

289-13-BZ

CEQR #14-BSA-057K

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York Methodist Hospital, owner.

SUBJECT – Application October 16, 2013 – Variance (§72-21) to allow the development of a new, 304,000 s.f. ambulatory care facility on the campus of New York Methodist Hospital, contrary to floor area (§§24-11, 24-17 and 77-02), lot coverage (§24-11), rear yard (§24-382), height and setback (§24-522), rear yard setback (§24-552), and sign (§22-321) regulations. R6, C1-3/R6, and R6B zoning district.

PREMISES AFFECTED – 473-541 6th Street, aka 502-522 8th Avenue, 480-496 & 542-548 5th Street & 249-267 7th Avenue, Block bounded by 7th Avenue, 6th Street, 8th Avenue and 5th Street, Block 1084, Lot 25, 26, 28, 39-44, 46, 48, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings’ Executive Zoning Specialist, dated February 6, 2014, acting on Department of Buildings Application No. 320576952, reads in pertinent part:

1. Proposed FAR in R6B and R7B portions both exceed maximum permitted because proposed “floor area” distribution across district boundary lines is not permitted; contrary to ZR 24-11, ZR 24-17, and ZR 77-02.
2. Proposed lot coverage of (a) corner lot in R6, (b) interior lot in R6, (c) through lot in R6/R6B districts, and (d) corner lot in R7B exceeds the maximum; contrary to ZR 24-11.
3. Proposed rear yard at through lot portion in zoning districts R6 and R6B is contrary to ZR 24-382 Required Rear Yard Equivalent.
4. Height and setback limitations for: (a) the R6 district portion, above both narrow (6th Street) and wide street (8th Avenue) and (b) the R6B . . . district portions above narrow street (5th Street) are both contrary to ZR 24-522.
5. Required rear setbacks for R6 and R6B district portions are contrary to ZR 24-552.
6. Proposed signs exceed maximum permitted number and surface area contrary to ZR 22-321.
7. Proposed building portion in required rear

yard on interior lot portion, beyond 100 feet of a wide street, is not a permitted obstruction as per ZR 24-33(b)(3)(iii), and is therefore contrary to ZR 24-36; and

WHEREAS, this is an application under ZR § 72-21 to permit within R6, R6B, and R7B zoning districts, the construction of a new ambulatory care facility (the “Center for Community Health” or the “Center”) on the campus of New York Methodist Hospital (“NYM” or the “Hospital”) that does not comply with zoning regulations for FAR, lot coverage, rear setback, rear yard, rear yard equivalent, and signage, contrary to ZR §§ 22-321, 24-11, 24-17, 24-33, 24-36, 24-382, 24-522, 24-552, and 77-02; and

WHEREAS, a public hearing was held on this application on February 11, 2014, after due notice by publication in the *City Record*, with a continued hearing on April 8, 2014, and then to decision on June 17, 2014; and

WHEREAS, at the April 29, 2014 public hearing, the Board set a May 20, 2014 decision date; and

WHEREAS, however, subsequent to the April 29, 2014 hearing, a representative of Preserve Park Slope communicated with Board staff and NYM about its request for supplemental documents from NYM; the Board declined to request the documents and NYM declined to provide the documents directly; and

WHEREAS, Preserve Park Slope then sought judicial relief to obtain the documents in New York State Supreme Court by Order to Show Cause; and

WHEREAS, the court issued a stay which prohibited the Board from closing the hearing and rendering a decision as scheduled on May 20, 2014; on June 4, 2014, the court lifted the stay but did not issue a ruling on the subpoena request, which is pending; and

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

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application with the following conditions: (1) height compliance within the R6 zoning district; (2) height and setback compliance within the R7B zoning district; (3) reduction of streetwall height and building height and the inclusion of an additional setback within the R6B zoning district; (4) that NYM provide notice of its New York State Department of Health Certificate of Need (CON) application at the time it is filed; (5) that NYM develops a long-range plan; (6) that signage be limited to the revised reduced amount; (7) that the usage of the Eighth Avenue and Sixth Street entrance be limited to employees, emergency egress, and Urgent Care facility use during late afternoon and evening hours; (8) that parking be reduced by at least 189 spaces; (9) that NYM participate with the Traffic Task Force to address transportation impacts and to perform a full scale traffic study; (10) that NYM participate in

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continued discussions regarding building design and materials; and (11) that NYM continue to participate in discussions with a Construction Task Force; and

WHEREAS, New York State Assemblymembers Joan L. Millman and James F. Brennan and New York City Councilmember Brad Lander provided testimony in support of the application; and

WHEREAS, the M.S. 51 public school provided testimony stating that after initially having concerns about traffic safety and pollution as well as environmental impacts during the construction period and following completion of the building, it is satisfied after later communication with NYM demonstrated efforts to address these issues; and

WHEREAS, the P.S. 39 public school Parent Association provided a submission which identified concerns with traffic safety and air pollution; and

WHEREAS, Park Slope Neighbors, a community group, submitted testimony in support of the application on the condition that the offstreet parking be reduced; and

