

186-10-BZ**CEQR #11-BSA-029M**

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

SUBJECT – Application September 28, 2010 – Variance (§72-21) to allow for the construction of two community facility buildings (*NYU Langone Medical Center*), contrary to rear yard (§24-36), rear yard equivalent (§24-382), height and setback (§24-522), rear yard setback (§24-552), tower coverage (§24-54), maximum permitted parking (§13-132), minimum square footage per parking space (§25-62), and curb cut requirements (§13-142). R8 zoning district.

PREMISES AFFECTED – 400-424 East 34th Street, aka 522-566 & 596-600 First Avenue, East 34th Street, Franklin D. Roosevelt Drive, East 30th Street, and First Avenue, Block 962, Lot 80, 108 & 1001-1107, Borough of Manhattan.

COMMUNITY BOARD #6M**APPEARANCES –**

For Applicant: Elise Wagner.

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 Superintendent, dated September 24, 2010, acting on Department of Buildings Application Nos. 120448284, 120448293, and 120448998, reads in pertinent part:

1. No required rear yard and rear yard equivalent are provided contrary to ZR 24-36 and ZR 24-382.
2. Portion of the building within the initial setback distance exceeds maximum permitted height of 85 feet above curb level and penetrates sky exposure plane contrary to ZR 24-522.
3. No required 20-foot rear yard setback is provided above the height of 125 feet as required by ZR 24-552.
4. Proposed tower coverage for aggregate areas exceeds 40% of zoning lot contrary to ZR 24-54.
5. Proposed accessory parking exceeds the maximum permitted 100 accessory parking spaces pursuant to 13-132 and does not provide the minimum 200 SF per accessory parking space pursuant to 25-62.
6. Proposed curb cuts along wide streets (First Avenue and East 34th Street) are contrary to 13-142; and

WHEREAS, this is an application under ZR § 72-

21, to permit, within an R8 zoning district, the construction of two new community facility buildings on the campus of the New York University Langone Medical Center (the “Medical Center”) that do not comply with 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, contrary to ZR §§ 24-36, 24-382, 24-522, 24-552, 24-54, 13-132, 25-62, and 13-142; and

WHEREAS, a public hearing was held on this application on January 25, 2011, after due notice by publication in the *City Record*, and then to decision on March 15, 2011; and

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

WHEREAS, Community Board 6, Manhattan, recommends approval of this application, subject to the condition that the applicant consider alternative designs for vehicle ingress and egress which would allow for an increase in the planted area and a decrease in the number of proposed curb cuts; 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 34th Street to the north, the Franklin D. Roosevelt Drive (the “FDR Drive”) to the east, East 30th 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, most recently, 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, 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 31st Street, East 32nd Street and East 33rd Street were demapped and their beds conveyed to NYU; the indenture also created a sewer easement and requires that no building on the zoning lot have a height greater than

186-10-BZ**CEQR #11-BSA-029M**

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 northeast portion of the zoning lot, bounded by East 34th Street to the north, First Avenue and two Amtrak ventilation towers to the west, the FDR Drive Service Road to the east, and the Medical Center's 21-story Tisch Hospital building ("Tisch Hospital") and four-story Coles Student Labs to the south (the "Development Site"); and

WHEREAS, the Development Site is an irregular parcel which occupies the entire East 34th Street frontage of the superblock, two frontages on First Avenue of approximately 127 feet and 35 feet, and approximately 552 feet of frontage on the FDR Drive Service Road; and

WHEREAS, the Development Site is currently occupied by the ten-story Perelman Building, the nine-story Rusk Institute for Rehabilitative Medicine (including the one-story Auxiliary Pavilion), and the one-story northern service wing; these existing buildings would be demolished to make way for the proposed construction; and

WHEREAS, the applicant proposes to construct: (1) a 22-story major clinical building with a floor area of 687,731 sq. ft., which will be physically linked to, and function with, the existing Tisch Hospital (the "Kimmel Pavilion"); and (2) a six-story building with a floor area of 40,438 sq. ft., which will house both a modern cogeneration facility to serve the entire campus and a radiation oncology facility (the "Energy Building") (collectively, the Kimmel Pavilion and the Energy Building make up the "New Buildings"); and

WHEREAS, the applicant also proposes to relocate the Medical Center's bulk oxygen tank facility to a site at the south end of the zoning lot; and

