



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

330 West 42nd Street, 26th floor New York, NY 10036
tel: 212-736-4536 fax: 212-947-9512
www.nyc.gov/mcb4

CHRISTINE BERTHET
Chair

Jesse R. Bodine
District Manager

May 20, 2015

Honorable Margery Perlmutter, Chair
New York City Board of Standards and Appeals
250 Broadway, 29th Floor
New York, NY 10007

Re BSA Variance for Alvin Ailey Expansion Project
405 West 55th Street (Block 1065, Lot 29)

Dear Chair Perlmutter,

Manhattan Community Board 4 (MCB4) welcomes the opportunity to comment on the application by the Alvin Ailey Dance Foundation (Ailey) pursuant to Section 72-21 of the New York City Zoning Resolution (ZR) and section 666 of the New York City Charter to seek a variance from the New York City Board of Standards and Appeals (BSA) to allow the enlargement of Alvin Ailey's existing building, the Joan Weill Center for Dance, on the northwest corner of West 55th Street and Ninth Avenue in the Preservation Area of the Special Clinton District.

The proposed enlargement would require modifications of provisions of the New York City Zoning Resolution (ZR) pertaining to floor area ratio (FAR), lot coverage, height and setback, and the maximum number of central office employees. The enlargement is necessary, according to Ailey, to allow it "to meet its programmatic needs."

In order to be eligible for a variance under Section 72-21 of the Zoning Resolution, each of the waivers an applicant is seeking must satisfy all five specific findings set forth in the Zoning Resolution. Failure to satisfy any one of the five findings would result in a rejection of the application. (A non-profit organization such as Ailey is exempt from one of the findings and thus only has to satisfy each of four of the specific findings.)

On the recommendation of its Clinton/Hell's Kitchen Land Use and Zoning Committee and after a duly noticed public hearing at its Board meeting on May 6, 2015, Manhattan Community Board 4 voted to recommend **denial** of the application for a variance since the requested waivers for Floor Area Ratio, Lot Coverage, and Height and Setback **do not meet** all of the required findings.

EXISTING BUILDING

Ailey's existing building on West 55th Street was constructed in 2004 and consists of two zoning lots: a corner lot within an R8 (C1-5) zoning district; and an adjacent midblock lot within a C6-2 zoning district.

Prior to constructing the building, the Alvin Ailey Dance Foundation in 2002 applied for and received approval for a variance to height and setback and lot coverage regulations under BSA Application No. 92-

02 BZ. Pursuant to section 72-21 of the Zoning Resolution, the variance allowed the building to be constructed with 83% lot coverage on the corner lot (70% allowed), 67% on the midblock lot (60% allowed), and rise to a height of 98 feet without setback (66 feet permitted).

The existing variance waived height and setback (ZR Sec 96-104) and lot coverage (ZR Sec 96-102) requirements applicable within the Preservation Area of the Special Clinton District. The existing variance permitted the construction of a 59,123 square foot building containing 14 dance studios, offices, and support space. The result of this variance was a large building on the corner lot and a smaller attached building on the midblock lot.

The existing building on West 55th Street is home for the educational, performance, and administrative functions of the different divisions of the Alvin Ailey Dance Foundation, the umbrella organization for the activities of the Alvin Ailey Dance Theater, the Ailey II Company, the Ailey School, the Ailey Arts in Education, and the Ailey Extension. The applicant claims that because of "tremendous growth in its educational activities and programs" there is not enough space to meet "its programmatic needs." To do so, and to accommodate projected growth and an "enhanced curriculum," the applicant argues it needs to add 10,227 square feet of floor area containing four new dance studios, classrooms, and offices. Thus, Ailey is proposing to increase the height of the midblock building to match the height of the building on the corner lot.

PROPOSED ENLARGEMENT

The proposed enlargement of the existing building does not comply with the regulations of the Special Clinton District. The enlargement would exceed the 66-foot maximum height limit for the portion of the building located within the C6-2 district; would not provide the required setback of 15 feet at the height of 66 feet; and it would exceed the 85-foot maximum height limit for the portion of the building located in the R8/C1-5 district.

In meeting with Ailey to discuss its needs prior to seeking a variance, MCB4 suggested it explore alternate ways to meet its demands for more space without seeking to waive the Special Clinton District height regulations, including:

1. Expanding in the back;
2. Reconfiguring the existing space and utilizing the additional height permissible under the current zoning; and,
3. Seeking nearby office and rehearsal space¹.

