

55-15-BZ

CEQR #15-BSA-173M

APPLICANT – Elise Wagner, Kramer Levin Naftalis & Frankel LLP, for Alvin Alley Dance Foundation, lessee.
SUBJECT – Application March 13, 2015 – Variance (§72-21) to allow for the enlargement of a Alvin Alley Dance foundation's existing building to provide additional dance studios, classrooms, and offices, located within an R8/C1-5, C6-2 Clinton Preservation Area zoning district.

PREMISES AFFECTED – 405 West 55th Street, located on the northwest corner of Ninth Avenue and West 55th Street. Block 01065, Lot 29. Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez4
Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 2, 2015, acting on DOB Application No. 122231441, reads in pertinent part:

The proposed floor area exceed maximum permitted FAR in R8/C1-5 and C6-2 zoning districts, contrary to ZR 96-101. The proposed lot coverage increases the degree of existing lot coverage non-compliance for portions of the zoning lot located both within 100 feet of a wide street and more than 100 feet of a wide street, contrary to ZR 96-102. The proposed building height exceeds the maximum permitted height and setback regulations for the portions of the building located both within 100 feet of a wide street and more than 100 feet of a wide street, contrary to ZR 96-104(c). The proposed number of office workers exceeds the maximum number of 50 permitted for central office functions in a Use Group 4 philanthropic or non-profit institution without sleeping accommodations, contrary to ZR 22-14 ... A variance (ZR 72-21) is required from the Board of Standards and Appeals.

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R8 (C1-5) zoning district, and also within a C6-2 zoning district, within the Preservation Area of the Special Clinton District, the enlargement of an existing building to accommodate the programmatic needs of the Alvin Ailey Dance Foundation, which does not comply with zoning regulations for floor area, lot coverage, building height, and number of office workers, contrary to ZR §§ 96-101, 96-102, 96-104(c), and 22-14; and

WHEREAS, a public hearing was held on this

application on July 28, 2015 after due notice by publication in the *City Record*, and then to decision on August 25, 2015; and

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

WHEREAS, Community Board 4, Manhattan, recommends that the Board disapprove this application; and

WHEREAS, this application is brought on behalf of the Alvin Ailey Dance Foundation, Inc. (“Alvin Ailey”), a non-profit organization dedicated to dance performance and education; Alvin Ailey is an umbrella organization comprised of (1) the Alvin Ailey Dance Theater, a dance company established in 1958 which uses the subject building as a rehearsal space for approximately 15 weeks each year; (2) Ailey II, a dance company which concentrates on the development of young artists, and which uses the subject building as a rehearsal and performance space for approximately 16 weeks each year; (3) the Ailey School, an accredited institutional member of the National Association of Schools of Dance, which was established in 1969 as the official school of Alvin Ailey and which is located at the subject building; (4) the Ailey Arts in Education and Community Outreach Programs; and (5) the Ailey Extension, which provides open classes for adults age 16 and older, as well as recreational classes for children and teens, within the subject building; and

WHEREAS, the Ailey School enrolls approximately 1,280 students each semester, with an annual enrollment of approximately 3,000 students, eighty percent of whom receive discounted tuition and ninety percent of whom receive free tuition; students attend multiple classes per week at the subject building; the Ailey School includes a professional division, which offers a Bachelor of Fine Arts in dance, in conjunction with Fordham University’s College at Lincoln Center, a three year certificate program for post-secondary school students, a one year study for U.S. and international college students, a six week summer program for high school and college students, and dance classes for candidates enrolled in Pace University’s Actor’s Studio Drama School; and

WHEREAS, during the academic year, students enrolled in the Ailey School’s professional division attend classes at the subject building between one and five days per week; and

WHEREAS, the Ailey School also includes a pre-professional junior division with an enrollment of 1,027 students; the junior division includes a joint high school program with the Professional Performing Arts School, a New York City public school; students enrolled in the junior division attend classes at the subject building between one and five days per week; and

WHEREAS, the applicant represents that Alvin Ailey employs approximately 415 people in the foregoing divisions; 87 full-time and 328 part-time and seasonal employees, 131 of whom require office space within the existing building; and

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WHEREAS, the subject site is located at the northwest corner of the intersection of Ninth Avenue and West 55th Street, within an R8 (C1-5) zoning district, and also within a C6-2 zoning district, within the Preservation Area of the Special Clinton District; and

WHEREAS, the trapezoidal site has 84.2 feet of frontage along the west side of Ninth Avenue and 150 feet of frontage along the north side of West 55th Street, with a lot area of approximately 14,060 sq. ft.; and