WHEREAS, the applicant states that the construction of the New Buildings will result in a total floor area for the zoning lot of 2,601,636 sq. ft. (6.37 FAR); the maximum permitted FAR for a community facility in the subject zoning district is 6.5; and

WHEREAS, the proposed construction will create the following non-compliances on the site: a portion of the Kimmel Pavilion is located within a required rear yard and the bulk oxygen tank facility, at the southern end of the zoning lot, is located wholly within a required rear yard (rear yards with minimum depths of 30'-0" are required); the Energy Building fully occupies a required rear yard equivalent (a rear yard equivalent with a minimum depth of 60'-0" is required); the portion of the Kimmel Pavilion located more than 125 feet above the required rear yard provides a rear yard setback of only 5'-0" (a rear yard setback of 20'-0" is required above the height of 125'-0"); a total tower coverage for the zoning lot of 171,578 sq. ft.

(a maximum tower coverage of 163,404 sq. ft. is permitted); the addition of 140 accessory parking spaces (100 accessory parking spaces is the maximum permitted for hospital developments or enlargements in Manhattan Community District 6); a parking garage with 150 sq. ft. per accessory parking space (200 sq. ft. is the minimum required per accessory parking space); and the relocation and enlargement of two existing curb cuts on East 34th Street, a wide street, and the addition of a second curb cut on First Avenue, a wide street (entrances and exits to permitted accessory off-street parking spaces may not be located on a wide street in Manhattan Community District 6); and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Medical Center: (1) a sufficient number of up-to-date operating and procedure rooms, private inpatient rooms, observation units for post-procedure patients, radiation oncology facilities, and attendant spaces to satisfy increased patient volumes and current medical standards; (2) hospital floor plates that are highly flexible and repetitive; (3) providing physical and functional connections among the New Buildings and the existing Tisch Hospital, to create a single integrated hospital system with a single standard of care; (4) an efficient and up-to-date energy system with direct utility connections to all campus buildings; and (5) additional parking spaces and improved access through and around the hospital; and

WHEREAS, the applicant states that each year the Medical Center admits approximately 36,000 inpatients and 600,000 ambulatory visits and performs 25,000 surgeries; and

WHEREAS, the applicant represents that these numbers are expected to increase by approximately 47 percent for procedure volumes and 21 percent for inpatient discharges within the next ten years; and

WHEREAS, accordingly, the applicant represents that the Medical Center requires additional operating and procedure rooms and patient rooms to meet the demand created by current and projected patient volumes; and

WHEREAS, the applicant states that existing operating and procedure rooms are insufficient in number for this demand and insufficient in size for the integration of new technologies and procedures; and

WHEREAS, specifically, the applicant states that there is a projected need for 82 operating and procedure rooms while only 69 such rooms exist, and the optimal size for an operating and procedure room is 600 to 650 sq. ft., while the Medical Center's existing rooms range in size from 310 to 550 sq. ft.; and

WHEREAS, the applicant states that there is also a shortage of recovery rooms and that such rooms are too small in size and clearance, causing a backup in the operating rooms, and as a result, operating suites are

used inefficiently, with extended wait times for patients; and

WHEREAS, as to the Medical Center's patient rooms, the applicant states that only 12 percent of the Medical Center's inpatient beds are designed for critical care, while national benchmarks for similar facilities require that 40 to 50 percent of inpatient beds be designed for such critical care; and

WHEREAS, the applicant notes that the existing inpatient rooms are designed for multiple beds, and that the Medical Center's goal, based on current medical standards, is that all inpatient beds be located in single-patient rooms, which is important for reducing the spread of infection, and providing privacy for patients and family members; and

WHEREAS, the applicant represents that the Medical Center also has a need for observation areas for patients who do not require hospitalization after a procedure but require observation for a period of less than 24 hours, to accommodate for the increasing number of outpatient procedures; and

WHEREAS, the applicant states that the Medical Center's existing inpatient beds, procedure rooms, and patient care areas are located in three buildings (Tisch Hospital, the Rusk Institute building, and the Schwartz Health Care Center) which are physically and operationally separate, creating inefficiencies and redundancies in equipment, support space, and clinical supply inventories; and