WHEREAS, Preserve Park Slope, a community group, represented by counsel, provided opposition to the application, citing the following primary concerns: (1) NYM may not rely on the deference defined by the courts in Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986), namely the prohibition against inquiry into programmatic needs because NYM is not an educational institution; (2) evidence in support of NYM's programmatic needs is deficient; (3) the evidence in support of programmatic needs is inadequate in that it differs from that in prior hospital variance cases and standards set by the Board; (4) the proposal is incompatible with the character of the neighborhood and a lesser variance involving construction over the garage (the "Garage Alternative") would be a viable alternative; (5) there will be traffic impacts including on safety and the environment; (6) that the proposal does not reflect the minimum variance; and (7) that NYM should be required to adhere to the Community Board's conditions; and

WHEREAS, certain community members provided testimony in opposition to the application, citing concerns about whether the programmatic needs for the application had been established, traffic and other environmental impacts, and whether the proposal is compatible with the neighborhood character; and

WHEREAS, opponents to the project are, collectively, the "Opposition;" and

WHEREAS, this application is brought on behalf of NYM, a non-profit hospital, research, and educational facility; and

WHEREAS, a companion application to modify a prior approval for parking filed under BSA Cal. No. 142-92-BZ was decided at the same hearing and allows for the enlargement of the zoning lot (the "Zoning Lot"); and

WHEREAS, the zoning lot comprises the majority of Block 1084; it includes Tax Lots 39, 164, 1001, and 1002, and has frontages along Fifth Street, Sixth Street, Seventh Avenue, and Eighth Avenue; the applicant notes that when the noted special permit was granted (BSA Cal. No. 142-92-BZ), the site comprised Lots 164, 1001, and 1002, however, at the time the lots were designated as Lots 1, 17, and 64; as for Lot 39, it was formed by the merger of former Lots 25, 26, 28, 40-44, 46, 48, and 50-59; and

WHEREAS, the NYM main campus is located on two adjacent blocks bounded by Seventh Avenue, Fifth Street, Eighth Avenue, and Seventh Street; the development site (the "Development Site") is located on the eastern portion of the northern block, with frontages on Sixth Street, Fifth Street, and Eighth Avenue and will be part of a zoning lot that consists of the parcels designated as Block 1084, Lots 39, 164, 1001, and 1002 (the "Zoning Lot"); and

WHEREAS, the Development Site is located partially within an R6 zoning district, partially within an R6B zoning district, and partially within an R7B zoning district; and

WHEREAS, the Zoning Lot has approximately 510 feet of frontage along Fifth Street, approximately 696 feet of frontage along Sixth Street, 200 feet of frontage along Seventh Avenue, 200 feet of frontage along Eighth Avenue, and 120,569 sq. ft. of lot area; and

WHEREAS, there are a series of contiguous parcels fronting on Fifth Street which are not part of the Zoning Lot ("out-parcels") and which give the Development Site a U-shape; and

WHEREAS, the Development Site is currently occupied by NYM-owned low-rise buildings, originally constructed as walk-up residences, and a parking lot, all of which would be demolished in connection with the construction of the Center; and

WHEREAS, the Hospital notes that calculations for lot area and width, use group, floor area/FAR, lot coverage, required rear yards, parking, and loading are for the Zoning Lot; other calculations are for the Development Site, which comprises a majority of the zoning lot and is located in R6, R6B, and R7B zoning districts;

WHEREAS, the Hospital initially proposed to construct a new building for the Center which would include 311,000 sq. ft. of community facility floor area (3.82 FAR), seven stories and two mechanical floors, and a maximum height of 152 feet; and

WHEREAS, an interim proposal reflected 304,000 sq. ft. of floor area, but was ultimately revised again to include a reduction in height and increases in certain setback depths to reflect the current proposal; and

WHEREAS, specifically, the Hospital states that in response to comments from the Board and the conditions set forth in the Community Board's recommendation, reductions were made to the height

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and setback of the building in the R6B and R7B zoning districts including: (1) the R7B portion of the building was reduced in height so that it now complies with the applicable height and setback regulations; (2) the front setback on Fifth Street at the fourth floor in the R6B district was increased by an additional 15 feet, to a total depth of 20 feet from the street line; and (3) the front setback on Fifth Street at the fifth through seventh floors in the R6B district was increased by an additional 21 feet, to a total depth of 41 feet from the street line; and

WHEREAS, the proposed Center will occupy a single building with seven stories and two mechanical floors, and a maximum height of 150 feet with 299,000 sq. ft. of floor area; it will include: an ambulatory surgery center; a new endoscopy suite; clinical institutes for physician practice care delivery (the "Institutes"); an urgent care center; and a below-grade parking facility with connections to the Hospital's existing parking facilities to the west; the Institutes would include cardiology, neurosciences, orthopedics, urology, otolaryngology (ENT), a women's center, and cancer care with diagnostic radiology services; and

WHEREAS, additionally, the Hospital plans to construct a below-grade pedestrian and utility tunnel between the proposed Center and the existing Hospital facilities across Sixth Street to the south, which tunnel would be subject to the approval of a revocable consent by the NYC Department of Transportation; and

WHEREAS, the Hospital asserts that the building's floor plate dimensions and configurations would accommodate needed ambulatory care facilities, while providing adjacencies and direct connections to promote efficient, collaborative health care with minimal risk of contamination and infection; and

WHEREAS, the existing buildings include the following: (1) on the southern portion of the Development Site are five two-story buildings located to the immediate west of the parking lot, which have been converted from residential use to NYM-affiliated medical facilities and offices, and three four-story walk-ups located farther west, which contain apartments for NYM staff and medical students and on-call rooms for NYM departments; (2) on the northeast corner of the Development Site are five three-story walk-ups, which are all vacant; (3) on the northwest corner, fronting on Fifth Street, are three four-story residential walk-ups, which have been vacated in connection with the development of the Center; and (4) a parking lot, located on the southeast corner of the Development Site, which serves NYM doctors and contains 79 spaces; and