WHEREAS, the subject building was constructed pursuant to a BSA variance issued on July 9, 2002, under BSA Cal. No. 92-02-BZ, which waived certain zoning regulations for height and setback and lot coverage applicable in the Preservation Area of the Special Clinton District; and

WHEREAS, the July 9, 2002 variance authorized the construction of a building containing 59,123 sq. ft. of floor area, with 14 dance studios, offices and support space; the existing building contains 50,786 sq. ft. of floor area (3.83 FAR), and does not include two of the Board-approved studios or the support space; and

WHEREAS, the subject building is comprised of a corner portion, which occupies 62'-6" feet of frontage on Ninth Avenue and 95'-6" of frontage along West 55th Street, and a midblock portion, which occupies 54'-4" of frontage along West 55th Street; and

WHEREAS, the corner portion of the subject building is six stories high (93'-2") and the midblock portion of the subject building is two stories high (47'-9") 1; and

WHEREAS, Alvin Ailey proposes to enlarge the subject building to provide four additional studios, two new classrooms and additional office space; and

WHEREAS, specifically, Alvin Ailey proposes to extend the fourth, fifth and sixth floors of the midblock portion of the subject building eastward, to meet the corner portion of the subject building, thereby locating the new office space adjacent to the existing office space on the fourth floor of the building and locating the new studios adjacent to the existing studios on the fifth and sixth floors of the building; and

WHEREAS, the applicant states that the proposed enlargement will, *inter alia*, create horizontal adjacencies for the office and studio spaces allowing for programmatic benefits including the ability to schedule studio classes for individual divisions of Alvin Ailey, providing a more focused learning environment, improving rehearsal space and encouraging collaboration and mentoring between experienced and less experienced dancers and performers;

1 The July 9, 2002 variance authorized a partial seventh floor atop the corner portion of the subject building, as well as an additional floor at the midblock portion of the subject building to accommodate two studios. The applicant states that these portions of the building were not constructed due to budget constraints.

and

WHEREAS, the applicant notes that the proposed location of the new studios is dictated by the floor to ceiling height of the existing fifth and sixth floors of the building, which, at 14'-0" is higher than the office floors located in the corner portion of the subject building; and

WHEREAS, the proposed enlargement will result in an increase in the floor area of the building from 50,786 sq. ft. (3.83 FAR) to 61,013 sq. ft. (4.34 FAR); as per ZR § 96-101, the maximum permitted floor area is 59,052 sq. ft. (4.2 FAR); and

WHEREAS, the proposed enlargement will increase the degree of the building's non-compliance with applicable lot coverage as the building already exceeds the permitted lot coverage within 100 feet of a wide street (the building has a lot coverage of 84 percent, 70 percent is allowed in the R8 (C1-5) zoning district, as per ZR § 96-102) and more than 100 feet from a wide street (the building has a lot coverage of 67 percent, 60 percent is allowed in the C6-2 zoning district, as per ZR § 96-102); and

WHEREAS, the proposed enlargement exceeds the maximum height permitted under ZR § 96-104 in that proposed height of 97'-9" would exceed the 66'-0" maximum height limit for the portion of the building located within the C6-2 zoning district, and the proposed height of 93'-2" would exceed the 85'-0" maximum height limit, as well as the required setback of 15'-0" at a height of 66'-0", for the portion of the building located within the R8 (C1-5) zoning district; and

WHEREAS, the proposed enlargement will result in a total of 13,511 sq. ft. of office space for use by approximately 100 central office employees (the number of persons involved in central office functions in a Use Group 4 not-for-profit without sleeping accommodations cannot exceed 50, and the amount of floor area used for central office purposes may not exceed the greater of 25 percent of the total floor area of the building, or 25,000 sq. ft., as per ZR § 22-14); and

WHEREAS, because the enlargement does not comply with the applicable regulations in the subject zoning districts, the applicant seeks the requested variance; and

WHEREAS, the applicant states that the variance is necessary to meet Alvin Ailey's programmatic need to expand and improve existing studio space and create new adjacencies, studios, classrooms, and office space, all of which will enable Alvin Ailey to accommodate the significant growth and increased enrollment it has achieved since the issuance of the July 9, 2002, variance; and

WHEREAS, the applicant asserts that a complying development does not fully satisfy Alvin Ailey's programmatic needs; and

WHEREAS, specifically, the applicant notes that under the July 9, 2002, variance, Alvin Ailey is permitted to construct 8,266 sq. ft. of floor area, including two additional studios and support space but argues that