WHEREAS, the applicant represents that the Rusk Institute building, constructed in 1952, is unsuitable for renovation due to its age, condition, column grid and configuration (such as low floor-to-floor heights of 11'-4½" and narrow floor plate dimensions of 50'-0" by 296'-6" above the ground floor), and the Schwartz Health Care Center is undersized for inpatient use and is located near the southern end of the Medical Center campus, remote from the other clinical facilities; and

WHEREAS, the applicant states that Tisch Hospital is limited by existing floor-to-floor heights (typically 11'-4 ½") and floor plate dimensions (typically 343 feet by 134 feet on the lower floors and 278 feet by 80 feet on the upper floors) which cannot be adapted to a state-of-the-art facility for the highest acuity level of care because: (1) there is no expansion space available for emerging clinical practices; (2) existing corridors connecting the entrances and various departments are circuitous and difficult for patients and hospital staff to navigate; and (3) the building lacks adequate swing space to accommodate relocations during the renovation of other hospital buildings, and other buildings on the Medical Center campus lack adequate swing space to accommodate patient beds during the renovation of Tisch Hospital; and

WHEREAS, the applicant represents that the new facility must be integrated with the existing Tisch Hospital, especially on critical procedure floors, so that patients and staff can move freely between buildings as needed to satisfy patient care and support needs; and

WHEREAS, the applicant further represents that the floor plates must be repetitive so as to create an environment that doctors and nurses can easily learn and efficiently navigate, and must be highly flexible and free of major permanent obstructions so that the building may be adapted for changes in patient care and technology that are likely to occur over the buildings' expected 100-year lifespan; and

WHEREAS, the applicant states that the Kimmel Pavilion will satisfy these programmatic needs because the lower levels of the Kimmel Pavilion will provide large contiguous floor plates, with a concentrated elevator and utility core surrounded by large amounts of space unconstrained by vertical penetrations, which will allow for flexibility in accommodating operating and procedure rooms, and will allow for floor plates that are repetitive and easily navigable; and

WHEREAS, the applicant further states that each procedure floor of the Kimmel Pavilion would support eight to 12 operating and procedure rooms as well as associated pre-operative holding, recovery, and support areas, and procedure rooms would be clustered to allow for efficient staffing and management of patient flow and pre- and post-procedure care; and

WHEREAS, the applicant notes that the Kimmel Pavilion would also be physically linked and function with the existing Tisch Hospital, such that: (1) the entrances and elevators of the two buildings would be physically and visually connected by a public concourse running between the lobby and second floor of the Kimmel Pavilion; (2) the second floor of Tisch Hospital and a service corridor would link the buildings at the first and second floors of the Kimmel Pavilion; and (3) two of the Kimmel Pavilion's procedure levels would align with key procedure floors of the Tisch Hospital building, thereby creating large, contiguous, and flexible clinical areas; and

WHEREAS, as to the programmatic need for the Energy Building, the applicant states that electrical requirements for the existing Medical Center facilities have been rapidly increasing due to new clinical and research technologies, greater intensity of computing, and greater reliance on information technologies for medical care; and

WHEREAS, the applicant further states that the Medical Center's existing electrical facilities are incapable of meeting the growing need and are burdened with a 50-year old campus electrical distribution system, overloaded and outdated electrical transformers, and switchgear that expose the campus to

**186-10-BZ
CEQR #11-BSA-029M**

the risk of power failure; and

WHEREAS, the applicant states that the proposed Energy Building would supplement and replace the existing facilities with a combined heat and power facility with direct utility connections with all campus buildings, which would provide energy efficiently, reliably, and cost-effectively; and

WHEREAS, the applicant further states that the Energy Building would include a cogeneration facility which would allow the thermal byproducts of electricity generation to be captured to supply heat and hot water on the site, thereby reducing electrical loads, transmission losses that occur when electricity is transmitted over long distances, and operating costs for the Medical Center, and would also reduce regional pollutants and greenhouse gas emissions; and

WHEREAS, the applicant represents that the Medical Center also needs updated radiation oncology treatment facilities, which are currently located in the cellar of Tisch Hospital, a floor primarily used for utility equipment and storage; and

WHEREAS, the applicant notes that the existing treatment vaults for the radiation oncology treatment facility, which serve to buffer the treatment equipment, are more than 20 years old and are not large enough to accommodate state-of-the-art equipment or to expand to satisfy growing demand; and