Ailey claims none of these suggestions are acceptable alternatives and therefore is seeking a variance to override the Special Clinton District regulations. The variance would require four waivers of the applicable portions of the Zoning Resolution.

FINDINGS TO BE SATISFIED FOR A VARIANCE

As noted above, in order to be eligible for a variance under Section 72-21 of the Zoning Resolution, a non-profit organization such as Ailey only has to satisfy four of the findings set forth in the Zoning Resolution. Failure to satisfy any one of these findings results in a rejection of the application.

¹ According to a member of the Park Vendome Condominium Board present at the Clinton/Hell's Kitchen Land Use meeting, the Park Vendome (353 West 56th Street, a block from Ailey) has available for rent a former 15,000 square-foot health club space.

The findings which have to be satisfied are:

A. Unique Physical Conditions

That there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular zoning lot; and that, as a result of such unique physical conditions, practical difficulties or unnecessary hardship arise in complying strictly with the use or bulk provisions of the Resolution; and that the alleged practical difficulties or unnecessary hardship are not due to circumstances created generally by the strict application of such provisions in the neighborhood or district in which the zoning lot is located;

B. Reasonable Return

That because of such physical conditions there is no reasonable possibility that the development of the zoning lot in strict conformity with the provisions of this Resolution will bring a reasonable return, and that the grant of a variance is therefore necessary to enable the owner to realize a reasonable return from such zoning lot; this finding shall not be required for the granting of a variance to a non-profit organization²;

C. Essential Character Of Neighborhood

That the variance, if granted, will not alter the essential character of the neighborhood or district in which the zoning lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare;

D. Self-Created Practical Difficulties

That the practical difficulties or unnecessary hardship claimed as a ground for a variance have not been created by the owner or by a predecessor in title; however where all other required findings are made, the purchase of a zoning lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship; and,

E. Minimum Variance Necessary

That within the intent and purposes of this Resolution the variance, if granted, is the minimum variance necessary to afford relief; and to this end, the Board may permit a lesser variance than that applied for.

WAIVERS REQUESTED BY AILEY

The proposed enlargement of the Alvin Ailey building would require four waivers of applicable provisions of the New York City Zoning Resolution. The requested waivers are for:

1. Floor Area Ratio (FAR);
2. Lot Coverage;
3. Height and Setback; and,

² Since Alvin Ailey is a non-profit organization, the B finding is not relevant to their variance application.

4. Maximum Number of Employees.

Each of the four waivers Ailey is seeking must satisfy all of the four specific findings set forth in the Zoning Resolution. Failure to satisfy any one of these findings results in a rejection of the application.

Manhattan Community Board believes that the application fails to meet all of the required findings for *three of the four* requested waivers (floor area ratio, height and setback, and lot coverage).

Below is MCB4's analysis as to whether the application meets the required findings for each requested waiver:

1. Floor Area Ratio (FAR)

MCB4 believes that the application for the requested waiver for floor area (FAR) fails to meet all of the findings.

The Alvin Ailey building is considered a not-for-profit listed in Use Group 4 (ZR Section 22-14). The maximum permitted FAR for community facility buildings is 4.2 in both the R8 and C6-2 districts, which is less than would be permitted by the underlying zoning (ZR Section 96-101). The provisions of four studios, two classrooms, and office space Ailey claims it needs would increase the floor area of the building to 61,013 square feet (4.34 FAR) which is 1,961 square feet above the maximum permitted floor area.

Therefore Ailey is requesting a FAR waiver under ZR Section 96-101 (floor area). In order to get the FAR waiver, all four of the findings have to be satisfied (the B finding does not apply since Ailey is a non-profit).

Findings For FAR Waiver

A. Unique Physical Conditions

MCB4 believes that the A Finding is not met.

There is no unique physical condition requiring the midblock building to be increased in size. There is no unique physical condition on the site creating a practical difficulty to remain below 4.2 FAR. There was a condition when the original variance was granted; the site sits on a deep, sloping hill so constructing the building was problematic and unique³. However, the building was successfully constructed; the unique physical condition was addressed and resolved. This slope no longer affects further development upon the existing building.

