

**BOARD OF STANDARDS AND APPEALS RESOLUTIONS  
CITED IN STATEMENT OF FACTS AND FINDINGS**

1. Weill Cornell Medical College Biomedical Research Building, 411-431 East 69<sup>th</sup> Street (BSA Cal. No. 170-08-BZ)
2. Columbia University Northwest Science Building, 3030 Broadway, Manhattan (BSA Cal. No. 113-06-BZ)
3. Columbia University School for Social Work, 1255-1257 Amsterdam Avenue (BSA Cal. No. 362-01-BZ)
4. Polytechnic University, 101 Johnson Street, Brooklyn (BSA Cal. No. 164-00-BZ)
5. The Nightingale Bamford School, 16-26 East 92nd Street, Manhattan (BSA Cal. No. 207-86-BZ)
6. Actors' Fund of America, 469-475 West 57th Street (B.S.A. Cal No. 116-94-BZ)
7. 142-148 East 57th Street (B.S.A. Cal. No. 74-97-BZ)

170-08-BZ

**CEQR #08-BSA-100M**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Cornell University, owner.

SUBJECT – Application June 25, 2008 – Variance (§72-21) to permit the construction of a research building (Weill Cornell Medical College) with sixteen occupied stories and two mechanical floors. The proposal is contrary to ZR §24-11 (Floor area and lot coverage), §24-36 (Rear yard), §24-522 (Height and setback), and §24-552 (Rear yard setback). R8 district.

PREMISES AFFECTED – 411-431 East 69<sup>th</sup> Street, block bounded by East 69<sup>th</sup> and East 70<sup>th</sup> Streets and York and First Avenues, Block 1464, Lots 8, 14, 15, 16 p/o 21, Borough of Manhattan.

**COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant: Gary T. Tarnoff and James Power.

**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 decisions of the Manhattan Borough Commissioner dated June 23, 2008, acting on Department of Buildings Application No. 110098787, reads in pertinent part:

- “1. ZR 24-11 – The floor area proposed exceeds that permitted for an R8 Zoning District.
- 2. ZR 24-11 – The lot coverage proposed exceeds that allowed for an R8 Zoning District.
- 3. ZR 24-36 – The minimum rear yard requirement has not been met.
- 4. ZR 24-522 – The height and setback proposed for the building does not comply with the requirements.
- 5. ZR 24-552 – A rear yard setback is required for the proposed building;
- 6. ZR 24-35 – The open areas provided along the side lot lines, at the mechanical penthouse level, are less than 8’-0”;
” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R8 zoning district, the proposed construction of an 18-story biomedical research building for Weill Cornell Medical College to be occupied by community facility use, that does not comply with zoning parameters for community facility floor area, lot coverage, front and rear height and setbacks, and rear and side yards, contrary to ZR §§ 24-11, 24-36, 24-522, 24-552, and 24-35; and

WHEREAS, the application is brought on behalf of Weill Cornell Medical College (“Weill Cornell”), a non-profit educational institution; and

WHEREAS, a public hearing was held on this application on October 28, 2008, after due notice by publication in the *City Record*, with a continued hearing on December 9, 2008 and then to decision January 13, 2009; and

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

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, certain area residents testified in opposition to the application; and

WHEREAS, additionally, the Kingsley Condominium, represented by counsel (hereinafter, the “Opposition”), also appeared at hearing, and made submissions into the record in opposition to the application; the arguments made by the Opposition related to the required findings for a variance, as well as other items, and are addressed below; and

WHEREAS, the subject site consists of tax lots 8, 14, 15, 16, and part of Tax Lot 21, which together comprise a single zoning lot (tentative Tax Lot 8, the “Zoning Lot”); and

WHEREAS, the subject site is occupied by three buildings which are proposed to be demolished; and

WHEREAS, the subject site is located on the north side of East 69<sup>th</sup> Street between First Avenue and York Avenue within an R8 zoning district; and

WHEREAS, the subject site has a total lot area of 26,116 sq. ft., and

WHEREAS, the subject site is located at the southwestern end of Weill Cornell’s campus, which is primarily located on the subject block and on the east side of York Avenue between East 68<sup>th</sup> and East 70<sup>th</sup> Streets; and

WHEREAS, the first and second floors are proposed to be occupied by public lobbies and meeting, educational and building support space; the third through 16<sup>th</sup> floors will be occupied by research laboratories and related functions (totaling 287,910 sq. ft.); the 17<sup>th</sup> and 18<sup>th</sup> floors are proposed to be occupied by mechanical space; and six below-grade levels will be occupied by laboratory support and building support space, which do not contribute to the building’s total floor area; and

WHEREAS, the proposed building would have the following parameters: (1) floor area of 331,945 sq. ft.

(169,754 sq. ft. is the maximum permitted floor area); (2) an FAR of 12.71 (6.5 is the maximum permitted FAR for community facility use); (3) lot coverage of 92 percent (65 percent is the maximum permitted lot coverage); (4) a street wall height of approximately 231 feet and total building height (including mechanicals) of 302'-7" (85'-0" is the maximum height permitted), without a setback (a setback of 20'-0" is required); (5) a rear yard of 15'-0" (30'-0" is required above 23'-0"), with no setback (a setback of 20'-0" is required above 125'-0"); and (6) two side yards of 5'-0" (if provided, two side yards of 8'-0" are required); and ZR § 72-21 (a) – Unique Physical Conditions Finding

WHEREAS, under § 72-21 (a) of the Zoning Resolution, the Board must find that there are unique physical conditions inherent to the Zoning Lot which create practical difficulties or unnecessary hardship in strictly complying with the zoning requirements (the "(a) finding"); and

WHEREAS, the applicant represents that the waivers are sought to enable Weill Cornell to construct a facility that meets its programmatic needs; and

WHEREAS, as to these programmatic needs, the applicant represents that Weill Cornell is a non-profit profit educational institution, with a mission to develop a state-of-the-art medical science and research facility with floor plates that facilitate interdisciplinary and translational research and laboratories and which are proximate to the Weill Cornell Medical Center; and

WHEREAS, the applicant states that Weill Cornell has adopted a strategic plan focusing on translational and clinical research in metabolic, cardiovascular and neuro-psychiatric disorders, infectious diseases, genetics, nano-biotechnology and stem cell biology and intends to recruit 50 additional tenure-track research faculty, and to enroll an additional 51 graduate students, 101 post-doctoral fellows, 101 technicians, 25 non-tenure track research faculty, and 25 support personnel to conduct this research; and