WHEREAS, the applicant states that because of the vaults' low ceilings, renovations would be difficult and would have a limited effect in improving patient experience, and that the required depth of the vaults makes it difficult to accommodate the facilities within the proposed Kimmel Pavilion; and

WHEREAS, the applicant represents that the most efficient location for the radiation oncology facilities is on the second floor of the Energy Building, where they can be provided with vaults of sufficient depth and where they can be physically and programmatically integrated with the proposed Kimmel Pavilion and Tisch Hospital; and

WHEREAS, the applicant notes that the Medical Center's program also requires the relocation of existing bulk oxygen tanks on the Development Site to a site fronting on former East 30th Street; the tanks will be surrounded by concrete masonry unit and screen walls with a height of approximately 48'-6"; and

WHEREAS, as to the need for 140 parking spaces in the accessory parking garage of the Kimmel Pavilion, the applicant states that there are only 110 existing accessory off-street parking spaces on the zoning lot outside of the Development Site and, as noted above, the 1949 indenture agreement with the City requires that the Medical Center provide at least 235 parking spaces on the zoning lot; therefore, the Medical Center has a programmatic need for the Development Site to

provide more than the 100 accessory parking spaces permitted pursuant to the underlying zoning district regulations; and

WHEREAS, the applicant notes that the proposed parking garage would provide automated parking facilities which would maximize parking capacity by allowing the vehicles to be stacked closely together with no internal driveways, such that the proposed 150 sq. ft. per parking space would be sufficient to accommodate the facility; and

WHEREAS, the applicant states that the programmatic needs of the Medical Center also require an additional curb cut on First Avenue to allow two vehicular access points to the Kimmel Pavilion, thereby providing optimal configuration for accommodating vehicular traffic through and around the hospital; and

WHEREAS, the applicant submitted an engineer's report which states that the additional access point: (1) allows continued access to the hospital in the event that either entrance becomes inaccessible due to traffic congestion, road construction, or other activity; (2) provides an alternative entry point in the event that the City's proposed Select Bus Service (SBS) has a sustained impact on the East 34th Street entry point; (3) provides access from First Avenue separate from that to the Emergency Department, allowing ambulances to access the Emergency Department without interference from general hospital traffic; (4) minimizes traffic volume and delays at the intersection of First Avenue and East 34th Street, as well as conflicts with pedestrians at the intersection's crosswalks; and (5) provides additional vehicular queuing space, which would in turn limit possible "spillback" into the adjacent streets; and

WHEREAS, as noted above, the Community Board requested that the applicant consider alternative designs for vehicle ingress and egress at the site; specifically, the Community Board suggested that the applicant consider an alternative in which: (1) the proposed new curb cut on First Avenue is eliminated; and (2) the existing First Avenue curb cut for ambulance access to the Emergency Department is widened to accommodate both ambulance access to the Emergency Department and vehicular access to the Kimmel Pavilion driveway; and

WHEREAS, in response, the applicant submitted a letter from its engineer stating that the Community Board's proposal would compromise the Medical Center's operations and site plan, since a shared curb cut would increase conflicts between hospital-bound vehicles and Emergency Department ambulances, cause driver confusion, and detract from the pedestrian environment; and

WHEREAS, the applicant submitted plans for an alternative scenario consisting of a complying hospital building, with 24 stories and 707,306 sq. ft. of floor

area, and an adjacent accessory parking lot; 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 required rear yard and setbacks of the hospital building would significantly compromise the efficiency and flexibility of the building, as they would result in three fewer operating and procedure rooms and less space for associated services on each of the lower floors, a significant reduction in the size of the clinical areas on the fourth, fifth and sixth floors, and a reduction in the width of the corridor connecting the hospital building to Tisch Hospital such that the corridor would not align with the existing corridor in Tisch Hospital, thereby compromising the efficiency of circulation between the buildings; and

WHEREAS, the applicant represents that the rear yard requirements would also preclude the location of the Energy Building south of the hospital building, and the energy facilities and the radiation oncology facilities would therefore have to be located within the hospital building, resulting in a larger mechanical core, a reduced clinical area, less flexible floor plates, and a taller building; and

WHEREAS, the applicant further represents that the inclusion of heat and power facilities within the complying hospital building would also result in poor connectivity to the southern end of the Medical Center campus and would prevent the phasing of construction of the energy facilities, which is critical to maintaining operation of the Medical Center; and