WHEREAS, the remainder of the Zoning Lot to the west of the Development Site is occupied by two Hospital buildings to remain: the Medical Office

Pavilion, a five-story building fronting on 7th Avenue, containing hospital-related facilities, ground-floor retail, and a 518-space below-grade accessory parking garage with surface parking; and the Wesley House, a 12-story building containing hospital-related facilities and staff dwellings; and

WHEREAS, the existing buildings to remain on the Zoning Lot are the subject of a variance and special permit granted by the Board on January 11, 1994, which waived applicable height and setback, parking, loading, and curb cut regulations to allow the construction of the Medical Pavilion and the garage (BSA Cal. No. 142-92-BZ); the special permit allowed the existing parking garage and deck to contain 518 parking spaces, consisting of 76 required parking spaces accessory to retail uses, 49 required parking spaces accessory to the Wesley House, and 393 permitted parking spaces accessory to hospital-related uses; and

WHEREAS, the Hospital states that the existing buildings to the west of the Development Site must remain in order to allow it to continue to operate effectively; this includes the existing garage, which cannot be vertically enlarged in a way that satisfies the Hospital's programmatic needs; and

WHEREAS, the R6, R6B, and R7B zoning districts allow Use Groups 1 and 2 residential uses and Use Groups 3 and 4 community facility uses, including ambulatory care facilities and hospitals; the C1-3 commercial overlay district, which applies along the Zoning Lot's Seventh Avenue frontage but not to the Development Site, allows additional limited commercial uses; and

WHEREAS, the maximum permitted FAR for community facilities is 4.8 in the R6 district, 2.0 in the R6B district, and 3.0 in the R7B district, pursuant to ZR § 24-11; these limits allow, respectively, 481,670 sq. ft. of floor area on the R6 portion of the Zoning Lot, 22,426 sq. ft. of floor area on the R6B portion of the Zoning Lot, and 27,024 sq. ft. of floor area on the R7B portion of the Zoning Lot; pursuant to ZR § 77-02 (Zoning Lots Not Existing Prior to Effective Date or Amendment of Resolution), for a split zoning lot that did not exist on the effective date of the Zoning Resolution or an applicable amendment, each portion of the zoning lot is subject to the regulations applicable in the zoning district in which the portion is located; and

WHEREAS, the Center would not utilize all of the available floor area on the Zoning Lot, but it would require the distribution of permitted floor area across zoning district boundaries, from the R6 portion to the R6B and R7B portions; the R6B portion of the Zoning Lot would contain 42,150 sq. ft. of floor area, exceeding the maximum permitted amount by 19,724 sq. ft.; the R7B portion would contain 39,600 sq. ft. of floor area, exceeding the maximum permitted amount by 12,576 sq. ft.; and the R6 portion of the Zoning Lot

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would contain 378,134 sq. ft. of floor area, including 161,534 sq. ft. in existing buildings on the Zoning Lot to remain; and

WHEREAS, further, the Center would require waivers from the following bulk regulations within the R6 zoning district due to: (1) a lot coverage of 94.7 percent on the corner lot portion and 66.8 on the interior lot portion fronting Sixth Street, and 92.2 percent lot coverage on the other through lot portion (a lot coverage limitation of 65 percent on interior and through lots and 70 percent on corner lots is permitted (ZR § 24-11)); (2) rear yard and rear setback relief because the one-story portion of the Center located in the interior lot portion of the Zoning Lot is located more than 100 feet from Eighth Avenue and therefore is not permitted in the rear yard (ZR §§ 24-33 and 24-36) (a required rear yard of 30 feet for interior lot portions of a zoning lot and a rear yard equivalent of 60 feet for through lot portions of a zoning lot, with a required rear yard setback of 20 feet above a height of 125 feet is required (ZR §§ 24-36, 24-382, and 24-552)); (3) a portion of the Center fronting on Sixth Street, a narrow street, would extend above 60 feet within the required setback distance with a maximum height of 132 feet and would pierce the sky exposure plane (a required front setback of 15 feet on wide streets or 20 feet on narrow streets above a height of 60 feet is required and a sky exposure plane of 5.6 to 1 on wide streets or 2.7 to 1 on narrow streets is required (ZR § 24-522)); and

WHEREAS, within the R6B district, there is: (1) a lot coverage of 89 percent (a maximum lot coverage of 60 percent for through lots is permitted (ZR § 24-11)); (2) the portions of the Center located on the through and interior lot exceed 125 feet in height and are less than 20 feet from the rear yard line (a rear yard equivalent of 60 feet for through lot portions of a zoning lot, with a required rear yard setback of 10 feet above a height of 40 feet is required (ZR § 24-552)); (3) the portion of the Center fronting on Fifth Street would have a front wall with a height of approximately 59 feet at the street line and, beyond the required 15-foot setback, a maximum building height of approximately 141 feet is required and the street wall would align with the street walls of the adjacent rowhouses, allowing for the rowhouses' bay windows to visibly project, but would have a large opening to provide pedestrians with access to the Center's vehicular driveway area and visitor entrance (a street wall location with a minimum base height of 30 feet and maximum base height of 40 feet and a maximum building height of 50 feet are permitted (ZR §§ 24-522, 23-633)); and