WHEREAS, the applicant further states that all available research facilities on the campus are being used to capacity and there is no room to expand within Weill Cornell's existing buildings; and

WHEREAS, the applicant represents that Weill Cornell's existing research facilities are inadequate in size and quality, lack floor plates capable of supporting modern research and are largely located in obsolete buildings constructed before 1960; and

WHEREAS, the applicant represents that Weill Cornell cannot fulfill its research mission, remain competitive, and attract and retain highly-skilled physicians, researchers, and medical students without providing modern research laboratories; and

WHEREAS, the applicant further represents that the research space of the proposed research facility has been designed to be modern and competitive with other such facilities and to promote the desired research environment by creating opportunities for collaborations among different scientific disciplines; and

WHEREAS, to achieve this multi-disciplinary collaborative model with efficiency and adaptability, the laboratory floors require large uniform floor plates; and

WHEREAS, the applicant cites spatial analyses reflecting that effective laboratory floor plates for institutions with similar missions to Weill Cornell's range from 20,000 sq. ft. to 35,000 sq. ft.; and

WHEREAS, the studies reflect that a certain sized floor plate is dictated by the optimum number of principal investigators ("P.I.'s") per floor, their space requirements and the additional space necessary for ancillary offices, equipment rooms and conference rooms required by multi-disciplinary teams of scientists; and

WHEREAS, a study cited by the applicant also reflects that 1,400 to 1,700 net sq. ft. is the minimum area required for each lead scientist or P.I., and that eight to ten is the optimum number of P.I.'s to station on each floor; and

WHEREAS, the applicant represents that none of the laboratory floor plates of Weill Cornell's existing facilities is optimally sized and that each active P.I. now occupies an average of only 925 sq. ft.; and

WHEREAS, the applicant represents that the proposed 21,752 sq. ft. floor plate (not including mechanical space) will provide 1,600 sq. ft. of space to each of the proposed 370 P.I.s and is therefore the minimum size required for Weill Cornell's research programs; and

WHEREAS, the applicant also proposes to provide two floors of above-grade mechanical space; and

WHEREAS, the applicant states that above-grade mechanical space is necessary to provide better air quality to laboratories and that placing air and exhaust air streams adjacent to each other at the top of the building allows air-to-air heat exchangers to maximize heat recovery and achieve greater energy efficiency; and

WHEREAS, the applicant represents that the waiver to floor area is sought to provide the square footage necessary to meet Weill Cornell's research and educational programmatic needs, and the waivers to lot coverage, front and rear height and setbacks, and rear and side yards, allow Weill Cornell to achieve research facility floor plates that are efficient and encourage collaboration among research teams; and

WHEREAS, the applicant states that a complying facility would be limited to 169,754 sq. ft. of floor area; and

WHEREAS, based on an extensive review of its facilities and operations, Weill Cornell determined that 280,000 sq. ft. of laboratory and educational programmatic space was needed for development of an academic and medical center building that would reduce overcrowding on its campus, while creating an interdisciplinary and

translational research center consistent with National Institute of Health (NIH) guidelines; and

WHEREAS, the applicant states that Weill Cornell determined that approximately 280,000 sq. ft of program space was required: 220,000 sq. ft. for laboratory space; and 60,000 sq. ft. of educational program space, consisting of classrooms, lecture halls, conference rooms, and an atrium with garden area; and

WHEREAS the applicant further states that Weill Cornell's demands are also driven by the programmatic need to relocate 54 to 90 faculty members from overcrowded facilities on the east side of the campus, as well as the need to accommodate 50 additional faculty being recruited in response to the NIH strategic plan for interdisciplinary and translational research centers; and

WHEREAS, the applicant represents that recruitment of 50 additional tenure-track research faculty will result in the addition of approximately 51 additional graduate students, 101 post-doctoral fellows, 101 technicians, 25 non-tenure track research faculty, and 25 other support personnel, while the relocated 54 faculty members would result in the addition of 53 graduate students, 107 post-doctoral fellows, 107 technicians, 27 non-tenure track research faculty, and 27 other support personnel; and

WHEREAS, the applicant further represents that a complying building would provide less than half the programmable square footage necessary to meet Weill Cornell's research and educational programmatic need, and that a complying building would further require 11,737 sq. ft. of program space to be located in below grade space where it would not count as floor area; and

WHEREAS, the applicant states that the proposed facility would provide the research laboratory space needed to meet the programmatic need on above-grade floors in space appropriate to that use and without the loss of research support facilities; and

WHEREAS, the applicant states that the rear yard, height and setback waivers are necessary to accommodate the minimum floor plate depth of 85 feet required for an efficient laboratory module; and

WHEREAS, further, the applicant states that the proposed site is the most viable to satisfy its programmatic needs because the nature of clinical research requires that facilities be located proximate to patient care facilities and the subject site is adjacent to the Weill Greenberg Ambulatory Care Center at the corner of East 70<sup>th</sup> Street and York Avenue; and

WHEREAS, the subject site's location within the Medical Center's campus also facilitates connectivity and allows students to be integrated into research programs and clinical physician faculty to have easy access to both their patients and to research laboratories; and

WHEREAS, in addition to its proximity to the Medical Center's campus, Weill Cornell identified the subject site as the most operationally feasible location for the proposed research facility because: (1) research laboratory uses are currently located on the site; and (2) the existing uses can be relocated elsewhere on the campus or within the proposed building; and

WHEREAS, although the subject site was found to constitute the optimum site for the proposed project from an operational standpoint, Weill Cornell represents that it is unable to accommodate its programmatic needs within a building or a site plan that complies with all relevant R8 zoning district regulations; and

WHEREAS, in its submission, the applicant considered an as-of-right alternative for the proposed development, but determined that – at 12 above-grade stories and 169,754 sq. ft. of floor area – it would provide less than half the floor area of the proposed facility; and

WHEREAS, the applicant further represents that complying with the subject zoning would produce a tiered facility with inefficient non-uniform floor plates that would severely compromise the functionality and efficiency of the laboratory space; and

WHEREAS, the applicant states that the third through sixth floors would be limited by the lot coverage and rear yard regulations to 10,370 programmable square feet per floor; and

WHEREAS, the lot coverage limitations would allow a maximum building depth of 65'-3", necessitating a design that would hinder effective research collaboration and the informal interaction that is the catalyst for scientific discovery; and