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locating the support space on a partial seventh floor of the corner portion of the subject building is not useful in that it is too isolated from the studios and office spaces, and that because the corner portion of the subject building was built with an 18'-0" height for the sixth floor, rather than the approved 24'-0" height, it is not feasible to insert a partial seventh floor within that portion of the building, such that a complying development is only achievable in the midblock portion of the subject building and would only provide for two additional studios, which is insufficient to alleviate the overcrowding and scheduling conflicts which preclude the school from meetings its programmatic needs; and

WHEREAS, the applicant also notes that the complying development would not provide any traditional classroom space, such that the school would have to continue holding its nine academic classes in studios, which is an inefficient use of studio space and is unsuitable for traditional classroom learning; and

WHEREAS, Alvin Ailey contends that the requested waivers are both modest and essential to the school's ability to utilize the existing building to meet its programmatic needs; and

WHEREAS, the Board acknowledges that the school, as an educational 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 *Cornell Univ. 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 upon the above, the Board finds that the Alvin Ailey's programmatic needs create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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

WHEREAS, the applicant represents that, pursuant to ZR § 72-21(c), the variance, if granted, 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 argues that the waiver of height and setback would have little discernible impact on the surrounding neighborhood, noting that the proposed

height of 97'-9" would match the height of the existing midblock portion of the site with the corner portion of the site and is consistent with the heights of many of the existing buildings on the surrounding blocks; and

WHEREAS, the applicant states that on the midblock between West 53rd Street and West 56th Street and Eighth and Tenth Avenues, 28 percent of the buildings exceed a height of 66'-0", and range in height from 70'-0" to 158'-0"; and

WHEREAS, the applicant also argues that the requested waivers for lot coverage and FAR would have a minimal impact on the surrounding neighborhood because the proposed enlargement, while increasing the height of the midblock portion of the building, would not increase the size of the building's footprint, thus the lot coverage would not reduce the amount of open area on the subject zoning lot; and

WHEREAS, the applicant also argues that the proposed waiver to exceed 50 central office employees would not impact the surrounding neighborhood; specifically, the applicant argues that the intent of ZR § 22-14 was to ensure that community facility uses would not result in a high concentration of office employees in a residential neighborhood, a concern which is not implicated in the subject neighborhood; the applicant also notes that the existing building is located in a commercial district, thus obviating the need to guard against disruption of a residential district; and

WHEREAS, accordingly, the applicant asserts that the proposal will have no negative impacts on the surrounding neighborhood; and

WHEREAS, the Board agrees with the applicant that the proposal 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, Alvin Ailey states that the subject hardship was not self-created and that the school could not meet its programmatic needs through a complying development; and

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

WHEREAS, the applicant represents that, consistent with ZR § 72-21(e), the requested waivers are the minimum necessary to accommodate the school's current and projected programmatic needs; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the school to fulfill 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 the Board has conducted an environmental review of the proposed action and has documented relevant information about the

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project in the Final EAS CEQR No. 15-BSA-173M, dated June 15, 2015; 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 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 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 R8 (C1-5) zoning district, and also within a C6-2 zoning district, within the Preservation Area of the Special Clinton District, the enlargement of an existing building to accommodate the programmatic needs of the Alvin Ailey Dance Foundation, which does not comply with zoning regulations for floor area, lot coverage, building height, and number of office workers, contrary to ZR §§ 96-101, 96-102, 96-104(c), and 22-14, *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, August 12, 2015"—fourteen (14) sheets; and *on further condition*:

THAT following shall be the bulk parameters of the building: a maximum floor area of 61,013 sq. ft. (4.34 FAR); a maximum lot coverage of 84 percent in the R8 (C1-5) zoning district, and 67 percent in the C6-2 zoning district; a maximum building height of 97'-9" in the C6-2 zoning district and a building height of 93'-2", without setback, in the R8 (C1-5) zoning district, all as illustrated on the BSA-approved plans;

THAT any change in the use, occupancy, or operator of the school shall require the Board's approval;

THAT the applicant shall request the establishment of a no-parking zone during weekend hours along West 55th Street;

THAT the glass curtain wall of the building shall meet a minimum sound attenuation rating of STC-35;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by August 25, 2019;

THAT this approval is limited to the relief granted

A true copy of resolution adopted by the Board of Standards and Appeals, August 25, 2015.

Printed in Bulletin No. 36, Vol. 100.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

by the Board in response to specifically cited DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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 25, 2015.

