

312-12-BZ

CEQR #13-BSA-054M

APPLICANT – Jay A. Segal, Esq./Greenberg Traurig LLP, for 33 Beekman Owner LLC c/o Naftali Group, owners; Pace University, lessee.

SUBJECT – Application November 19, 2012 – Variance (§72-21) to facilitate the construction of a new 34-story, 760-bed dormitory (*Pace University*), contrary to maximum permitted floor area. C6-4 district/Special Lower Manhattan District.

PREMISES AFFECTED – 29-37 Beekman Street aka 165-169 William Street, northeast corner of block bound by Beekman, William, Nassau and Ann Streets, Block 92, Lot 1,3,37,38, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otteley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 15, 2012, acting on Department of Buildings Application No. 104697507, reads in pertinent part:

Floor Area greater than allowed by Sec. 91-22; and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C6-4 zoning district within the Special Lower Manhattan District, the construction of a 34-story dormitory building (Use Group 3) which does not comply with zoning requirements related to floor area, contrary to ZR § 91-22; and

WHEREAS, a public hearing was held on this application on March 12, 2013 after due notice by publication in the *City Record*, and then to decision on April 9, 2013; and

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

WHEREAS, Community Board 1, Manhattan, recommends approval of the application on condition that the developer minimizes construction impacts on the surrounding community and that Pace offers community members programs and services; and

WHEREAS, a member of the community from several blocks away provided testimony in opposition to this application, citing concerns about the new building blocking views; and

WHEREAS, the application is brought on behalf of Pace University (“Pace”), a not for profit educational institution; and

WHEREAS, the zoning lot (Tax Lots 1, 3, 37, and 38) (the “Zoning Lot”) is located on the southeast corner of William Street and Beekman Street, within a C6-4

zoning district within the Special Lower Manhattan District; and

WHEREAS, the Zoning Lot has approximately 120.4 feet of frontage on Beekman Street, 102 feet of frontage on William Street, and a total lot area of 13,436.9 sq. ft.; and

WHEREAS, the proposed building will be constructed on the portion of the Zoning Lot consisting of Lots 1, 37, and 38 (the “Development Site”), which has 120.4 feet of frontage on Beekman Street, 49.3 feet of frontage on William Street, and 9,866.5 sq. ft. of lot area; and

WHEREAS, Lot 3 is occupied by a ten-story building constructed in approximately 1908 (the “Lot 3 Building”) with commercial use on the ground floor and residential use on the upper floors; and

WHEREAS, in 1989, the Board authorized the exclusion from payment of the conversion contribution then required under ZR § 15-50 in connection with the conversion of 17,892 sq. ft. of floor area in the Lot 3 Building (BSA Calendar No. 735-89-ALC); the Lot 3 Building is under separate ownership and control and no changes to it are proposed; and

WHEREAS, the applicant states that the Development Site and Lot 3 were merged into a single zoning lot pursuant to a Declaration of Zoning Lot Restrictions and Zoning Lot Development and Easement Agreement (the “ZLDA”) that were executed by the prior owners of the parcels and recorded in 2007; and

WHEREAS, the applicant states that it has submitted draft materials to the Department of City Planning to amend a pending application (No. N090178 ZCM) seeking a certification from the Chair of the City Planning Commission for a proposed public plaza (the “Public Plaza”) and floor area bonus pursuant to ZR §§ 73-78 and 91-24; and

WHEREAS, the applicant proposes to construct a 34-story dormitory building with 146,963 sq. ft. of floor area (10.94 FAR) and to maintain the existing Lot 3 Building with 31,977 sq. ft. of floor area (2.38 FAR) for a total of 178,963 sq. ft. of floor area (13.3 FAR) across the Zoning Lot; and

WHEREAS, the applicant proposes to increase the permitted base floor area of 134,369 sq. ft. (10.0 FAR) across the site by (1) installing a 3,012 sq. ft. Public Plaza on the northeast corner of the Development Site pursuant to City Planning Commission approval that will generate 18,072 sq. ft. (1.34 FAR) of bonus floor area; and (2) obtaining a variance for the additional required 26,522 sq. ft. (1.97 FAR); and