WHEREAS, within the R7B district, there is (1) a lot coverage of 94.9 percent (a maximum lot coverage of 80 percent for corner lots is permitted (ZR § 24-11)); (2) a street wall location with a minimum base height of 40 feet and a maximum base height of 60 feet is permitted;

and (3) a complying front wall height of approximately 60 feet on Fifth Street and Eighth Avenue and a complying 75-ft. maximum building height (a maximum building height of 75 feet is permitted (ZR §§ 24-522, 23-633)); and

WHEREAS, finally, the Center would have a total of four signs to provide wayfinding for pedestrians and vehicles: a 120-sq.-ft. sign demarcating the pedestrian and vehicular entrances on Sixth Street, two 19-sq.-ft. signs demarcating the corner pedestrian entrance at 8th Avenue and Sixth Street (one on each frontage), and a 16-sq.-ft. building directory located near the main vehicular driveway and pedestrian lobby entrance (for non-residential uses, exclusive of hospitals and related facilities [which are listed in the Zoning Resolution separately from ambulatory care facilities] signage is restricted to one identification sign with a surface area of up to 12 sq. ft. and a bulletin board with an area of up to 16 sq. ft. (ZR § 22-231) yet flags, banners, and pennants for community facilities are permitted without limitation (ZR § 22-332)); and

WHEREAS, the Hospital states that the variance is required so that it may construct a building that accommodates NYM's programmatic need to locate the Center on the NYM campus and the subject site was the only available site suitable; and

WHEREAS, further, due to the need to maintain the existing hospital buildings on the campus and the presence of a significant slope across the Development Site, the subject waivers are required to construct a building that will accommodate the Hospital's programmatic needs; and

WHEREAS, the Hospital asserts that because of its status as a non-profit teaching hospital, its programmatic needs may be considered in determining if a variance is warranted; and

WHEREAS, the Hospital states that it has a need for adequate and appropriately configured space for ambulatory care facilities, with efficient adjacencies and circulation pathways located on its main campus; and

WHEREAS, the Hospital asserts that the Center would satisfy this need, while no other alternative including the studied complying development (the "Complying Development") would; and

WHEREAS, the Hospital states that the Development Site is the only site on the NYM campus that is available for new construction and that allows the Center to be located proximate to the Hospital's existing clinical facilities due to the location of the existing buildings that will remain on the Zoning Lot and the out-parcels on Fifth Street, which significantly limit the design and configuration of the Center by giving the Development Site an irregular U-shape with narrow dimensions; and

WHEREAS, the Hospital states that these conditions, when combined with the application of the

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Zoning Resolution's bulk regulations, constrain the dimensions of the Center's footprint and floor plates; and

WHEREAS, the Hospital states that the Zoning Lot has significant sloping conditions which are reflected on the survey, which show that the Development Site slopes downward from Eighth Avenue toward Seventh Avenue, with a change in grade of approximately 11 feet as measured from a point at the corner of Sixth Street and Eighth Avenue to the midblock portion of Sixth Street; and

WHEREAS, the Hospital states that this change in grade represents slightly more than three-quarters of the height of a typical building floor and, thus, a development that spans the length of the Development Site must have a split ground-floor level, impacting floor-to-floor heights and internal circulation; and

WHEREAS, the Hospital states that the slope also results in varying values of the applicable curb level and base plane, which, in combination with applicable height and setback regulations, constrain ceiling heights in the Complying Development; and

WHEREAS, the Hospital states that because of these physical constraints and their effect on a building's bulk and floor plate configurations, a development that complies with applicable zoning regulations creates practical difficulties in satisfying the Hospital's programmatic needs; and

WHEREAS, as to the need of the proposed orientation of the building and for the yard and setback waivers, the Hospital states they are necessary to achieve the necessary floor plates;

WHEREAS, specifically, the Hospital states that the eastern and western wings of the Center's U-shaped floor plates would have dimensions of approximately 95 feet by 195 feet at the lower floors, which are necessary to accommodate the surgical suite's 12 operating rooms, at approximately 550 sq. ft. each, on the third floor, with adjacent dedicated surgical preparation rooms; and

WHEREAS, the Hospital states that the floor plate also accommodates (1) the surgical recovery rooms on the floor immediately below the surgical suite and, with slightly smaller dimensions, the associated Central Sterile Services on the floor immediately above; (2) the second floor would also contain patient preparation and recovery facilities for special procedures, consisting of ten dedicated preparation rooms and 18 dedicated recovery rooms; and (3) the surgical suite, Central Sterile Services, and patient preparation and recovery facilities would be served by dedicated elevators to provide efficient, sterile, and controlled connections; and

WHEREAS, the Hospital represents that these adjacencies would promote efficient communication

and coordination among caregivers, minimize travel distances for doctors, nurses, and patients, and minimize the duplication of support functions; and

WHEREAS, further, the Hospital states that the Center would contain a number of Institutes which are staffed by faculty and affiliated physicians such as the Institute for Cancer Care, which would contain approximately 60 infusion rooms and support space, would be accommodated on the sixth and seventh floors; and

WHEREAS, the Hospital states that the ability to locate an Institute on a single floor and proximate to other medical care facilities in the building and on the block to the south would promote comprehensive, coordinated caregiving for the Hospital's patients; and