WHEREAS, the applicant states that the setback regulations require a 20-foot setback from the street line for floor seven through nine and a setback of approximately 53 feet from the western lot line on floors 10 through 12; and

WHEREAS, the applicant states that the seventh, eighth and ninth floors would consequently have floor plates of 7,232 sq. ft. and the 10<sup>th</sup>, 11<sup>th</sup>, and 12<sup>th</sup> floors would have floor plates of 5,168 sq. ft., all with maximum depths of 50'-5"; and

WHEREAS, the applicant further states that floors seven through nine of a complying building would accommodate a maximum of five principal investigators and that the 10<sup>th</sup> through 12<sup>th</sup> floors could accommodate only three principal investigators, each with a lab group size of no more than two to three researchers with a layout that would not permit direct relationships and collaborations between lab teams; and

WHEREAS, the applicant further states that the height and setback regulations would also limit the efficiency

of the program and of the mechanical and other building systems, the cost benefits of sharing expensive scientific equipment among an optimum number of researchers, and the economies of the building support systems; and

WHEREAS, the applicant concludes that the floor area, lot coverage, front and rear height and setbacks, and rear and side yard relief is required to meet the programmatic and design imperatives of the proposed research facility; and

WHEREAS, in analyzing the applicant's waiver requests, the Board notes at the outset that Weill Cornell, as a non-profit educational institution, may use its programmatic needs as a basis for the requested waivers; and

WHEREAS, as noted by the applicant, under well-established precedents of the courts and this Board, applications for variances that are needed in order to meet the programmatic needs of non-profit institutions, particularly educational and religious institutions, are entitled to significant deference (see, e.g., *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986) (hereinafter, "Cornell")); and

WHEREAS, the Board notes that Weill Cornell is a New York State chartered educational institution providing a significant educational program, which will operate the proposed research facility; and

WHEREAS, the Board also notes that the proposed research facility has been designed to be consistent and compatible with adjacent uses and with the scale and character of the surrounding neighborhood and is, therefore, consistent with the standard established by the decision in Cornell; and

WHEREAS, accordingly, the Board finds it appropriate to give deference to Weill Cornell's programmatic needs; and

WHEREAS, the Board observes that such deference has been accorded to comparable institutions in numerous other Board decisions, certain of which were cited by the applicant in its submission; and

WHEREAS, here, the waivers will facilitate construction of a building that will meet the specific needs of Weill Cornell; and

WHEREAS, specifically, as set forth above, the applicant represents that the proposed research facility will provide Weill Cornell with 14 laboratory floors, which meet the minimum required floor area for modern translational research programs, and two floors for other educational uses; and

WHEREAS, in sum, the Board concludes that the need for the waivers to accommodate Weill Cornell's programmatic needs has been fully explained and documented by the applicant; and

WHEREAS, the Opposition argues that the applicant has failed to make the (a) finding because: (1) the site is not unique; and (2) the negative impacts of the proposed development outweigh its positive benefits; and

WHEREAS, as to its lack of uniqueness, the Opposition contends that the applicant cannot satisfy the (a) finding under ZR § 72-21 because the Zoning Lot is not subject to a unique physical condition which creates a hardship; and

WHEREAS, the Board finds that the applicant's submissions, which include statements, plans, and other evidence, provide the required specificity concerning its requirements for laboratory space to establish that the requested variances are necessary to satisfy its programmatic needs, consistent with the Cornell decision; and

WHEREAS, in Cornell, the New York Court of Appeals adopted the presumptive benefit standard that had formerly been applied to proposals of religious institutions, finding that municipalities have an affirmative duty to accommodate the expansion needs of educational institutions; and

WHEREAS, the applicant states that Weill Cornell enrolls 465 MD and MD/Ph.D students as well as 394 candidates for other degrees (Ph.D., M.S. and P.A.) in its graduate biomedical and health sciences degree programs; and

WHEREAS, the applicant further states that the employees at the proposed research facility will include approximately 104 to 182 Medical School faculty, 98 graduate students, 196 post-doctoral fellows and 196 technicians; and

WHEREAS, the applicant represents that the outcomes of research conducted at the proposed research facility will be "translated" into Weill Cornell's clinical care and medical education in furtherance of its mission, and that research facilities such as that proposed are customarily found on the campuses of medical schools; and

WHEREAS, the Opposition argues that Weill Cornell is not entitled to the deference accorded educational institutions seeking variances to zoning requirements under Cornell because the negative impacts of the project use outweigh the public benefits presented by the proposed project; 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, furthermore, a zoning board may not wholly reject a request by an educational institution, but must instead seek to accommodate the planned use; (see *Albany Prep. Charter Sch. v. City of Albany*, 31 A.D.3<sup>rd</sup> 870 (3<sup>rd</sup> Dep't 2006); *Trustees of Union Col. v. Schenectady City Cnl.*, 91 N.Y.2d 161 (1997)); and

WHEREAS, as discussed below, the Opposition has failed to establish that the proposed research facility will

negatively impact the health, safety or welfare of the surrounding community; and

WHEREAS, in sum, the Board has reviewed the submissions made by the Opposition, as well as the applicant's responses, and finds that the Opposition has failed to rebut the applicant's substantiated programmatic need for the proposed research facility; and

WHEREAS, accordingly, the Board finds that the applicant has sufficiently established that unnecessary hardship and practical difficulty exist in developing the site in compliance with the applicable zoning regulations due to the programmatic needs of Weill Cornell; and

ZR § 72-21 (b) – Financial Return Finding

WHEREAS, under ZR § 72-21 (b), the Board must establish that the physical conditions of the site preclude any reasonable possibility that its development in strict conformity with the zoning requirements will yield a reasonable return, and that the grant of a variance is therefore necessary to realize a reasonable return (the "(b) finding"), unless the applicant is a nonprofit organization, in which case the (b) finding is not required for the granting of a variance; and

WHEREAS, since Weill Cornell is a nonprofit institution and each of the required waivers are associated with its community facility use and are sought 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

ZR § 72-21 (c) – Neighborhood Character Finding

WHEREAS, the applicant represents that the waivers of community facility floor area, lot coverage, rear yard, front and rear height and setbacks, and rear and side yards will not alter the essential neighborhood character, impair the use or development of adjacent property, nor be detrimental to the public welfare; and

WHEREAS, the applicant represents that the proposed development is compatible with the medical and research uses that characterize the York Avenue corridor from East 60th Street to East 72nd Street; and