Ailey claims it will "not be able to adequately address its programmatic needs without the FAR waiver"

³ As we stated in our May 3, 2002 letter to the BSA recommending approval for the original application for a variance: "The applicant's request for these variances is attributable to the trapezoidal shape of the corner lot and fact that the site's grade decreases from 53 feet at the northeast corner to 44 feet at its southwestern corner. The new building has been designed to include 14 dance studios (two of which will be built at a later date). It is planned to be seven stories above grade and two below grade. The proposed studios have widths from 32 to 43 feet and ceiling heights from 14 to 20 feet. If the building were designed to accommodate these studios without the requested variance, the building would be approximately 30 feet taller along Ninth Avenue and would much more significantly alter the character of the neighborhood than the proposed building.

arguing that it has satisfied the A finding simply by reason of the fact that it is a "non-profit educational institution and its programmatic needs must be taken into account in determining if a variance is warranted."

In support of this argument, the applicant has cited a New York Court of Appeals case, *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986). That case does not support the applicant's interpretation of the zoning resolution. Cornell dealt with the issue of whether a municipal zoning resolution can exclude a school entirely from a residential district. The case dealt with use regulation, not FAR, or zoning lot, nor height and setback. The Court in Cornell held that schools, as an important part of the community, cannot be automatically excluded from residential areas. No such exclusion is at issue here.

The Court also saw the need for community review: "Recognizing that educational and religious institutions are presumed to have a beneficial effect on the community, we clarified in *Cornell University* that this presumption can be rebutted "with evidence of a significant impact on traffic congestion, property values, municipal services and the like." (*Matter of Pine Knolls Alliance Church v Zoning Bd. of Appeals of the Town of Moreau* 5 N.Y. 3d 407, 804 N.Y. S.2d 708.)

It is true that in Cornell the Court ruled that it is an "impermissible criterion" that a school be required to show an "affirmative need" (e.g., programmatic needs) for its proposed expansion. If anything, then, Cornell stands for the proposition that a school's "need to expand" (or lack thereof) is irrelevant to the zoning decision. In this instance we do not question Ailey's programmatic needs driving its expansion. All we seek to do is to review the findings it is required to meet in the zoning under Section 72-21 of the Zoning Resolution.

In sum, nothing in Cornell justifies the applicant's claim that its programmatic needs trump the requirements of the A Finding.

What is at issue in this application is not the use of the zone lots, but the size of the buildings on the lots. Cornell does not deal in any way with that issue. Moreover, and relevant to this application, Cornell expressly rejected the notion that schools are entitled to a "full exemption from zoning rules..." (68 N.Y.2d at 594), observing that the result of some municipalities applying such an exemption "has been to render municipalities powerless in the face of a religious or educational institution's proposed expansion, no matter how offensive, overpowering or unsafe to a residential neighborhood the use might be. Such an interpretation, however, is mandated neither by the case law of our State nor common sense."

B. Reasonable Return

The B Finding is not applicable since Alvin Ailey is a non-profit organization.

C. Essential Character of Neighborhood

MCB4 believes that the C Finding is not met.

The applicant claims the proposed enlargement "would be consistent with the scale and character of the neighborhood" and asserts that the proposed height of 97.9 feet, while taller than the maximum permitted height of 66 feet, "is consistent with the height of many of the existing buildings on the surrounding blocks."

While it is undeniably true that the proposed enlargement would be "consistent" with some taller existing buildings, it does not follow that the proposed height is therefore consistent with the essential character of the neighborhood. The taller existing buildings referred to were either built *before* the Clinton Special

District regulations were put in place in 1978 or, in the case of the Nicole on West 55th Street, *before* new height restrictions were enacted for Ninth Avenue. The essential character of the neighborhood of the Special Clinton District is characterized by its overall low-rise building configuration with its characteristic 66-foot high tenements. The character of the neighborhood was defined by the creation of the Special Clinton Preservation Area, not the prior existing structures. Further, the proposed height increase would make the Ailey building taller than the adjacent structure.

If this applicant is given a waiver to break the height limit of the Special Clinton District, the next applicant requesting a waiver could refer to the Ailey 97.9-foot height as "the scale of the neighborhood." Such reasoning would subvert the intent of the City's designation of special zoning districts, as the Department of City Planning says, "to achieve specific planning and urban design objectives in defined areas with unique characteristics."

D. Self-Created Practical Difficulties

MCB4 believes that the required D Finding is met.

The difficulties of compliance have not been adequately shown to exist, but no evidence suggests they are self-created.

E. Minimum Variance Needed

MCB4 believes that the required E Finding is not met.

