

**163-12-BZ****CEQR #12-BSA-141M**

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for NYU Hospitals Center, owner; New York University, lessee.

SUBJECT – Application May 31, 2012 – Variance (§72-21) to permit the development of a new biomedical research facility on the main campus of the NYU Langone Medical Center, contrary to rear yard equivalent, height, lot coverage, and tower coverage (§§24-382, 24-522, 24-11, 24-54) regulations. R8 zoning district.

PREMISES AFFECTED – 435 East 30<sup>th</sup> Street, East 34<sup>th</sup> Street, Franklin D. Roosevelt (FDR) Drive Service Road, East 30<sup>th</sup> Street and First Avenue, Block 962, Lot 80, 108, 1001-1107, Borough of Manhattan.

**COMMUNITY BOARD #6M**

**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 Montanez .....5  
Negative:.....0

**THE RESOLUTION –**

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 24, 2012, acting on Department of Buildings Application No. 121183432, reads in pertinent part:

1. Proposed building portion is located within the required rear yard equivalent; contrary to ZR 24-382.
2. Proposed building portion located within the initial setback distance exceeds the maximum permitted height of 85 feet above curb level and also penetrates the sky exposure plane; contrary to ZR 24-522.
3. The proposed total lot coverage within the interior and through lot portions of zoning lot exceeds 65 percent; contrary to ZR 24-11.
4. The proposed building increases the degree of non-compliance allowed by prior BSA variance (Cal. No. 186-10-BZ) with respect to tower coverage limitation; contrary to ZR 24-54 and 186-10-BZ; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R8 zoning district, the construction of a new biomedical research facility on the main campus of the New York University Langone Medical Center (the “Medical Center”) that does not comply with zoning regulations for rear yard equivalent, height and setback, lot coverage, and tower coverage, contrary to ZR §§ 24-382, 24-522, 24-11, and 24-54; and

WHEREAS, a public hearing was held on this application on August 4, 2012, after due notice by

publication in the *City Record*, with a continued hearing on October 30, 2012 and then to decision on December 11, 2012; and

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

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the application is brought on behalf of the Medical Center, a non-profit educational institution and hospital; and

WHEREAS, the subject zoning lot is located on the superblock bounded by East 34<sup>th</sup> Street to the north, the Franklin D. Roosevelt Drive (the “FDR Drive”) to the east, East 30<sup>th</sup> Street to the south, and First Avenue to the west, within an R8 zoning district; and

WHEREAS, the zoning lot has a lot area of 408,511 sq. ft.; and

WHEREAS, on November 20, 2001, the Board granted a special permit pursuant to ZR § 73-64 to allow the construction of a new medical research and laboratory building (Use Group 3A) on the site, contrary to zoning regulations for height and setback, rear yard, and minimum distance between buildings; and

WHEREAS, on July 13, 2010, under BSA Cal. No. 41-10-BZ, the Board granted a variance to permit the renovation and enlargement of the existing Emergency Department and the addition of 354 sq. ft. of signage at the entrances and on the façade of the Emergency Department, contrary to zoning regulations for rear yard and signage; and

WHEREAS, most recently, on March 15, 2011, the Board granted a variance to permit the construction of two new community facility buildings, contrary to zoning regulations for rear yard, rear yard equivalents, height and setback, rear yard setback, tower coverage, maximum permitted parking, minimum square footage per parking space, or curb cut requirements; and

WHEREAS, the applicant notes that the zoning lot is subject to a 1949 indenture between the City and New York University (“NYU”), pursuant to which portions of East 31<sup>st</sup> Street, East 32<sup>nd</sup> Street and East 33<sup>rd</sup> Street were demapped and their beds conveyed to NYU, and the portion of East 30<sup>th</sup> Street abutting the southern end of the superblock was also demapped and an access easement thereover granted to NYU; the indenture also requires that no building on the zoning lot have a height greater than 25 stories, that lot coverage on the zoning lot not exceed 65 percent, and that at least 235 parking spaces be provided on the zoning lot; and