WHEREAS, the Hospital states that the consolidation of the Center's program in a single building would allow for the efficient, vertical stacking of facilities, with a central elevator core that minimizes travel distances for visitors and staff; and

WHEREAS, the Hospital states that the vertical alignment of facilities would facilitate circulation among floors, including efficient connections among the Hospital's Institutes and other medical care facilities; and

WHEREAS, the Hospital states that the operating rooms would have a direct, controlled and clean pathway to the building's Central Sterile Services on the floor immediately above, minimizing both the risk of infection incidents and the time it takes for sterile supplies to be delivered; and

WHEREAS, as to signage, the Hospital asserts that its proposed signs satisfy its need for effective wayfinding on a campus that contains a mix of hospital and healthcare facilities with multiple entrances located on streets that slope between Seventh and Eighth Avenues, which limits the visibility of signs; and

WHEREAS, the Hospital assert that the signs for the main entrance on Sixth Street, in particular, must be of a sufficient size to be visible to approaching vehicles at appropriate distances; and

WHEREAS, the Hospital analyzed a Complying Development that would contain approximately 310,000 sq. ft. of floor area – approximately 11,000 sq. ft. more than the proposal; and

WHEREAS, the analysis reflects that in order to accommodate the proposed floor area within the permitted envelope, it would include two building segments with narrower floor plates; one segment would have a similar footprint than the proposed Center's, but without a west wing, and the other segment would be constructed directly over the existing parking deck on the Zoning Lot; and

WHEREAS, the Complying Development would be eight stories tall, with two mechanical floors and a height of 150 feet; and

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WHEREAS, the application of lot coverage, height and setback, rear yard and rear yard equivalent, rear yard setback, and floor area distribution regulations to the Complying Development, in combination with constraints created by the Development Site's unique physical conditions, would result in narrow floor plate configurations that limit opportunities for functional adjacencies and require the duplication of support spaces; and

WHEREAS, specifically, the dimensions of the eastern wing on Eighth Avenue would be severely constrained by lot coverage limitations applicable to corner lots in the R7B zoning district; the eastern wing would be further constrained by street wall and building height regulations which require setbacks above 60 feet and preclude development altogether above 75 feet and the building's central segment on Sixth Street would be limited in its configuration by lot coverage and rear yard regulations applicable to the interior lot portion of the Zoning Lot, with its upper floors having particularly shallow dimensions because of the application of height and setback and rear yard setback regulations; and

WHEREAS, the Hospital represents that the Complying Development's western segment would be physically separated from the rest of the building above grade in order to comply with the required rear yard equivalent and this isolated segment would have very narrow dimensions in order to comply with the required rear yard equivalent, as well as with the height and setback regulations applicable to the Zoning Lot's Fifth Street frontage; and

WHEREAS, the Hospital states that the slope of the Development Site results in significant variations in the applicable curb level and base plane, as calculated pursuant to ZR § 12-10; specifically, along Sixth Street in the R6 zoning district, the applicable curb level is 131.8 feet in the corner lot, 126.44 feet in the interior lot, and 122.62 feet in the through lot; accordingly, the elevation of the applicable maximum front wall height thus steps down from Eighth Avenue toward Seventh Avenue, which results in constrained floor-to-floor heights of 9 feet and 12 feet 11 inches for portions of the fourth floor in the Complying Development; and

WHEREAS, the Hospital asserts that low ceiling heights significantly impede the ability to program these portions of the building; and

WHEREAS, the Hospital states that the Complying Development's constrained floor plates result in an inefficient configuration for the Hospital's new ambulatory care facilities, with the building's 12 operating rooms located in separate suites on the third and fourth floors; patient preparation split between the third and fourth floors; and surgical recovery on the second floor; with preparation and recovery functions

for special procedures be located in shared space on the fourth floor; and

WHEREAS, additionally, Central Sterile Services and the materials management facilities would be located at the extreme northeast corner of the building on the third floor, far removed from the operating rooms; and materials management would be housed in the east end of this segment on the second floor, physically separate from the eastern building segment, resulting in inefficiencies in the movement of material to and from the facilities located in the eastern segment; and

WHEREAS, the Hospital identified the following operational issues associated with the Complying Development, which are incompatible with its programmatic needs: (1) doctors, nurses, and other staff would be dispersed over multiple floors, and their travel times between treatment areas would be increased, resulting in an inefficient circulation network; (2) patients would experience longer and less comfortable transfers between treatment areas; (3) additional Hospital staff would be needed to accommodate the operating rooms and support spaces on each floor; (4) certain support functions and programmatic elements required by the Department of Health would have to be duplicated on each floor, reducing the amount of space in the building available for other healthcare functions; (5) the lack of a direct connection between Central Sterile Services and the operating rooms would increase the risk of infection incidents; (6) the lengthy travel path between the materials management facilities and the operating rooms would significantly reduce efficiency and increase the risk of cross-contamination; and (7) significant program impacts to the Institute for Cancer Care and preparation and recovery suites as the Complying Development would accommodate only 20 infusion rooms with minimal support, as compared to the 60 infusion rooms in the proposed Center, and only 16 shared preparation and recovery rooms, as compared to the 10 dedicated preparation rooms and 18 dedicated recovery rooms in the proposed Center; and

WHEREAS, the Hospital states that the physical isolation of the Complying Development's western segment would create additional issues as it would be connected to the remainder of the development only by the at-grade vehicular driveway and loading area; and