WHEREAS, the applicant asserts that a maximum of 12.0 FAR is contemplated for the site (10.0 FAR base and 2.0 FAR bonus for plaza or inclusionary housing), but that it cannot accommodate the maximum size plaza, so it can only generate 1.34 FAR in bonus floor area, rather than 2.0 FAR; and

WHEREAS, the applicant represents that the

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proposal will comply with all relevant zoning provisions except total floor area and FAR; and

WHEREAS, the applicant states that the proposed building provides the following uses: (1) accessory spaces for student recreational facilities and meeting rooms, administrative office space, lobby space, a gym, a kitchen, a laundry room, a storage room, and utility rooms on the cellar level, first and second floors; (2) an approximately 400 sq. ft. retail space (which is required for the Public Plaza) on the first floor; and (3) 760 beds in 381 units on the 3rd through 34th floors and one staff apartment on the 3rd floor; and

WHEREAS, the site will also include an approximately 3,012 sq. ft. Public Plaza at the corner of Beekman and William Streets, subject to City Planning Commission review; and

WHEREAS, because the proposed building does not comply with the underlying zoning district regulations, the subject variance is requested; and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the irregular shape of the Development Site; and (2) the easement benefitting the New York City Transit Authority (NYCTA) and the L-shaped turn of the subway directly beneath the Development Site; and

WHEREAS, the applicant also relies on Pace's primary programmatic needs of accommodating the increased number of out-of-state students and the high demand for dormitory beds in close proximity to Pace's facilities; and

WHEREAS, as to the irregular shape of the Development Site, which is roughly L-shaped and varies in depth (measured from Beekman Street) from 49.3 feet to 100.5 feet and in width from 66.5 feet to 120.4 feet; and

WHEREAS, as to the presence of the NYCTA transit easement, it precludes excavation and foundation work on a portion of the site, and therefore any substantial development, on approximately 22 percent of the buildable portion of the Development Site and the presence of the subway results in construction premiums related to foundation and excavation work of approximately 1.78 million dollars; and

WHEREAS, as to the uniqueness of this condition, the applicant states that there are no other development parcels in the C6-4 portion of the Special District or in other districts within a half-mile of the Development Site below which the subway turns as it does under the Development Site; and

WHEREAS, the applicant provided an area map, which reflects that within a half-mile of the site, the subway lines all run beneath the street beds except at the subject site where the 2/3 subway makes a turn at the corner of Beekman Street and William Street within the

site, below grade; and

WHEREAS, the applicant asserts that the irregular shape of the Development Site and the presence of the transit easement result in an inefficient floor plate for the Proposed Building that reduces the number of beds that can be achieved; and

WHEREAS, the applicant states that these factors also limit the ability to maximize the area of the Public Plaza and, therefore, reduce the potential floor area bonus from 2.0 FAR to 1.34 FAR; and

WHEREAS, the applicant states that these conditions are illustrated by comparing the drawings and zoning calculations for the as-of-right scenario with the drawings and zoning calculations for the regularly-shaped scenario; and

WHEREAS, the applicant states that the building in the complying scenario would contain 120,464 sq. ft. of floor area and 624 beds on 28 floors, which amounts to approximately 193 sq. ft. of floor area per bed and that due to the shape of the Development Site, the maximum feasible area of the Public Plaza is 3,012 square feet, which generates a bonus of 18,072 square feet of floor area; and

WHEREAS, the applicant states that the regularly-shaped scenario assumes the same lot area for the Development Site (approximately 9,860 square feet) but with a rectangular shape: approximately 113.3 feet of frontage along Beekman Street and 87 feet of frontage along William Street and assumes the absence of the transit easement; and