WHEREAS, the applicant states that the campus of Memorial Sloane Kettering Cancer Center ("MSK") is located immediately to the south of the subject site between East 66<sup>th</sup> and East 69<sup>th</sup> Streets and First and York Avenues and that a NYPH-Weill Cornell superblock is located one-half block from the subject site on the east side of York Avenue between East 68th and East 71<sup>st</sup> Streets; and

WHEREAS, the applicant represents that the proposed development is also compatible with the scale and bulk of the surrounding area; and

WHEREAS, the applicant states that the surrounding area consists of higher density, R10, R10A and R10 equivalent districts along the avenues and wide streets, and mid-density districts, primarily R8, R9 and R8B districts on the mid-blocks; and

WHEREAS, maps submitted by the applicant indicate that there are numerous large buildings in the surrounding area, including (i) the adjacent 40-story Kingsley Condominium with a height of 406 feet, and an FAR of 16.94; (ii) the Payson House residence at 435 East 70<sup>th</sup> Street, with a height of 332 feet; (iii) the Oxford Condominium, at 422 East 72<sup>nd</sup> Street, with a height of 374 feet; (iv) the 26-story Baker Tower and 36-story Helmsley Medical Tower, to the east of the subject site across York Avenue, with respective heights of 398 feet and 384 feet; and (v) MSK's Zuckerman Research Center, located directly across East 69<sup>th</sup> Street with a height of 424 feet and FAR of 11.24; and

WHEREAS, the Opposition contends that the development of the proposed building would be inconsistent with the mid-block scale of the surrounding area which is stated to be predominately built of moderate-height residential tenement buildings; and

WHEREAS, the applicant states that the mid-blocks to the south of the subject site, from East 67<sup>th</sup> Street to the midpoint between East 68<sup>th</sup> and East 69<sup>th</sup> Streets, were rezoned from R8 to R9 in 2001; and

WHEREAS, the applicant further states that a 26-story, approximately 420-foot MSK-occupied research building was recently constructed on the mid-block portion of the block bounded by First and York Avenues and East 69th and East 68th Streets across the street from the subject site, and that other tall mid-block buildings in the surrounding area include the MSK Research Building at 430 East 67<sup>th</sup> Street (16 floors), and residential buildings at 333 East 68<sup>th</sup> Street (16 floors), 310 East 70<sup>th</sup> Street (12 floors), 309 East 70<sup>th</sup> (12 floors), 311-19 East 69<sup>th</sup> Street (13 floors) and 325-339 East 69<sup>th</sup> Street (13 floors); and

WHEREAS, the applicant represents that the proposed research facility would not impact the development or use of other property, in that all the sites to the north and east are owned and occupied by the Weill Cornell Medical Center and sites to the south are owned and occupied by MSK; and

WHEREAS, further, any impacts on surrounding development would also be limited by the location of the subject site within Weill Cornell's campus and by its proximity to the MSK campus; and

WHEREAS, the applicant represents that the proposed waivers to the required setback and sky exposure plane would not result in a building that is out of context in terms of its height or its location at the streetline, as East 69<sup>th</sup> Street is characterized by buildings of varied height, massing and material, with some setback configurations that are not in compliance with the bulk regulations of the Zoning Resolution; and

WHEREAS, the applicant further represents that the façade of the proposed building includes decorative

elements that relate to nearby residential buildings as well as to the primary façade of the adjacent Weill Greenberg Center and that the building has been designed to reduce its apparent height from the street; and

WHEREAS, the applicant states that the proposed facility will result in no significant impacts to traffic or

parking in the area; and

WHEREAS, with respect to traffic, the applicant states that the project is expected to generate truck traffic estimated at 15 to 20 vehicles per day and that the projected traffic generated by the proposed facility is below the City's established thresholds for requiring a traffic analysis; and

WHEREAS, the applicant further states that East 69<sup>th</sup> Street is a one-way street which is not a primary route for emergency vehicles arriving at or departing from New York Presbyterian Hospital, which will generally travel west on 68<sup>th</sup> Street and north and south on York Avenue; and

WHEREAS, the applicant states that special measures will be implemented with respect to the handling and disposal of biohazardous materials in conformance with all applicable federal, State and City regulations; and

WHEREAS, during the process, the Board raised concerns regarding the loading berths; and

WHEREAS, the Board noted that the loading berths were located on the west side of the proposed facility, adjacent to residential buildings, and asked whether they could be relocated to the east site; and

WHEREAS, the applicant's response states that the west side of the site is four feet higher than the mid-point of the site where the building entrances are proposed and that the placement of the loading docks on the west thereby takes advantage of grade elevation changes across the site to resolve the differences in the floor-to-floor height requirements needed for the loading docks and for the program spaces; and

WHEREAS, the applicant further states that a floor of classroom space can fit within the 14'-0" floor-to-floor height of the proposed facility, but that the loading docks need a height of 24'-0" for truck clearance and structural transfers and MEP systems distributions over the docks, and that locating the loading docks on the higher side of the site, to the west, maximizes the college program space on the east side of the lobby of the proposed facility and provides for a more efficient layout; and

WHEREAS, further, the Board noted that the two proposed waste compactor berths were not fully enclosed and asked whether they could be redesigned to ensure that any loading activities would be less disruptive to the adjacent residential uses; and

WHEREAS, in response, the applicant provided revised plans which can accommodate a 40-foot truck with the loading dock doors in a closed position, so that all removal operations can be fully contained within the proposed facility; and

WHEREAS, the applicant states that the materials handling entrance/loading dock area will therefore be fully enclosed and that all trash loading activities would take place within the building concealed behind a stainless steel art wall when trucks are not entering or leaving the facility; and

WHEREAS, according to shadow studies performed by the applicant, the proposed research facility would result in incremental shadows on five sun-sensitive resources: St. Catherine's Park, two blocks to the southwest; the Church of St. Catherine of Siena across 69<sup>th</sup> Street, and public plazas at 400 East 70<sup>th</sup> Street (the Kingsley); 400 East 71<sup>st</sup> Street (the Windsor), and 422 East 72<sup>nd</sup> Street, which would be of limited extent and duration during the late spring and summer months; and

WHEREAS, based upon the above, the Board finds that the subject variances will not alter the essential character of the surrounding neighborhood, impair the appropriate use and development of adjacent property or be detrimental to the public welfare; and