Ailey argues that the additional floor area in the proposed enlargement "represents the amount of additional space ...requires in order to provide the facilities necessary to meet its programmatic needs." And that "modifying the proposed enlargement so as to require lesser modifications" would result in "less efficient connections to the existing studios, offices and classrooms."

CB4 believes that the requested variance exceeds the minimum needed for relief.

Under the existing variance, Ailey could expand, and that allowable expansion has not been proven to be insufficient. Therefore the requested variance is not the minimum required for relief.

The applicant is in part proposing the addition of two floors of classrooms due to the strain they are experiencing with their dual degree program with Fordham University. The applicant claims that the classrooms are necessary due to the inadequacy and distance of the space provided by Fordham. The Fordham University campus is only five blocks north of the Alvin Ailey Center for Dance. CB4 remains unconvinced that the applicant requires additional classrooms or studios beyond the degree allowed under the current variance on its site when it has a University with which it is affiliated, and which has adequate space for Ailey's needs, available a short walk away.

2. Lot Coverage

MCB4 believes that the application for the requested waiver for lot coverage fails to meet all of the findings.

Portions of zoning lots located within 100 feet of a wide street have a maximum lot coverage of 70%; portions of zoning lots located more than 100 feet from a wide street have a maximum lot coverage of 60%. Because the proposed enlargement is an extrusion of the footprint of the midblock portion, a waiver of the permitted lot coverage under ZR Section 96-102 (lot coverage) is required since the Building already

exceeds the permitted lot coverage both within and more than 100 feet of a wide street (by 84% and 67%, respectively).

Therefore Ailey is requesting a FAR waiver under ZR Section 96-102 (lot coverage). In order to get the Zoning Lot waiver, all four of the findings have to be satisfied (the B finding does not apply since Ailey is a non-profit).

Findings For Zoning Lot Waiver

A. Unique Physical Conditions

MCB4 believes that the A Finding is not met.

There is no unique physical condition requiring the mid block building to be increased in size.

And, as discussed above (FAR finding A), MCB4 does not believe that the applicant's argument that it has satisfied the A finding simply by reason of the fact that it is a "non-profit educational institution and its programmatic needs must be taken into account...."

B. Reasonable Return

The B Finding is not applicable since Alvin Ailey is a non-profit organization.

C. Essential Character of Neighborhood

MCB4 believes that the C Finding is not met.

The applicant's argument that since the proposed enlargement would be "consistent" with some taller buildings, it would be "consistent" with the essential character of the neighborhood is a specious one. The taller existing buildings referred to were either built *before* the Clinton Special District regulations were put in place in 1978 or, in the case of the Nicole on West 55th, *before* new height restrictions were enacted for Ninth Avenue. The essential character of neighborhood of the Special Clinton District is characterized by its overall low-rise building configuration with its characteristic 66-foot high tenements.

D. Self-Created Practical Difficulties

MCB4 believes that the required D Finding is met.

The difficulties of compliance have not been adequately shown to exist, but no evidence suggests they are self-created.

E. Minimum Variance Needed

MCB4 believes that the required E Finding is not met.

The Alvin Ailey Center for Dance proposes to construct their addition on the same footprint as the existing variance granted structure. This would increase the degree of non-compliance. The intention of the original variance remains intact and as stated above (Floor Area, E Finding) MCB4 believes that the requested variance is not the minimum required for relief.

3. Height and Setback

MCB4 believes that the application for the requested waiver for height and setback fails to meet all of the findings.

The underlying height and setback regulations do not apply to buildings within the Preservation Area. Instead, the requirements of ZR Section 96-104 apply. Along the wide street frontage and along the narrow street frontage within 50 feet of a wide street, the street wall must be located at the street line. The street wall must rise without setback for a minimum height of 50 feet and a maximum of 66 feet, above which a 10-foot setback is required facing a wide street, and a 15-foot setback is required facing a narrow street. The maximum permitted building height is 85 feet. Beyond 100 feet of a wide street, the maximum permitted height of a building is 66- feet or 7 stories.

To align the proposed building with the existing floors, and achieve the minimum square feet and height required for studio space, the Proposed Enlargement must exceed the permitted height limit under ZR Section 96-104 (height and setback). The Proposed Enlargement would exceed the 66 foot maximum height limit for the portion of the building located within the C6-2 district, would exceed the 85 foot height limit, and would not provide the required setback of 15 feet at the height of 66 feet in the R8/C1-5 district.