WHEREAS, under the regularly-shaped scenario, the applicant states it would be possible to increase the area of the Public Plaza to 4,030 square feet, (with the inclusion of portion of the Lot 3's lot area) and generates 24,180 sq. ft. of bonus floor area (1.8 FAR), which is 6,168 sq. ft. more than under the complying alternative; such a scenario would also contain 126,572 sq. ft. of floor area and 755 beds on 34 floors, which amounts to approximately 168 sq. ft. per bed (a 15 percent increase in efficiency over the complying scenario; and

WHEREAS, the applicant states that in addition to reducing the efficiency of the building floor plates and limiting the size of the Public Plaza, the irregular shape of the Zoning Lot coupled with the presence of the transit easement also result in significant additional construction costs; and

WHEREAS, specifically, the applicant states that the estimated foundation and excavation costs would increase by \$1,785,473, from \$1,596,226 under the regularly-shaped scenario to \$3,381,699 under the complying due primarily to the presence of the transit easement, an increase which includes the cost of additional piles and lagging necessitated by the presence of the subway, as well as special monitoring and inspection costs required under applicable NYCTA guidelines; and

WHEREAS, as to Pace's programmatic needs, it

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currently houses students in four buildings containing a total capacity of 1,900 beds and it has determined that it needs a minimum of 2,160 beds due to the increased number of applications from out-of-state students for Pace's general programs and, in particular, its Performing Arts Program; and

WHEREAS, the applicant submitted a letter from Pace, which describes that need and its exhaustive search for potential development sites in Lower Manhattan for a new dormitory to replace the leased 500-bed facility at 55 John Street; and

WHEREAS, the applicant also states that Pace has identified a number of factors including efficiency, student expectations, and industry standards, to help it establish standards regarding dormitory layouts, which it has applied to the design for the dormitory currently under construction at 180 Broadway as well as to the design for the proposed building; and

WHEREAS, the applicant states that Pace's goal is that the overwhelming majority of beds (83 percent) are within two-bed units and that in addition, each floor in the dormitory generally is permitted one one-bed unit (the majority of which are reserved for resident advisors) and one three-bed unit and that each unit has a private bathroom with a shower, sink and toilet and is furnished with a single bed, desk/chair, and small bureau for each occupant as well as a small closet; and

WHEREAS, the applicant states that in order to accommodate these furnishings and provide a reasonable amount of circulation space, it has concluded that each unit contain approximately 100 net sq. ft. per bed; and

WHEREAS, the applicant asserts that the site's location within central proximity to the other Pace facilities made it an excellent choice to satisfy Pace's need for students to reside near the university's buildings; and

WHEREAS, the applicant states that due to the presence of the transit easement and the irregular shape of the Development Site, however, the maximum number of beds that could be provided in an as-of-right building on the Development Site, taking into account Pace's design standards, is 624, which is 136 few beds than is necessary to accommodate Pace's needs; and

WHEREAS, the applicant states that the variance allows for an additional 136 beds which otherwise could only be constructed if the Development Site were regularly shaped and not burdened by the transit easement; and

WHEREAS, the applicant represents that a complying building at the site would not provide an adequate amount of space for the current demand or for the anticipated growth; and

WHEREAS, based upon the above, the Board agrees that the cited unique conditions of the site and the programmatic needs are legitimate and have been

documented with substantial evidence; and

WHEREAS, the Board acknowledges that Pace, 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 N.Y.2d 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 limitations of the existing site, when considered in conjunction with the programmatic needs of Pace, creates 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 Pace is a not-for-profit organization and the proposal is in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that 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 notes that the use of the site as a dormitory is permitted as-of-right in the subject zoning district; and

WHEREAS, the applicant states that the neighborhood surrounding the Zoning Lot is predominantly characterized by institutional, commercial, parking, and some residential uses; and

WHEREAS, the applicant states that in addition to the residential and ground floor retail use in the Lot 3 Building, uses on the block include a four-story public parking garage, a ten-story garage, a number of commercial buildings, ranging from four to 22 stories in height, with ground-floor retail and offices above and one seven-story building with ground floor retail and residential use above; the block also includes a 22-story building occupied by Pace; and