WHEREAS, the proposed construction would be located on the southeast portion of the zoning lot, bounded by East 30<sup>th</sup> Street to the south, the FDR Drive Service Road to the east, the Smilow Research Center building to the north, and the Schwartz Lecture Hall to the west (the “Development Site”); and

WHEREAS, the Development Site is currently

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occupied by the 15-story Rubin Hall, a one-story portion of Schwartz Lecture Hall, and a two-story portion of the Medical Science Building, which are proposed to be demolished; and

WHEREAS, the applicant notes that Rubin Hall is currently vacant and abatement and demolition of that building have already begun independent of the development of the proposed building; and

WHEREAS, the applicant proposes to construct a 16-story biomedical research facility building with a floor area of 296,776 sq. ft. (the "Science Building"); and

WHEREAS, the applicant states that the construction of the Science Building will result in a total floor area for the zoning lot of 2,650,003 sq. ft. (6.5 FAR); the maximum permitted floor area for a community facility in the subject zoning district is 2,650,322 sq. ft. (6.5 FAR); and

WHEREAS, the proposed construction will create the following non-compliances on the site: a small amount of the northeast portion of the Science Building is located within the required rear yard equivalent (a rear yard equivalent with a minimum depth of 60'-0" is required); the front wall of the Science Building fronting on the FDR Drive Service Road has a height of approximately 281'-0", and pierces the sky exposure plane (a minimum front wall setback of 15'-0" is required above the height of 85'-0" or nine stories); a lot coverage of 258,962 sq. ft. (66 percent) and a temporary lot coverage of 260,883 sq. ft. (66.5 percent) attributable to the Medical Center's existing loading berths on former East 30<sup>th</sup> Street, which would not be demolished until after the Science Building is completed (the maximum permitted lot coverage for interior and through lots is 65 percent); and an increase in the degree of non-compliance of the tower coverage of the zoning lot's previously approved towers; and

WHEREAS, because the Science Building does not comply with the underlying zoning district regulations, the applicant seeks the proposed variance; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Medical Center: (1) additional up-to-date laboratory space to accommodate the Medical Center's growing research program; (2) floor plates that are sized and configured for efficient and collaborative research; and (3) functional integration of such space with the Medical Center's existing scientific research facilities; and

WHEREAS, the applicant states that the Medical Center has a programmatic need for additional laboratory space that is optimally configured for efficient and collaborative research and physically and functionally integrated with the Medical Center's existing science research facilities; and

WHEREAS, the applicant submitted a letter from the Medical Center in support of its need for additional research space, which states that the Medical Center's guiding principle of translational medicine requires that its campus have a sufficient amount of up-to-date research space so that its clinical services can continue to be informed by, and its educational programs involved in, scientific advancements; and

WHEREAS, the applicant states that as the Medical Center enhances its clinical and educational programs, it must ensure that its research program is likewise supported by an adequate amount of research space and state-of-the-art facilities; and

WHEREAS, the applicant further states that increasing research and funding activity at the Medical Center also make it crucial for the Medical Center to have sufficient up-to-date research facilities for attracting talent and investment; and

WHEREAS, specifically, the applicant states that the Medical Center's research expenditures have increased by 46 percent over the past five years, with \$255 million in expenditures in 2011, and are expected to increase to approximately \$340 million in 2015 and \$460 million in 2020, with corresponding increases in the number of principal investigators and lab staff; and

WHEREAS, the applicant notes that the Medical Center has leased space in East River Science Park, located on the south side of East 29<sup>th</sup> Street to the east of First Avenue, and on Varick Street to help satisfy the demand for research space, but additional on-campus space, integrated with existing Medical Center buildings, is also needed; and

WHEREAS, the applicant represents that, to support the current and projected research activity on campus, the Medical Center needs approximately 350,000 net assignable sq. ft. of new research space, of which 236,000 net assignable sq. ft. would be dedicated to wet bench space; and