Therefore Ailey is requesting a Height and Setback waiver under ZR Section 96-104 (floor area). In order to get the Height and Set back waiver, all four of the findings have to be satisfied (the B finding does not apply since Ailey is a non-profit).

Findings For Height and Setback Waiver

A. Unique Physical Conditions

MCB4 believes that the A Finding is not met.

There is no unique physical condition requiring the mid block building to be increased in size. And, as discussed above (FAR finding A), MCB4 does not believe that the applicant's argument that it has satisfied the A finding simply by reason of the fact that it is a "non-profit educational institution and its programmatic needs must be taken into account in determining if a variance is warranted."

B. Reasonable Return

The B Finding is not applicable since Alvin Ailey is a non-profit organization.

C. Essential Character of Neighborhood

MCB4 believes that the C Finding is not met.

As stated above (FAR finding C), the proposed enlargement is not consistent with the essential character of the neighborhood. The character of the neighborhood was defined by the creation of the Special Clinton Preservation Area, not the prior existing structures.

D. Self-Created Practical Difficulties

MCB4 believes that the required D Finding is met.

The difficulties of compliance have not been adequately shown to exist, but no evidence suggests they are self-created.

E. Minimum Variance Needed

MCB4 believes that the required E Finding is not met.

As stated above (Floor Area, E Finding), MCB4 believes that the requested variance is not the minimum required for relief.

4. Employees

MCB4 believes that the application for the requested waiver for employees meets all of the findings.

The building is best characterized as a not-for-profit without sleeping accommodations, listed in Use Group 4 (ZR Section 22-14). For that use, the number of persons involved in central office purposes may not exceed 25 percent of the total floor area or 25,000 square feet, whichever is greater. In order to ensure the efficient administration of Alvin Ailey's five divisions the proposed enlargement would contain approximately 100 central office employees, which exceeds the maximum permitted 50 central office employees for a non-profit organization without sleeping accommodations.

Therefore Ailey is requesting a FAR waiver under ZR Section 22-14 (Use Group 4). In order to get the waiver, all four of the findings have to be satisfied (the B finding does not apply since Ailey is a non-profit).

Findings For Employees Waiver

A. Unique Physical Conditions

MCB4 believes that the required A Finding is met since the physical characteristics of the site are not applicable.

B. Reasonable Return

The B Finding is not applicable since Alvin Ailey is a non-profit organization.

C. Essential Character of Neighborhood.

MCB4 believes the required C Finding is met.

The neighborhood is currently frequented by a diverse group of local community residents, tourists, people attending the theater, and people working in the surrounding areas. The permitted use of additional employees serving the dance center will do no harm to the essential character of the surrounding blocks.

D. Self-Created Practical Difficulties

MCB4 agrees that the required D Finding is met.

The support staff needed for an organization providing the services that the Alvin Ailey Foundation, though inherent, is not self-created.

E. Minimum Variance Needed

MCB4 believes that the required E Finding is met.

MCB4 has no reason to dispute the assertion by the applicant that the variance for 100 person use is believed to be the minimum required to adequately support the applicants programming needs.

CONCLUSION

Manhattan Community Board 4 believes that the application for waivers under the Zoning Resolution fails to meet the required findings and therefore recommends that the application be denied.

The Alvin Ailey Dance Foundation is an exceptional and valued organization and the Joan Weill Center for Dance on West 55th Street is a welcome addition to the Clinton neighborhood. MCB4 salutes its accomplishments in bringing dance to students of all ages.

The Clinton Special District is also an exceptional achievement, having through the dedication of its residents and enforcement of its zoning regulations preserved the character, diversity, and affordable housing of the neighborhood. That dedication, and those zoning regulations, were instrumental in making one of the most blighted neighborhoods in the borough into a thriving residential community in the heart of the City.

Manhattan Community Board 4 wishes Ailey continued success and hopes a way can be found for it to expand without waiving these particular Clinton Special District zoning laws, regulations this Board believes are critical to the contextual integrity and survival of the district.

Sincerely,



Christine Berthet
Chair



Jean-Daniel Noland
Chair, Clinton / Hell's Kitchen Land Use Committee

cc: Hon. Gale A. Brewer, Manhattan Borough President
Hon. Corey Johnson, City Council
Hon. Brad Hoylman, State Senate
Hon. Linda B. Rosenthal, State Assembly
Bennett Rink, Executive Director, Alvin Ailey American Dance Theater
Joshua Bocian, Manatt, Phelps & Phillips, LLP