum base height of 65'-0" is required with a 10'-0" setback and a maximum building height of 80'-0" is permitted, per ZR § 23-633); and

WHEREAS, the applicant notes that, originally, the proposal included 125 dwelling units (mostly studio and one-bedroom apartments) and only 44 parking spaces, which required a waivers of ZR §§ 23-22 and 25-23; and

WHEREAS, however, in response to concerns raised by the Board, the proposal was amended to provide a complying number of dwelling units and parking spaces; in addition, studio apartments were eliminated entirely from the proposal and the number of two- and three-bedroom apartments were increased; and

WHEREAS, the applicant states that, in accordance with ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the site's irregular shape; (2) its topography; (3) the adjacency of the elevated subway line; (4) its substandard soil composition; and (5) the presence of a transit easement; and

WHEREAS, the applicant states that the site is narrow and has a crescent shape, measuring 620 feet in length and only 46 feet in width at its widest point; and

WHEREAS, the applicant states that, due to the irregularity of the site, a complying building would be an elliptical building with inefficient floorplates and unmarketable unit layouts; in particular, a double-loaded corridor cannot be constructed on the site; and

WHEREAS, further, the applicant states that a complying building would have unusually high façade construction costs in proportion to the amount of floorspace that may be constructed as-of-right; and

WHEREAS, thus, the site's shape makes the construction of a complying building infeasible; and

WHEREAS, the applicant states that the site also has a unique topography; specifically, the applicant represents that the site slopes downward along Fort George Hill from an approximately elevation of 79 feet at the southern end to an elevation of approximately 37 feet at the northern end; thus, in order to achieve a uniform basement grade, cuts of five to 50 feet are required, at significant cost; and

WHEREAS, the applicant contends that the site is also uniquely burdened by the presence of the No. 1 subway line tracks and platform for the Dyckman Street station along its western boundary; and

WHEREAS, the applicant states that the site for the subway line drops steeply in elevation from the subject site; as such, extraordinary temporary and permanent safety measures are required to safeguard areas around the subway line, including the construction of additional

shoring and retaining walls, and the monitoring of vibrations, all at significant cost; and

WHEREAS, in addition, the applicant represents that the site is burdened by substandard soil; and

WHEREAS, specifically, the applicant states that rock outcroppings are visible throughout the site and that a geotechnical investigation (borings and probes) revealed rock quality to be "very poor", with a percent core recovery measurement of 70.0, a rock quality designation value of 0.0, and sound rock located well below weathered rock; accordingly, the applicant contends that the site's substandard soil creates premium foundation costs; and

WHEREAS, the applicant notes that such premium foundation costs are increased further by the presence of an MTA easement along the southern boundary of the site, which must remain open and protected in perpetuity; and

WHEREAS, based upon the above, the Board finds that the site's irregular shape, sloping topography, the adjacency to the No. 1 subway line, substandard soil composition, and adjacency to a transit easement, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the Board also notes that a height factor building, which is available in the subject R7-2, is particularly incompatible with the site, given its unusual shape and shallow depth; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility of development of the site with affordable housing in compliance with the Zoning Resolution; and

WHEREAS, the applicant represents that the site's unique conditions create premium construction costs as follows: (1) \$540,000 for the construction of the perimeter retaining wall; (2) \$405,000 for the construction of the footings for the perimeter retaining wall; (3) \$600,000 for the excavation of hard and soft stone; and (4) \$265,000 for shoring and vibration monitoring; thus, the site's premium construction cost total \$2,023,350; and

WHEREAS, the applicant states that an as-of-right building would have 37 dwelling units at a premium construction cost of approximately \$54,685 per unit; in contrast, the proposed building distributes the premium construction costs over 113 dwelling units, at a cost of \$17,909 per unit, making affordable housing at the site feasible; 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

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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 high-density residential buildings, an active commercial district along Dyckman Street, major thoroughfares (the Henry Hudson Parkway, Broadway, and the Harlem River Drive) and parkland (Highbridge Park, Fort Tryon Park, and, further north, Inwood Hill Park); and

WHEREAS, the applicant states that the neighborhood is well-served by public transit, including the No. 1 train and several city bus lines; and

WHEREAS, as to adjacent uses, the applicant states, as noted above, that the site is directly adjacent to the No. 1 train and platform for the Dyckman Street station to the west; south and east of the site are Highbridge Park, and north of the site is the intersection of Nagle Avenue and Fort George Hill; no buildings abut the site, and the nearest building is a four-story utility building that fronts on Hillside Avenue and is separated from the site by the tracks for the No. 1 train; and

WHEREAS, turning to bulk, the applicant states that the proposed 12-story building is contextual with the profile of buildings in the immediate vicinity; while the buildings in the valley west of the train tracks and Nagle Avenue are predominantly five and six stories in height, the four buildings immediately to the south along Fort George Hill are more than 20 stories in height; in addition, there is a cluster of six 14-story buildings northeast of the site along Nagle Avenue; and

WHEREAS, at hearing, the Board: (1) directed the applicant to submit a parking demand analysis; and (2) questioned whether the proposed triple-stacker parking equipment would fit within the cellar; and

WHEREAS, in response, the applicant provided the requested parking demand analysis; in addition, the applicant submitted additional specifications regarding the parking stacker equipment and confirmed that it could be safely operated within the cellar; and

WHEREAS, as to the Opposition and the Community Board's many concerns, the Board notes that three of the major concerns—the height of the building, the parking waiver, and the breakdown of the unit type—were modified during the hearing process; the height was decreased by two stories, the parking waiver was eliminated, and the studio apartments were eliminated; and

WHEREAS, the Board finds that the Opposition's remaining concerns do not form a sufficient basis for the denial of the variance; as to the amount of "green space" eliminated in connection with the proposal, the Board notes that the proposal complies in all respects with the landscaping and planting requirements of the Zoning

Resolution; as to the suitability of the bedrock to carry the loads of the proposed building and the risk of harm to persons and property associated with construction near a subway line, such matters are within the purview of DOB; as to the shadows that will be cast by the proposed building, according to the Phase I environmental site assessment, the proposal does not have a significant adverse impact on shadows; finally, as to the lack of affordability of the proposed apartments, the Board observes that the applicant is a well-established community-based developer of affordable housing and the proposal has garnered support from various city agencies, including the Housing Development Corporation and the Department of Housing Preservation and Development; and

WHEREAS, accordingly, the Board finds that this action will not 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 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

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 a Type I action pursuant to 6 NYCRR, Part 617.4; 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-048M, dated July 19, 2013; 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 Type I Negative

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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 § 72-21 to permit, on a site within a R7-2 zoning district, the construction of a 12-story mixed residential and community facility affordable housing building that does not comply with the zoning requirements for FAR, lot coverage, rear yards, and height and setback, contrary to ZR §§ 23-145, 23-52, and 23-633; *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 August 8, 2014" – thirteen (13) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum of 12-stories, a maximum floor area of 142,195 sq. ft. (6.97 FAR), a maximum residential floor area of 131,848 sq. ft. (6.46 FAR), a maximum of 73 percent lot coverage, 113 dwelling units, a minimum of 57 parking spaces, a minimum rear yard depth of 10'-0", and a maximum building height of 146'-1" with no setback, 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) only;

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

THAT the approved plans shall 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, August 19, 2014.

**A true copy of resolution adopted by the Board of Standards and Appeals, August 19, 2014.**

**Printed in Bulletin Nos. 32-34, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