WHEREAS, the applicant states that the Science Building would provide approximately 296,776 sq. ft. of total floor area, with approximately 256,000 sq. ft. of floor area, amounting to approximately 186,000 net assignable sq. ft., dedicated to research laboratories and related core labs on the second through 13<sup>th</sup> floors of the building, bringing the Medical Center significantly closer to attaining its long-term goal; and

WHEREAS, the applicant further states that the multiple conference rooms and multipurpose spaces located on the basement and first floors would facilitate collaborative communications among researchers and thereby foster increased discovery, revenue, and growth for the Medical Center; and

WHEREAS, the applicant states that the Medical Center also has a programmatic need for its new research space to be accommodated on floor plates that are efficient in size and configuration; and

WHEREAS, the applicant notes that the

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prototypical laboratory floor plate is a systematically repetitive “laboratory module” including open lab benches, lab support spaces, offices, and office support space such as administrative facilities and shared amenities, which results in a flexible, adaptable, and functionally efficient research environment; and

WHEREAS, the applicant states that the floor plates must also be large enough to accommodate a “crucial mass” of principal investigators needed to facilitate collaborative research, and that leading laboratory design consultants have established a standard of eight to 12 principal investigators per floor for this purpose, with a range of 1,400 to 1,700 net assignable sq. ft. per principal investigator; and

WHEREAS, the applicant notes that the laboratory floors of the Science Building would have a width of approximately 275 feet and a depth of approximately 89 feet, so as to provide a flexible, adaptable, and functionally efficient research environment with slightly more than 15,500 net assignable sq. ft. of research space (approximately 22,000 gross sq. ft.) to accommodate nine to ten principal investigators on each floor; and

WHEREAS, the applicant represents that, to further the principle of translational medicine, the new research facilities must relate physically and functionally to the Medical Center’s educational and clinical facilities; and

WHEREAS, specifically, the applicant states that there must be physical connections between the new research facilities and the existing Berg Institute, the Medical Science Building, and the Smilow Research Center, with an ability to efficiently share core research facilities, as well as links from such spaces to the Medical Center’s educational and clinical facilities; and

WHEREAS, specifically, the applicant states that the Science Building would connect with the Berg Institute and the Medical Science Building on the cellar, basement, and first floors, with possible connections on the lower laboratory floors above, allowing for contiguities of the buildings’ research support spaces and shared access to the buildings’ conference facilities and amenity spaces; and

WHEREAS, the applicant further states that the Science Building would connect to the immediately adjacent Smilow Research Center by an exterior pedestrian path across a shared courtyard, completing an efficient circulation network among the Science Building, the Smilow Research Center, the Berg Institute, and the Medical Science Building, and that this circulation network would serve as an extension of the existing Medical Center buildings, providing Medical Center physicians, researchers, staff, and students with access to the research facilities and amenity spaces located at the southern end of the

campus; and

WHEREAS, the applicant represents that an on-campus location is critical for the significant percentage of MD/PhD researchers who maintain clinical practices on the main campus, while a location at the southern end of the zoning lot, in particular, also capitalizes on the campus’ proximity to the research buildings at East River Science Park, reinforcing the synergistic relationship among the institutions and commercial laboratories comprising the First Avenue biomedical corridor; and

WHEREAS, the applicant submitted plans for a complying scenario consisting of a four-story building with 80,860 sq. ft. of floor area, of which 39,500 net assignable sq. ft. (52,775 gross sq. ft.) would be dedicated to research space; and

WHEREAS, the applicant represents that the aforementioned programmatic needs could not be satisfied through the complying scenario; and

WHEREAS, specifically, the applicant states that the complying building would contain only four above-grade floors so as not to exceed the height threshold for tower coverage; and