WHEREAS, the Hospital states that the separation of medical care facilities in the two building segments would severely impact the efficiency of the Complying Development's circulation network and impede communication and coordination among the Hospital's caregivers; and

WHEREAS, the Hospital asserts that the western segment above the ground floor would necessarily be limited to faculty practices, as the permitted building envelope does not accommodate the floor plate dimensions that are needed for operating rooms and

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related facilities and could only accommodate five faculty practice suites—five, rather than the seven proposed would require duplication of shared spaces, such as reception and waiting; and

WHEREAS, the Hospital asserts that the separation of medical care functions in two building segments would require an additional entrance to the Complying Development on Fifth Street, encouraging curbside drop-offs, and would require additional elevator cores, with negative impacts on the building's programmatic and energy efficiencies; and

WHEREAS, the Hospital also states that the shallow floor plates of the Complying Development would result in a high ratio of façade surface area to floor area in the building and with a net-to-gross square foot ratio that is approximately 13 percent worse than that of the proposed Center; and

WHEREAS, finally, the Hospital notes that the construction of the Complying Development over the existing parking garage would necessitate major structural alterations to the garage, including the demolition and reconstruction of structural floors, columns, and footings and, in accordance with applicable codes, the introduction of seismic-resisting elements such as shear walls; and

WHEREAS, the Hospital represents that such additional work would not only represent a significant expense to the Hospital, but would also lengthen the construction period for the Complying Development and would require that the garage be closed for a 17-month period, resulting in the loss of all of the existing 518 parking spaces during that time; and

WHEREAS, the Hospital asserts that a Complying Development of two building segments with entrances on Sixth Street, Eighth Avenue, and Fifth Street, would have only one 12-sq.-ft. sign, on Sixth Street, and one 16-sq.-ft. bulletin board, in accordance with the signage regulations applicable to ambulatory care facilities and would be wholly inadequate to orient visitors to the Center and to other Hospital buildings on campus, as two of the building's frontages would be entirely unmarked and the third, on Sixth Street, would have a sign of an insufficient size to be visible to approaching vehicle drivers; and

WHEREAS, the Hospital relies on Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986), in which the Court of Appeals held that schools have a presumed beneficial effect on the community which may be rebutted only with evidence of "a significant impact on traffic congestion, property values, municipal services and the like" and that "[t]he imposition of . . . [any] requirement unrelated to the public's health, safety or welfare, is . . . beyond the scope of the municipality's police power. . . ."; and

WHEREAS, the Hospital asserts that the

fundamental premise of the Cornell decision is that land use authorities must afford special treatment to schools and related uses because they "singularly serve the public's welfare and morals" and because of "their presumed beneficial effect on the community." Id. at 593, 595; and

WHEREAS, the Hospital notes that the Board has viewed the programmatic needs of hospitals in the way described in Cornell for numerous hospital applications for variances and that none of those decisions have been disturbed by the courts; and

WHEREAS, the Hospital states that the Cornell decision's principles are directly applicable in this case because NYM is a teaching hospital and an acute care member institution of the New York Presbyterian Healthcare System, and, thus, may rely upon programmatic needs in support of the subject variance application; and

WHEREAS, further, the Hospital states that the application is consistent with the Cornell decision because the requested variances would not contravene public health, safety or welfare but is compatible with the character of the surrounding neighborhood and would not result in any significant adverse environmental impacts; and

WHEREAS, the Board notes that the Opposition asserts that the Hospital may not rely on the deference afforded to educational and religious institutions by New York state courts and that, even if it could, it has not established its programmatic needs; and

WHEREAS, the Opposition cited the following specific concerns about the program: (1) the programmatic needs have not been established by verifiable data and to justify the proposed patient projections through 2018; (2) the Hospital has not submitted studies and analysis similar to those in other hospital variance applications; and (3) disagreement that the program cannot be accommodated through the Garage Alternative detailed by the Opposition; and

WHEREAS, the Board acknowledges that NYM, is an established hospital and educational institution consistent with the numerous other hospitals that have sought and obtained variances from the Board; and

WHEREAS, the Board notes that in Cornell, the Court of Appeals identified the presumed public benefit of the educational institution and it finds that NYM, whether as a teaching hospital or otherwise, shares the presumed benefit to the community and 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 its variance application, which allows it to further its mission; and

WHEREAS, further, the Board notes, as held in Cornell, 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

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disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the Board also notes that NYM has described with great specificity, including numerical data pertaining to historic and projected patient volumes for inpatient services, ambulatory surgical cases, and clinical Institute services, its needs and how they can be accommodated on its campus in a manner consistent with what the Board has accepted from other hospital applicants; and

WHEREAS, the Board finds that NYM has established the necessary nexus between the services to be offered in the Center and the spatial requirements which trigger the zoning non-compliance; and

WHEREAS, the Board notes that the Hospital has not yet submitted its application for a Certificate of Need (CON) from the New York State Department of Health and that it awaits a decision on the subject variance before it will finalize the CON application; and

WHEREAS, the Board also notes that each variance application has a unique set of circumstances and a unique program and that it does not require identical analysis or information of each institution in order to establish its programmatic needs; and

WHEREAS, the Board notes that the Opposition is not satisfied that the Garage Alternative is infeasible and raises concerns about NYM's initial response that the garage could not support such an enlargement; and

WHEREAS, the Board finds that NYM has explained how, even if construction above the garage is possible from a structural standpoint, it is severely disruptive to its program and the necessary efficiencies accommodated in the proposed building; and