WHEREAS, the applicant notes that the complying scenario also would not provide vehicular access from First Avenue, thereby increasing congestion and vehicle-pedestrian conflicts at the intersection of East 34th Street and First Avenue, creating a risk of “spillback” into the adjacent streets by limiting queuing space, and risking impeded access to the hospital in the event that traffic congestion, road construction, or other activity affects the existing East 34th Street entrance; and

WHEREAS, the applicant states that the complying scenario would have an inefficient internal roadway geometry because of the need to use existing curb cuts on East 34th Street, and there would be less parking for patients and visitors; and

WHEREAS, the applicant represents that the complying scenario would also require that the bulk oxygen tanks be relocated to a site on the north side of former East 30th Street, which would necessitate the removal of existing storage space on the site and the extensive relocation of existing rooftop mechanical equipment; 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: (1) the sub-grade conditions of the Development Site; and (2) the existing built conditions of the zoning lot; and

WHEREAS, as to the sub-grade conditions on the Development Site, the applicant submitted an engineer's report stating that the site suffers from the following sub-grade constraints: four Amtrak tunnels running beneath the zoning lot, a sewer easement held by the New York City Department of Environmental Protection (“DEP”) which spans the zoning lot in an east-west direction, storm sewers, a high water table, and poor soil conditions; and

WHEREAS, the engineer's report submitted by the applicant states that these constraints preclude the construction of cellars, which are commonly used for mechanical space in hospital buildings, and thus require that a greater amount of the buildings' bulk be located above grade, and they limit the location of foundations and elevator and mechanical cores, thereby constraining the configuration and dimensions of the buildings' footprints; 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 New Buildings so that the Medical Center may continue to operate efficiently; and

WHEREAS, the applicant states that the location of the Development Site is also constrained by the location of two Amtrak ventilation buildings on the northwest portion of the superblock; one of these buildings has frontage on First Avenue, close to the corner of East 34th Street, and the other has no street frontage and is within the Medical Center's zoning lot, immediately adjacent to the north of Tisch Hospital; and

WHEREAS, the applicant states that Tisch

Hospital is currently the Medical Center's primary inpatient facility and must remain in operation throughout the construction of the New Buildings; and

WHEREAS, Tisch Hospital is located in the center of the Medical Center campus in an east-west direction, and therefore acts as a barrier between buildings to the north and south, such that new clinical facilities must be physically connected with Tisch Hospital in order to create an integrated environment with a single standard of care; and

WHEREAS, the applicant represents that the Development Site is the only location on the zoning lot that allows for the efficient consolidation of clinical facilities, and the construction of a large medical facility elsewhere on the zoning lot would either be impeded by the two Amtrak ventilation buildings, or would require more extensive demolition and displacement of existing, functioning Medical Center facilities; and

WHEREAS, the applicant states that the location of the Energy Building is dictated by the need for a central location to minimize the length of utility connections with other buildings and the inability to route utility connections through Tisch Hospital; and

WHEREAS, specifically, the applicant states that Tisch Hospital is already highly congested with utility connections, and its age and low floor-to-floor heights (typically 11'-4½") make it infeasible to route new utilities through the building; and

WHEREAS, the applicant further states that utilities cannot be routed between the Kimmel Pavilion and Tisch Hospital at the lowest service levels because of the sewer easement on the zoning lot, and they cannot be routed through the building at higher levels because doing so would require the displacement of clinical programs; and

WHEREAS, the applicant further states that, because Tisch Hospital is oriented in an east-west direction in the center of the campus, it precludes the location of the Energy Building further south on the campus; 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 proposed buildings 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 "medical 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 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

WHEREAS, the applicant further states that the Development Site is located on a superblock largely occupied by the many mid-rise and high-rise buildings of the Medical Center, as well as two unoccupied Amtrak ventilation buildings on the northwest portion of the superblock and the Office of the New York City Medical Examiner on the southwest portion of the superblock; as such, there are no uses adjacent to the Development Site or on the superblock that would be affected by the requested rear yard waiver; and