WHEREAS, the applicant further states that to maximize the amount of research space within this limited building envelope, certain space on the basement floor which would otherwise be used for conference facilities and multipurpose spaces would instead be dedicated to shared research cores; however, even with this programming sacrifice, the complying building would fall well short of the 236,000 net assignable sq. ft. needed by the Medical Center and the 186,000 net assignable sq. ft. provided by the proposed Science Building; and

WHEREAS, the applicant states that, in order to comply with lot coverage, rear yard equivalent, and height and setback regulations, while maintaining physical connections to adjacent research facilities, the portion of the complying building located above the basement level would not extend as far to the east and northeast as that of the Science Building, resulting in smaller floor plates with fewer bench modules, procedure rooms, alcoves, researcher offices, and corresponding office support space, and capable of accommodating two to three fewer principal investigators per floor; and

WHEREAS, the applicant represents that, to maximize the amount of research space within the complying building’s limited building envelope, all floors above the basement would be dedicated to laboratory facilities and would be designed with centralized vertical circulation to minimize the circulation distances within the floor plate; however, because this plan arrangement is not conducive to connections between the complying building, the Berg Institute, and the Medical Science Building, such connections would be limited to the cellar and basement

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floors; and

WHEREAS, the Board acknowledges that the Medical Center, 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, in addition to the programmatic needs of the Medical Center, the applicant states that the variance request is also necessitated by unique conditions of the site that create a hardship, specifically: the existing built conditions of the zoning lot; and

WHEREAS, as to the surrounding conditions on the zoning lot, the applicant states that the configuration of the Development Site is dictated by the location of existing buildings on the zoning lot which are integral to the Medical Center's mission and cannot be demolished and/or which must be physically connected with the Science Building so that the Medical Center may continue to operate efficiently; and

WHEREAS, the applicant states that the existing Berg Institute, Medical Science Building, and the Smilow Research Building, with which the Science Building must be physically and functionally integrated to satisfy the Medical Center's programmatic needs, dictate the configuration of the Science Building's floor plates, which are further limited by the 65 percent lot coverage limitation applicable to the zoning lot, and as a result of these constraints, the amount of dedicated laboratory space that can be provided in the Science Building is severely limited unless the building is able to exceed the applicable threshold or tower coverage; and

WHEREAS, the applicant further states that the existing Berg Institute requires that the Science Building be located as far to the north on the Development Site as possible so as to create appropriate alignments for an efficient shared circulation system, and shifting the Science Building's laboratory floors to the south to comply with rear yard equivalent and height and setback regulations would compromise the ability to make critical physical and functional connections between the lower floors of the Science Building and the lower floors of the adjacent Berg Institute; in particular, the applicant states that connections to the Berg Institute are restricted by existing shafts located to the immediate west of the

Development Site, which contain extensive mechanical and other infrastructure services serving the Berg Institute, and locating the Science Building at the northern end of the Development Site allows for a critical overlap between the Science Building and the Berg Institute so that connections can be made to the Berg Institute's existing circulation paths; and

WHEREAS, the applicant represents that complying with the applicable rear yard equivalent, height and setback, and lot coverage regulations while providing efficient connections to the existing research facilities would also require offsets in building infrastructure at the upper laboratory levels, including stairs and MEP system distribution, which would further burden the Science Building's efficiency; 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 the Medical Center, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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

WHEREAS, the applicant represents that 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 states that the Science Building would be in keeping with the character of the surrounding neighborhood, which is defined by numerous medical and other institutional uses; and

WHEREAS, specifically, the applicant notes that the New Buildings would be located among a multitude of medical institutions comprising the First Avenue "biomedical corridor," including other buildings within the Medical Center, the Bellevue Hospital Center, the Veterans Affairs Medical Center, and the Hunter College School of Medical Professions; and

WHEREAS, the applicant further notes that the 197-a Plan for the Eastern Section of Community District 6 recommended that the area including the Medical Center be rezoned from residential to a Special Hospital Use District, indicating that the community recognizes this area as an appropriate location for specialized hospital uses; and