WHEREAS, the applicant notes that other nearby buildings include the eight-story New York Downtown Hospital, the 76-story mixed-use Frank Gehry building, and eight Pace buildings including the main building at One Pace Plaza, a 16-story building at 41 Park Row, a 22-story building, located at 163 William Street, a performing arts center at 140 William Street, and a 12-story building located at 156 William Street; and

WHEREAS, as to dormitory use, students currently occupy a portion of One Pace Plaza, a 12-story (200-bed) building located at 106 Fulton Street, and a 500-bed leased facility at 55 John Street; construction of a new

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600-bed dormitory at 180 Broadway is nearing completion; and

WHEREAS, at hearing, the Board directed the applicant to submit an expanded analysis of the surrounding streetscape; and

WHEREAS, in response, the applicant analyzed the buildings along Beekman Street and William Street within an 800-ft. radius of the site; the analysis reflects that to the south, along William Street, there is one building with a height of 341 feet and another with a height of 468 feet and to the east there is a series of buildings with height of 272 feet; and

WHEREAS, the applicant asserts that the proposed bulk is compatible within this portion of the Special Lower Manhattan District, which allows for a maximum permitted base FAR of 10.0 for C6-4 districts, 15.0 for C5-5 districts, and 6.5 for R8 districts; and

WHEREAS, further, the applicant states that pursuant to ZR § 91-24, the basic maximum permitted floor area may be increased by 6 sq. ft. for every square foot of public plaza provided to a maximum FAR of 12.0 in C6-4 districts and by 10 sq. ft. for every square foot of public plaza to a maximum FAR of 18.0 in C5-5 districts and a 12.0 FAR may also be achieved in the C6-4 district by providing inclusionary housing pursuant to ZR § 23-90; and

WHEREAS, additionally, the applicant states that other than FAR, all bulk conditions, including the height of the proposed building, comply with the underlying district regulations and will fit within the character of the surrounding neighborhood; 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 in conformance with zoning would meet the programmatic needs of Pace at the site; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board finds the requested waivers to be the minimum necessary to meet the programmatic needs of Pace and to construct a building that is compatible with the character of the neighborhood; and

WHEREAS, in sum, 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 Sections 617.6(h) and 617.2(h) of 6NYCRR; 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. 13BSA054M, dated November 19, 2012; and

WHEREAS, the EAS documents show 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

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, 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 and grants a variance to permit, within a C6-4 zoning district within the Special Lower Manhattan District, the construction of a 34-story dormitory building (Use Group 3) which does not comply with zoning requirements related to floor area, contrary to ZR § 91-22, *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 4, 2013” – seventeen (17) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the site: a floor area of 146,986 sq. ft. (10.94 FAR) for the Pace building; a total floor area of 178,963 sq. ft. (13.3 FAR) across the site; and a total height of 339 feet; as reflected on the BSA-approved plans;

THAT the proposed floor area relies on (1) the Public Plaza certification from the City Planning Commission to allow a bonus of 18,072 sq. ft. (1.34 FAR) and (2) the Board’s grant for 26,522 sq. ft. (1.97 FAR);

THAT in the absence of the Public Plaza certification from the City Planning Commission and the associated bonus of 18,072 sq. ft., the applicant must seek subsequent review and approval from the Board to increase the floor area from 128,914 sq. ft. to the 146,986

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sq. ft. reflected on the Board-approved plans;

THAT any change in the use, occupancy, or operator of the dormitory requires review and approval by the Board;

THAT the conditions of the proposed Public Plaza are subject to review and approval by the City Planning Commission;

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 be completed in accordance with ZR §72-23;

THAT the approved plans 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, April 9, 2013.

**A true copy of resolution adopted by the Board of Standards and Appeals, April 9, 2013.
Printed in Bulletin Nos. 13-15, Vol. 98.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.