#### ZR § 72-21 (d) - Self Created Hardship Finding

WHEREAS, as pertains to the (d) finding under ZR § 72-21, the Board is required to find that the practical difficulties or unnecessary hardship burdening the site have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is created by its programmatic needs in connection with the development of a state-of-the-art translational research facility with: (i) at least 280,000 sq. ft. of laboratory and educational programmatic floor area; (ii) floor plates of at least 20,000 sq. ft; (iii) a floor plate configuration that promotes collaborations among laboratory teams; (iv) above-grade mechanical space; and (v) proximity to Weill Cornell's campus; and by the consequential difficulty in accommodating those needs within an as-of-right development; and

WHEREAS, the Opposition contends that Weill Cornell created its hardship by its desire to expand; and

WHEREAS, the Board notes that the need by an educational institution to expand its facilities is not recognized as a self-created hardship under New York law; and

WHEREAS, the applicant concludes, and the Board agrees, that the practical difficulties and unnecessary hardship that necessitate this application have not been created by Weill Cornell or a predecessor in title; and

#### ZR § 72-21 (e) - Minimum Variance Finding

WHEREAS, as pertains to the (e) finding under ZR § 72-21, the Board is required to find that the variance sought is the minimum necessary to afford relief; and

WHEREAS, the applicant further represents that Weill Cornell, through its consultants, has designed research space that is modern and competitive with other such facilities and which minimizes the degree of waivers sought by meeting certain thresholds for maximum efficiency; and

WHEREAS, the applicant states that the requested waivers of floor area, lot coverage, front and rear height and setbacks, and rear and side yards represent the minimum variance necessary to allow Weill Cornell to meet its programmatic needs; and

WHEREAS, the Opposition argues that the (e) finding cannot be met because an as-of-right research facility could be built on the subject site; and

WHEREAS, as discussed above, the applicant explored an as-of-right scenario for the proposed project, and found that it provided insufficient floor area and lacked floor plates with the same size and functionality as that of the proposed building; and

WHEREAS, the Board asked the applicant to explore the feasibility of a 10 FAR research facility; and

WHEREAS, in response, the applicant prepared plans indicating that development of a 10 FAR facility would result in a loss of four floors of laboratory space, representing a loss of 29 percent of the laboratory space in the proposed facility; and

WHEREAS, the applicant states that the loss of four floors of laboratory space would consequently result in a reduction of between 28 and 40 new and existing faculty intended to be housed in the new research building, and would reduce the number of PIs to between 76 and 100, as compared to the between 104 and 140 PIs that would be accommodated in the proposed facility and that the numbers of PIs and faculty that could be accommodated would be insufficient to meet its programmatic need; and

WHEREAS, the Board therefore finds that the requested waivers of floor area, lot coverage, front and rear height and setbacks, and rear and side yards represent the minimum necessary to allow Weill Cornell to meet its programmatic needs; and

WHEREAS, accordingly, based upon its review of the record and its site visits, the Board finds that the applicant has provided sufficient evidence to support each of the findings required for the requested variances; and

WHEREAS, the project is classified as a Type I action pursuant to Section 617.4(b) (6) (v) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has identified and considered relevant areas of environmental concern about the project documented in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA100M, dated January 6, 2009; 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 ("DEP") Office of Environmental Planning and Assessment has evaluated the following submissions from the Applicant: (1) a June 2008 EAS; (2) a May 2008 Phase I Environmental Site Assessment report; (3) a October 2008 Revised Phase II Workplan and; (4) a Health and Safety Plan (HASP); and

WHEREAS, the applicant has agreed to implement any hazardous materials remediation, pursuant to a Restrictive Declaration executed on January 5, 2009 and recorded against the subject property on January 6, 2009; and

WHEREAS, a passenger car equivalent screening analysis was performed which determined that the proposed project would not generate sufficient traffic to have the potential to cause a significant noise impact from mobile noise sources; and

WHEREAS, based on noise measurements performed at two locations adjacent to the subject site, the proposed project would require a window/wall attenuation of 30 dBA in order to maintain an interior noise level of 45 dBA; and

WHEREAS, the EAS stated that this attenuation would be achieved through the use of double-glazed windows which would provide a window/wall attenuation of 30 dBA; and

WHEREAS, the proposed building would also include central air-conditioning which is an acceptable alternate means of ventilation to maintain a closed window condition; and

WHEREAS, the Board finds that the proposed action will not have a significant adverse impact on stationary source noise; and

WHEREAS, as discussed above, the EAS found that the proposed facility would result in incremental shadows on five sun-sensitive resources: St. Catherine's Park, two blocks to the southwest, the Church of St. Catherine of Siena across 69<sup>th</sup> Street, and public plazas at 400 East 70<sup>th</sup> Street (the Kingsley), 400 East 71<sup>st</sup> Street (the Windsor), and 422 East 72<sup>nd</sup> Street, but that these shadows would be of limited extent and duration and would not result in a significant adverse impact; and

WHEREAS, DEP also evaluated air quality analysis submissions to examine the potential air quality impacts of the proposed action; and

WHEREAS, with respect to air quality, the DEP evaluated submissions dated October 27, 2008 and January 5, 2009 and determined that the maximum hourly incremental traffic from the proposed project was less than the mobile

source air quality screening threshold of 100 peak hour trips set forth in the CEQR Technical Manual and therefore the project is not expected to create significant adverse impacts from mobile source air emissions; and

WHEREAS, the applicant states that laboratories will be equipped with a fume hood exhaust system to prevent any hazardous airborne chemical released within the laboratory from escaping into other areas of the building, or through windows to the outside; and

WHEREAS, the EAS analyzes potential emissions from the proposed facility's fume hood exhaust system in the event of an accidental spill of the chemicals with the greatest potential health hazard; and

WHEREAS, the analysis indicates that the maximum concentrations emitted as a result of a chemical spill would be lower than the corresponding short term exposure limits ("STELs") or ceiling values set by the Occupational Safety and Health Administration or the National Institute for Occupational Safety and Health for each of the chemicals analyzed; and

WHEREAS, accordingly, the EAS concludes that there would be no significant impacts from a chemical spill from fume hood emissions due to recirculation back into the building's air intakes or on other nearby buildings in the surrounding community; and

WHEREAS, the applicant additionally states that there is no potential for significant adverse impacts arising from emissions from a spill of materials in laboratories due to special exhaust features which remove 99.97 percent of all airborne matter 0.3 microns in diameter and larger, and cannon fans that further dilute emissions; and