WHEREAS, the applicant notes that the Development Site is located on a superblock largely occupied by the many mid-rise and high-rise buildings of the Medical Center, and the waiver of the rear yard equivalent, height and setback, lot coverage, and tower coverage regulations would have no discernible impact on the surrounding neighborhood; and

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WHEREAS, the applicant further notes that the Science Building would only be slightly taller than the Smilow Research Center with a height of 249'-0" to the immediate north, and would be shorter than the Kimmel Pavilion hospital building to be developed on the northeast corner of the zoning lot; and

WHEREAS, the applicant states that First Avenue is a wide, heavily-trafficked northbound thoroughfare which divides the major health care facilities on the east side of the avenue from the neighborhood to the west, which has a mix of residential and institutional uses, and the Science Building would be located on the southeast corner of the zoning lot, away from such uses and in alignment with the medical uses that comprise the First Avenue biomedical corridor to the north and south; and

WHEREAS, the applicant notes that the portion of the Science Building for which waivers of rear yard equivalent and height and setback are required fronts the FDR Drive Service Road, which is bounded to the east by the FDR Drive, and farther east, the East River Esplanade and the East River, such that these non-compliances would not have any impacts on other buildings or uses; and

WHEREAS, the applicant represents that the Science Building will actually improve the visual quality of the Development Site and the surrounding neighborhood, as it would replace aging buildings on the Development Site with a development of contemporary design that visually connects with other buildings on the Medical Center campus; and

WHEREAS, the applicant further represents that the Science Building will also create a more uniform street wall along former East 30<sup>th</sup> Street, and will provide a prominent gateway to the NYU School of Medicine at the southern end of the campus, helping to establish a visual identity for the institution and to orient the significant number of visitors that the Medical Center campus receives every day; 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 applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Medical Center 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, the applicant represents that the requested waivers are the minimum relief necessary to accommodate the projected programmatic needs; and

WHEREAS, the Board has reviewed the

applicant's program needs and assertions as to the insufficiency of a complying scenario and has determined that the requested relief is the minimum necessary to allow the Medical Center 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. 12BSA126M, dated December 7, 2012; 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, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials, air quality and noise impacts; and

WHEREAS, there is an existing Restrictive Declaration for hazardous materials (CRFN 2011030100673001001EF581) associated with the approved BSA New York University Kimmel Pavilion variance project (CEQR Number 11BSA029M); and

WHEREAS, since the project site is subject to an existing Restrictive Declaration, the DEP has requested that a Phase II Investigative Protocol and any other relevant or necessary supporting documents should be submitted to the New York City Office of Environmental Remediation ("OER") for review and approval prior to any field sampling activities; and

WHEREAS, DEP reviewed the applicant's stationary source air quality screening analysis and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, DEP reviewed the results of noise monitoring and determined that a minimum of 31 dBA window-wall noise attenuation is required on the north and east facades of the proposed building and an alternate means of ventilation should be provided in order to achieve an interior noise level of 45 dBA; and

WHEREAS, DEP determined that, with these noise measures, the proposed project is not anticipated to result in significant noise impacts; and

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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 an R8 zoning district, the construction of a new biomedical research facility on the main campus of the New York University Langone Medical Center that does not comply with zoning regulations for rear yard equivalent, height and setback, lot coverage, and tower coverage, contrary to ZR §§ 24-382, 24-522, 24-11, and 24-54, *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 December 10, 2012" – sixteen (16) sheets; and *on further condition*:

THAT the parameters of the proposed buildings will be in accordance with the approved plans;

THAT prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor will obtain from OER a Notice to Proceed;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided it with a Notice of Satisfaction from OER;

THAT the proposed building's windows on the north and east facades will have a noise attenuation rating of 31 dBA OITC and that an alternate means of ventilation (central heating and air-conditioning) will be provided throughout the building;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

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

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

**A true copy of resolution adopted by the Board of Standards and Appeals, December 11, 2012.**

**Printed in Bulletin No. 51, Vol. 97.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

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, December 11, 2012.