WHEREAS, the applicant notes that the portion of the Kimmel Pavilion for which waivers are required from rear yard and rear yard setback regulations is located directly to the east of the southernmost Amtrak building on the Development Site, which the applicant represents would not be impacted by the proposed waivers because the Amtrak building contains mechanical equipment, is occupied only as needed by maintenance workers, and does not have windows, and therefore will not be impacted by the proposed variance; and

WHEREAS, the applicant states that the Energy Building, which is located within a required rear yard equivalent and which exceeds the maximum permitted front wall height, fronts on the FDR Drive, and portions of the Kimmel Pavilion for which height and setback waivers are required are similarly adjacent to the FDR Drive, and that the only buildings adjacent to these portions of the New Buildings are Medical Center

facilities, none of which are residential in character; and

WHEREAS, the applicant further states that the small portion of the Kimmel Pavilion which pierces the East 34th Street sky exposure plane is located across East 34th Street from a 35-story residential complex, and the impact of the waiver for this non-compliance would be negligible given the small volume of the encroachment, the scale of the residential complex, and the distance to the residential complex across the wide street; and

WHEREAS, the applicant further states that the proposed bulk oxygen tank facility, located within a required rear yard to the east of the Office of the Medical Examiner on former East 30th Street, would be only slightly larger than the existing building on the site, would be smaller in scale than the other buildings fronting on East 30th Street, and would help create a continuous street wall with the adjacent properties; and

WHEREAS, the applicant represents that the New Buildings would not obstruct any views to any visual resources and would not detract from the visual quality of the Development Site or the surrounding neighborhood; and

WHEREAS, the applicant asserts that the New Buildings would actually improve the visual quality of the Development Site by replacing aging buildings on the Development Site with buildings of a contemporary design that will be designed to visually connect with other buildings on the Medical Center campus; and

WHEREAS, the applicant further asserts that the New Buildings would provide a benefit to the surrounding neighborhood and the City as a whole by providing a state-of-the-art, patient-centered, and integrated facility for inpatient and procedure-based care, and would further provide an upgraded energy infrastructure to ensure that the entire Medical Center campus is operated efficiently and safely; 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 an Unlisted action pursuant to 6 NYCRR, Part 617.2; 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") 11BSA029M, dated March 14, 2011; 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, DEP's Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials, air quality, and noise impacts; and

WHEREAS, DEP accepted the November 2010 Phase II Workplan for the proposed Kimmel Pavilion and requested that a detailed Phase II Investigation Report be submitted to DEP for review and approval; and

WHEREAS, DEP accepted the November 2010 Remedial Action Plan and Construction Health and Safety Plan for the Energy Building and requested that a professional engineer-certified Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, a Restrictive Declaration was executed on February 24, 2011 and filed for recording on March 2, 2011; and

WHEREAS, DEP reviewed the applicant's stationary and mobile sources air quality analyses and determined that significant impacts due to the proposed project are not anticipated; and

WHEREAS, DEP reviewed the results of noise monitoring, which determined that a range of 28 to 44 dBA of window-wall noise attenuation and central air-conditioning as an alternate means of ventilation are required for the two proposed buildings; and

WHEREAS, based upon the above, the Board finds that no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, accordingly, the Board has determined that the proposed action will not have a significant

**186-10-BZ
CEQR #11-BSA-029M**

adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a 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 two new community facility buildings on the campus of the New York University Langone Medical Center that do not comply with 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, contrary to ZR §§ 24-36, 24-382, 24-522, 24-552, 24-54, 13-132, 25-62, and 13-142, *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 September 28, 2010” – twenty (20) sheets, “Received November 22, 2010” – four (4) sheets, and “Received February 4, 2011” – one (1) sheet; and *on further condition*:

THAT the parameters of the proposed buildings shall 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 shall obtain from DEP a Notice to Proceed;

THAT prior to the issuance by DOB of a temporary or permanent Certificate of Occupancy, the applicant or successor shall obtain from DEP a Notice of Satisfaction;

THAT the window-wall noise attenuation requirements listed on sheet Z-1.02, stamped “Received February 4, 2011,” and central air-conditioning as an alternate means of ventilation shall be provided in the New Buildings;

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

**A true copy of resolution adopted by the Board of Standards and Appeals, March 15, 2011.
Printed in Bulletin No. 12, Vol. 96.**

**Copies Sent
To Applicant
Fire Com'r.
Borough Com'r.**

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, March 15, 2011.