WHEREAS, a stationary source screening analysis was performed to evaluate the potential for significant air quality impacts on the proposed project from the New York Presbyterian Hospital's boilers/cogeneration operation and the proposed new boilers/cogeneration plant which would be ducted to an existing common stack located above the Annex building between East 70<sup>th</sup> and 71<sup>st</sup> Streets east of York Avenue; and

WHEREAS, based on the screening analysis, emissions from the New York Presbyterian Hospital's boilers/cogeneration operation and the proposed new boilers/cogeneration plant are not anticipated to result in significant adverse stationary source air quality impacts; and

WHEREAS, the applicant states that no significant effects that would require an environmental impact statement are foreseeable; and

WHEREAS, the Opposition contends that the preparation of an environmental impact statement is required by SEQRA because the proposed research facility has the potential to create a health hazard in a densely populated residential neighborhood; and

WHEREAS, the Opposition argues that the building will be a biomedical research facility with a biosafety classification of "Level 3" that may endanger the surrounding community; and

WHEREAS, the applicant states that biohazards are classified by the Public Health Service Centers for Disease Control ("CDC") according to the degree of containment required, from BSL-1, which requires the lowest level of containment, to BSL-4 which requires the highest level of containment; and

WHEREAS, the applicant states the proposed facility will have many different laboratories and that the current plans for the building include one BSL-3 ("Level 3") laboratory on a portion of one floor of the building, with the other laboratories to be a mix of BSL-1 and BSL-2; no BSL-4 laboratories are planned; and

WHEREAS, the Opposition asserts that the siting of a BSL-3 laboratory in a "high traffic area;" is discouraged by "Biosafety in Microbiological and Biomedical Laboratories" (the "BMBL"), published by the US Department of Health and Human Services, CDC and National Institute of Health ("NIH"); and

WHEREAS, the applicant states that the BMBL sets forth guidelines to prevent personal, laboratory and environmental exposure to potentially infectious agents or biohazards and that there is no potential for significant environmental or health risk associated with medical research if the laboratories are operated by trained professionals in compliance with such guidelines; and

WHEREAS, the applicant asserts that Weill Cornell's proposed operations are consistent with the BMBL guidelines; and

WHEREAS, the applicant further points out that numerous BSL-3 laboratories currently operate in densely populated New York City neighborhoods; and

WHEREAS, the applicant further states that the Opposition has misconstrued a recommendation from an outdated edition of the BMBL concerning the siting of a BSL-3 laboratories within a high traffic area of a research facility, not an urban neighborhood; and

WHEREAS, the applicant represents that the distinction is clear in the most recent edition of the BMBL which does not contain the phrase "high traffic areas," but states that BSL-3 laboratories are to be "separated from areas which are open to unrestricted traffic flow *within the building* (emphasis added)," and which continues, "[p]assage through two sets of self-closing doors is the basic requirement for entry into the [BSL-3] laboratory from access corridors or other contiguous areas;" and

WHEREAS, the applicant states that Weill Cornell has many years of experience operating BSL-3 laboratories and currently conducts medical research with hazardous materials, including chemicals and biological agents in the

existing buildings on the subject site, and in other locations throughout its campus, and

WHEREAS, represents that the proposed facility will not contain any uses that are not already allowed as-of-right on the site, and that are not already conducted safely throughout the Weill Cornell campus and New York City; and

WHEREAS, the applicant further represents that, if the instant application is not approved, Weill Cornell may construct a smaller biomedical research building on the subject site in which could operate a new BSL-3 laboratory as-of-right; and

WHEREAS, the Opposition also asserts that the EAS was deficient in its analysis of potential significant adverse impacts by failing to consider the potential risks associated with: (i) malfunction of containment systems; (ii) infection of staff; (iii) failure of the exhaust system; (iv) release of infectious materials during transportation; (v) unauthorized removal of pathogens; and (vi) bioterrorism; and

WHEREAS, the applicant states that the potential for an accident is speculative, and neither SEQRA nor CEQR require the analysis of speculative impacts (see, e.g., *Ind. Liaison Comm. v. Williams*, 72 N.Y.2d 137, 146 (1988); *Real Estate Bd. of New York, Inc. v. City of New York*, 157 A.D.2d 361, 364 (1st Dep't 1990); and

WHEREAS, the Board agrees that the mere theoretical possibility of an accident, whether affecting a lab worker or the community, is not enough to support a finding that the proposed research facility has the potential for a significant adverse environmental impact; and

WHEREAS, the applicant states that all medical research activities involving the use of chemicals, biological materials, and radiological materials that would be conducted in the proposed facility are strictly regulated at the federal, State and local level; and

WHEREAS, the applicant further states that the CDC and the NIH have established guidelines specifying appropriate containment procedures for research activities involving recombinant DNA, pathogenic agents, and other biohazards which are mandatory for federally-funded institutions such as Weill Cornell and that all activities at the building would be conducted in compliance with all applicable regulatory requirements and research guidelines; and

WHEREAS, laboratories also are subject to New York City Fire Department rules relating to flammable and explosive materials and the certification of certain laboratory personnel; and

WHEREAS, the applicant represents that Weill Cornell laboratories involving the use of biological materials have special safety features including security check points, visual and audio surveillance, double-locking doors, intruder alarms, and locked and extra-strength storage cabinets and that BSL-3 laboratories in particular have special design measures that comply with the CDC/NIH guidelines to further ensure the safety of lab personnel and the community; and

WHEREAS, the applicant further represents that Weill Cornell implements security policies and practices to meet the requirements of the USA PATRIOT Act and subsequent bioterrorism legislation, including the performance of background checks of persons with access to hazardous agents, and that the location and quantities of these materials are frequently checked and inventoried; and

WHEREAS, all chemical, biological and radioactive wastes from the laboratories of the proposed facility would be containerized, labeled and stored prior to off-site disposal in appropriate storage areas; waste would be removed by appropriately licensed contractors; and

WHEREAS, the EAS states that the building will have diesel emergency generators which would be used in the event of a sudden loss of power from the electrical grid to provide life safety and other functions to protect both the occupants of the building and the surrounding community against the effects of any power outages on the exhaust systems of the proposed facility; and