WHEREAS, the Board notes that where a nonprofit organization has established the need to place its program in a particular location, it is not appropriate for a zoning board to second-guess that decision (see Guggenheim Neighbors v. Bd. of Estimate, June 10, 1988, N.Y. Sup. Ct., Index No. 29290/87), see also Jewish Recons. Syn. of No. Shore v. Roslyn Harbor, 38 N.Y.2d 283 (1975)); and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations and inefficiencies of the site, when considered in conjunction with the programmatic needs of NYM, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since NYM 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 Hospital asserts 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 Hospital asserts that the Center would be in keeping with the institutional uses found in the surrounding neighborhood and would be compatible with the residential uses in the area; and

WHEREAS, the Hospital asserts that as an NYM facility, it would represent an extension of an existing, prominent community facility in the area, and it would be located among a number of schools and religious institutions; and

WHEREAS, the Hospital asserts that the proposed bulk is compatible with the existing character of the neighborhood, because although the proposal requires a FAR waivers within the R6B and R7B portions of the site, the total floor area is contemplated for the site and would comply if the R6 floor area could be distributed across the site; and

WHEREAS, the applicant notes that the Development Site's immediate context is defined by existing buildings on the NYM campus, including the 12-story Wesley House on the Zoning Lot and the complex of five- to eight-story Pavilions on the block to the south; and

WHEREAS, the Hospital notes that there are also a number of existing large, five- to seven- story buildings on Eighth Avenue and Prospect Park West, to the east of the Development Site; and

WHEREAS, the Hospital notes that the buildings across Fifth Street vary in use and character, from the tall, nearly full-lot coverage John Jay Educational Campus, which comprises a majority of the block to the west, to the four-story rowhouses farther east; and

WHEREAS, the Hospital states that the Center was designed to be sensitive to the varied building forms in the surrounding area, including along Eighth Avenue and Fifth Street, and to incorporate community input regarding the configuration of the building envelope; and

WHEREAS, the Hospital states that the building's volume is concentrated on the western portion of the Development Site, away from neighboring residences on Eighth Avenue and Fifth Street, and near existing Hospital buildings, such as the 12-story Wesley House; and

WHEREAS, further, the Hospital states that the building's western wing is principally located to the west of the rowhouses across Fifth Street and is set back 26 feet above the fourth floor to minimize its presence on the street and the portion of the building that faces the rear yards of the out-parcels on Fifth Street is set back from the property line by 10 feet at the first floor and 30 feet above so as to provide the neighboring properties with additional light and air; and

WHEREAS, in response to the Opposition's assertion that 103 units of affordable housing will be

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lost due to the demolition of existing building's, the Hospital responded that all of the buildings on the Development Site were acquired by the Hospital approximately 40 to 45 years ago and many of the units have been converted to office space or have remained vacant; and

WHEREAS, the Hospital states that of the remaining 67 dwelling units only 12 are rented to members of the community who are not affiliated with the Hospital; the Hospital states that it has agreed to provide replacement housing for its 12 current tenants; and

WHEREAS, as noted, in response to comments from the Board and the Community Board, the Hospital revised its initial proposal including the reduction of the maximum height of the building in the R6 district by approximately 2 feet, from 152 feet to 150 feet, so as to match the height of the Complying Development; and

WHEREAS, the Hospital also reconfigured the building massing to reduce the height and volume of the building on the eastern end of the block, along Eighth Avenue and adjacent to the neighboring buildings on Fifth Street, and to provide greater building setbacks in those areas so that more of the building's volume is now concentrated on the middle of the Zoning Lot, near other Hospital buildings and directly adjacent to Wesley House; and

WHEREAS, the Hospital also modified the earlier proposal which reflected an exit from the driveway on Fifth Street, so that the Center's vehicular driveway is directly accessible only from Sixth Street in response to concerns of residents that the Fifth Street exit would result in increased vehicular traffic on that street, adjacent to existing residences and the John Jay Educational Campus; and

WHEREAS, further, a number of the Center's open areas, including rooftops created by the building's setbacks, have been designed as green spaces to provide visual amenities to Hospital visitors and the surrounding neighborhood; and

WHEREAS, finally, consistent with the conditions set forth in the Community Board's recommendation, the number of parking spaces in the proposed Center was reduced from 539 to 350; as noted, this change requires a modification to the drawings approved in connection with the Board's special permit for the existing NYM garage to accommodate the required parking for the Center and is addressed by the separate amendment application for; and

WHEREAS, as to traffic, the Hospital states that the proposal is designed to minimize the effect of the building's operation on surrounding properties and vehicular traffic in the following ways: (1) the vehicular driveway in the building would contain spaces for

standing vehicles so as to prevent queuing on Sixth Street; and (2) vehicles that access the driveway from Sixth Street would be able to continue along the driveway's loop and exit on Sixth Street or directly access the below-grade parking garage, which would connect to the existing parking garage on the block; and

WHEREAS, the Hospital states that its design is intended to keep vehicular circulation within the Zoning Lot so as to minimize traffic activity on adjacent streets and it also directs vehicular entries and exits to Sixth Street, adjacent to Hospital buildings and away from neighboring residences; and

WHEREAS, in response to the Opposition's concerns about existing traffic related to the Hospital, the Hospital states that the ambulance and loading facilities are existing conditions that do not have a relationship to the proposed Center, in part because they are located on a separate portion of the campus and in part because the Center will not draw any ambulance trips and will contain its own loading facility; and