WHEREAS, the Opposition argues that decisions in *Save the Audubon Coalition v. City of New York* 180 A.D. 2d 348 (1<sup>st</sup> Dept. 1992); *Allen v. Boston Redevelopment Authority*, 877 N.E. 2d 907 (2007); and *Tri-Valley Cares v Department of Energy* 203 Fed. Appx. 105, 2006 WSL 2971651 (9<sup>th</sup> Cir. 2006) support its position that preparation of an EIS is required to analyze the potential environmental impacts of the proposed facility; and

WHEREAS, the Board notes that the cases cited by the Opposition each concern environmental review of a facility in which biohazardous or radioactive materials will be present, but that none support the Opposition's position that an EIS is required to evaluate potential environmental impacts associated with the proposed development of such a facility; and

WHEREAS, for example, the petitioners in Audubon argued that the EIS analyzing the potential impacts of a biological research complex proposed to be located at 165<sup>th</sup> Street and Broadway did not sufficiently study public health and safety issues related to the expected use and possible release of hazardous chemicals, radioactive material and biohazardous materials at a research facility located in a populated area; and

WHEREAS, the Court rejected the petitioner's claim, finding that the environmental review had identified the relevant areas of environmental concern, taken the required "hard look" at them, and made a "reasoned elaboration" of the basis for its determination, as required by SEQRA; and

WHEREAS, both *Allen v. Boston Redevelopment Authority* (877 N.E. 2d 907 (2007)) and *Tri-Valley Cares v. Department of Energy* (203 Fed. Appx. 105, 2006 WSL 2971651 (9<sup>th</sup> Cir. 2006)) cited by the Opposition similarly concern the adequacy of environmental review, not the requirement that an EIS be prepared; and

WHEREAS, in Allen, which involved a challenge to a BSL-4 biomedical research complex brought under the Massachusetts Environmental Policy Act, the court found that the environmental review was inadequate because it had failed to analyze the likelihood of damage to the environment caused by the release of a contagious pathogen; and

WHEREAS, in Tri-Valley Cares, the Ninth Circuit found that environmental review of the proposed construction of a federal biological weapons research laboratory was inadequate because it had failed to consider the effects of a terrorist attack; and

WHEREAS, each of the three cited cases stand for the proposition that a lead agency must conduct a detailed review of the potential impacts of biohazardous materials, radioactive materials and chemical agents, but none hold that that review can only take the form of an EIS, as the Opposition asserts; and

WHEREAS, the Board notes that the environmental review for the instant application included a detailed examination of the potential health and safety impacts of the chemical and biological agents that may be present at the proposed facility, and describes a comprehensive system of regulations and physical protections designed to contain potential hazards and protect the residents of the surrounding community, as well as the workers at the facility; and

WHEREAS, Board finds that, based on the implementation of the requirements of the applicable statutes and regulations, compliance with the CDC/NIH guidelines, the design features of the building, and waste management practices, the proposed facility would have no significant adverse impacts related to hazardous materials; and

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

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*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 makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R8 zoning district, the proposed construction of an 18-story biomedical research facility building to be occupied for community facility use by the Weill Cornell Medical College, that does not comply with zoning parameters for floor area, lot coverage, front and rear height and setbacks, and rear and side yards, contrary to ZR §§ 24-11, 24-36, 24-522, 24-552, and 24-35; *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 25, 2008"- (9) sheets, "September 29, 2008"- (7) sheets and "November 12, 2008"- (1) sheet; and *on further condition*:

THAT the proposed building shall have the following parameters: (1) floor area of 331,945 sq. ft.; (2) an FAR of 12.71; (3) a lot coverage of 92 percent; (4) street wall height of approximately 231 feet and a total building height (including mechanicals) of 302'-7" without setbacks; (5) a rear yard of 15'-0" without a setback; and (6) two side yards of 5'-0"; and

THAT all requirements as set forth in the Restrictive Declaration shall be fully complied with;

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

THAT mechanical space calculations shall be subject to DOB review and approval;

THAT construction will be substantially completed in accordance with the requirements of ZR § 72-23; 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, January 13, 2009.

**A true copy of resolution adopted by the Board of Standards and Appeals, January 13, 2009.**

**Printed in Bulletin Nos. 1-3, Vol. 94.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

**113-06-BZ**

**CEQR #BSA-096M**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Columbia University in the City of New York, lessee.

SUBJECT – Application June 6, 2006 – Zoning variance pursuant to Z.R. Section 72-21 to allow a proposed 13-story academic building to be constructed on an existing university campus (Columbia University). The project requires lot coverage and height and setback waivers and is contrary to Z.R. Sections 24-11 and 24-522.

PREMISES AFFECTED – 3030 Broadway, Broadway, Amsterdam Avenue, West 116<sup>th</sup> and West 120<sup>th</sup> Streets, Block 1973, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #8M**

**APPEARANCES –**

For Applicant: James Power.

**ACTION OF THE BOARD –** Application granted on condition.

**THE VOTE TO GRANT –**

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 12, 2006, acting on Department of Buildings Application No. 104424650, reads, in pertinent part:

“Expansion of Science Studies Tower. Proposed lot coverage is exceeded, and is contrary to ZR 24-11. Proposed [street wall] height and setback is exceeded, and is contrary to ZR 24-522.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a portion of a site within an R8 zoning district, the proposed construction of a 229’-6” high, 14-story, 163,052 sq. ft. Use Group 3 building, serving as the science facility of Columbia University, which does not comply with applicable zoning requirements concerning lot coverage, front height, and setback, contrary to ZR §§ 24-11 and 24-522; and

WHEREAS, a public hearing was held on this application on August 22, 2006 after due notice by publication in the *City Record*, and then to decision on September 12, 2006; on this date the decision was deferred to September 19, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 9, Manhattan, states that it has no objections to the proposed variances, but indicated that it was not satisfied with the current architectural renderings of the proposed building (the “Building”); and

WHEREAS, the Morningside-Heights Historic District Committee 9 (“MHDC”) and certain neighbors also appeared in opposition to this application; and

WHEREAS, the concerns of the Community Board, MHDC and the neighbors are discussed below; and

WHEREAS, this application was brought on behalf of Columbia University, a not for profit education institution; and

WHEREAS, the subject zoning lot is comprised of the large block bounded by Broadway, Amsterdam Avenue, and West 114<sup>th</sup> and 120<sup>th</sup> Streets; this block and an adjacent block serve as Columbia’s primary campus; and

WHEREAS, the specific portion of lot to be developed is located at the northwest corner of Broadway and West 120<sup>th</sup> Street (the “Development Site”); and