WHEREAS, nonetheless, the Hospital states that it is responsive to the traffic concerns and will address them through its Traffic and Parking Management Plan developed with its traffic consultant and the New York City Department of Transportation; and

WHEREAS, the Hospital asserts that the existing operations, which are unrelated to the Center, and will not be affected by it, should not be a factor in the analysis of the Center's appropriateness; and

WHEREAS, the Hospital states that the consolidation of outpatient facilities and clinical Institutes in the Center, relocated from other parts of the NYM campus, would allow for the inpatient facilities in the Hospital's existing buildings to be upgraded and modernized and not to increase the number of inpatient beds; and

WHEREAS, accordingly, the EAS does not forecast an increase in the travel demand generated by the Hospital's existing facilities; and

WHEREAS, finally, the Center's loading berths would be enclosed and located on an interior portion of the Zoning Lot, ensuring that both truck maneuvering and loading activities occur off street; and

WHEREAS, the Opposition raised concerns about the aesthetic impact of the Center on the surrounding area and specifically raised concerns that the proposal does not fit within the City Planning Commission's (CPC) exception given to the Hospital campus in that much of it remained within the R6 zoning district while other portions of the area were zoned R6B and R7B and are to be respected as such; and

WHEREAS, the Opposition asserts that CPC's decision to allow the Hospital to remain within the R6 zoning district is negated if the proposal extends into the R6B and R7B districts; and

WHEREAS, the Board notes that the floor area is available across the site and only raises objection due to

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it being shifted from the R6 zoning district and into the R6B and R7B zoning districts; and

WHEREAS, the Board notes that the R6B and R7B portions of the lot are also occupied by the NYM campus and that the Hospital has explained why it is unable to shift more of the bulk in the R6 zoning district portion of the site, but it has revised its plans to include setbacks that are compliant with or nearly compliant with R6B and R7B regulations; and

WHEREAS, the Board finds that the Center's massing and design are sensitive to the surrounding neighborhood character; and

WHEREAS, the Board accepts the Hospital's traffic studies and the logic that the proposed ambulatory care facility will not compound any ambulance traffic concerns as it will not require such vehicles; and

WHEREAS, the Board notes that the Hospital has pledged to work with the community and traffic experts to improve the existing conditions not related to the Center and to ensure those issues are not affected by the Center's activities; and

WHEREAS, the Board notes that the Hospital has made several revisions to the proposal in response to concerns and has agreed to all of the Community Board's noted conditions; 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 Hospital states that the hardship was not self-created and that no development that would meet the programmatic needs of NYM could occur on the existing site; and

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

WHEREAS, as described, the Hospital reduced the degree of certain areas of non-compliance in the R6B and R7B zoning districts and represents that the requested waivers are the minimum relief necessary to accommodate the projected programmatic needs; and

WHEREAS, however, the Opposition asserts that it is possible to satisfy NYM's programmatic need in a building which requires fewer zoning waivers and that the Hospital did not pursue lesser variance alternatives in good faith; and

WHEREAS, as noted, the Hospital made certain revisions which reduced the degree of waiver it sought including: (1) increasing the setback from Fifth Street at the sixth floor in the R7B zoning district by 21 feet so as to achieve full compliance with applicable height and setback regulations in the R7B zoning district; (2) increasing the setback from Fifth Street at the fourth floor

in the R6B zoning district by 15 feet to total a depth of 20 feet from the property line; and (3) increasing the setback from Fifth Street at the fifth through seventh floors in the R6B zoning district by ten feet for a total depth of 41 feet from the property line; and

WHEREAS, the Board has reviewed the applicant's programmatic needs and assertions as to the insufficiency of a complying scenario and has determined that the requested relief is the minimum necessary to allow NYM to fulfill its programmatic needs; 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 conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 14BSA057K, dated April 21, 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.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative declaration, 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 the Board of Standards and Appeals makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit within R6, R6B, and R7B zoning districts, the construction of a new ambulatory care facility on the campus of New York Methodist Hospital that does not comply with zoning regulations for floor area, lot coverage, rear setback, rear yard, and rear yard equivalent, and signage, contrary to ZR §§ 22-321, 24-11, 24-17, 24-33, 24-36, 24-382, 24-522, 24-552, and 77-02, *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 June 13, 2014" – twenty-eight (28) sheets; and *on further condition*:

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THAT the bulk parameters of the proposed Center building will be in accordance with the approved plans and be limited to 298,350 sq. ft. of floor area for the Center (459,884 sq. ft. of floor area (3.81 FAR) across the site); a maximum wall height of 73 feet (in the R6B zoning district) and 60 feet (in the R7B zoning district); total height of 150 feet (in the R6 zoning district), 141 feet (in the R6B zoning district) and 75 feet (in the R7B zoning district); 350 new parking spaces (and 60 spaces within the existing parking garage's 480 parking spaces), and signage, setbacks and lot coverage 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 the use of the Eighth Avenue and Sixth Street entrance be limited to employees, emergency egress, and Urgent Care facility use during late afternoon and evening hours;

THAT the Hospital will monitor traffic as described and implement a Traffic and Parking Management Plan;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT the approved plans shall 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, June 17, 2014.

A true copy of resolution adopted by the Board of Standards and Appeals, June 17, 2014.

Printed in Bulletin No. 25, Vol. 99.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