WHEREAS, the applicant states that the northern portion of the Development Site is vacant to a depth of approximately 68 feet from West 120<sup>th</sup> Street, while the southern 146 ft. of the site is improved upon with a portion Columbia’s gymnasium; and

WHEREAS, the Development Site is bounded to the east by Columbia’s physics building, and the south by the chemistry building; the Building will be connected to these two buildings at various levels; and

WHEREAS, the Development Site, while part of a larger zoning lot, is considered a separate lot by the Department of Buildings for application of certain bulk requirements; and

WHEREAS, specifically, the Development Site is considered both a through lot (the portion located beyond 100 ft. of West 120<sup>th</sup> Street) and a corner lot (the remainder of the site); and

WHEREAS, the Building complies as to lot coverage for the through lot portion; and

WHEREAS, however, the Building is non-compliant as to lot coverage on the corner lot portion; the proposed coverage is 95% (75% is the maximum permitted); and

WHEREAS, additionally, while no variance is required for the overall height, no setbacks will be provided, except an 11'-6" setback at the first floor on West 120<sup>th</sup> Street (on wide streets such as Broadway and West 120<sup>th</sup> Street, a setback of 15 ft. is required at 85 ft. or nine stories, whichever is less); and

WHEREAS, the program of the Building is as follows: cellar and sub-cellar – mechanicals; floors two and three – cafeteria; floor four – library and entrance; floor five – classrooms and conference rooms; floor six and mezzanine – library, lecture room; floor seven through 13 – labs; and floor 14 – air handling and mechanicals; and **CEQR #BSA-096M**

WHEREAS, a total of 28 labs would be provided (four on a floor), and twelve of these would connect to the physics and chemistry buildings; and

WHEREAS, each lab floor would have mezzanine levels, providing additional office, meeting, and work space; and

WHEREAS, the average floor plate size would be between 16,257 and 20,249 sq. ft.; and

WHEREAS, the floor to ceiling heights would be approximately 19 ft. high to accommodate needed mechanicals at each level, as well as tall scientific equipment and the mezzanines; and

WHEREAS, the applicant argues that the waivers are necessary to create a building with floor plates and floor to floor heights that will meet the programmatic needs of Columbia; and

WHEREAS, the applicant states that Columbia does not currently have a world-class research facility similar to those of other large universities elsewhere in the country, and that one is needed in order to stay competitive; and

WHEREAS, the applicant cites to a 2005 programming study, in which consultants hired by Columbia concluded that 28 new laboratories were needed and that they should be arranged within the Building in a manner that would encourage interdisciplinary research and maximize interaction among the sciences as well as with the campus at large; and

WHEREAS, the study recommended that the labs be 2,000 to 3,500 sq. ft., that different disciplines be represented on each floor, that each floor have communal research and support facilities, as well as lecture halls, and that the Building be connected to other science buildings to the extent possible; and

WHEREAS, other identified needs include a new library devoted to science and engineering disciplines, and a cafeteria faculty, staff and students; and

WHEREAS, the applicant contends that a complying building would not meet the stated programmatic needs of Columbia; and

WHEREAS, the applicant notes that a complying building would rise to an overall height of 317'-6", and the northern wall would be 23'-3" from West 120<sup>th</sup> Street; and

WHEREAS, a complying building would have a 10 ft. setback above the sixth floor along Broadway, in order to comply with 40 percent tower requirements, as per ZR § 24-54; and

WHEREAS, the applicant states this would result in floor plates of 9,051 to 10,451 sq. ft. each on the upper floors, and labs would be reduced in size to 1,300 to 2,00 sq. ft.; and

WHEREAS, this would limit the flexibility and functionality of the labs, and certain science disciplines would not have sufficient space to conduct necessary research; and

WHEREAS, further, a complying building would not provide the same degree of integration with the adjacent physics and chemistry buildings, with only eight out of a proposed 26 labs having direct access; and

WHEREAS, the applicant also notes that certain features of the lower floors would be compromised by the limited footprint; specifically, the large lecture hall would be eliminated and replaced by two smaller ones, the entrance area would be smaller such that the escalators would be eliminated and replaced by a traditional stairwell core, and the cafeteria would be reduced in size; and

WHEREAS, the Board credits the applicant's statements as to Columbia's programmatic needs and the limitations of a complying building; and

WHEREAS, the Board also acknowledges that Columbia, as an educational institution, is entitled to significant deference under the case 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, in addition to these programmatic needs, the applicant notes that the Development Site is compromised by its adjacency to existing buildings, which effectively constricts the area available for the

Building's floor plates, when lot coverage and setback regulations are applied; and

WHEREAS, the applicant states that even above the height of the gymnasium, the existing buildings restrict the buildable area to 88 ft. in the east-west direction and 214 ft. in the north-south direction; and

WHEREAS, the applicant notes that if the existing buildings were not on the zoning lot, Columbia could easily design a building that would meet its programmatic needs and still comply with lot coverage and setback requirements; and

WHEREAS, based upon the above, the Board finds that the adjacency to the Development Site of the existing buildings constitutes a unique physical condition, which, when considered in conjunction with the programmatic need of Columbia to create a state of the art science facility, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since Columbia is a not-for-profit organization and the proposed development will be in furtherance of its educational mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the **CEQR #BSA-096M** appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the variances will allow a taller street wall (230 ft. as opposed to 85 ft.), but that this is consistent with the higher street wall context along Broadway and 120<sup>th</sup> Street; and

WHEREAS, the applicant also notes that the majority of buildings in the immediate area maintain facades at the street line without setback, including the chemistry and physics building, and other Columbia buildings; and

WHEREAS, the Board observes that the Building as proposed is more contextual with the surrounding built conditions than an as of right building, which would provide an 85 ft. street wall, set back, and then rise to a height of over 300 ft.; and

WHEREAS, the Board notes that Broadway is a wide avenue that can accommodate the additional street wall height without any significant impact on light and air to the street, as opposed to the impact that an as of right building would likely have; and

WHEREAS, as to total height, the applicant cites to buildings in the surrounding area that rise to heights that vary from 210 ft. to 237 ft.; and

WHEREAS, finally, the Board observes that any impact of the lot coverage waiver is mitigated by the provision of open space adjacent to the corner lot portion of the Development Site; and

WHEREAS, the applicant also notes that the submitted Environmental Assessment Statement ("EAS") concludes that the proposed building will be compatible with the neighborhood and is not expected to create any adverse impacts; and

WHEREAS, the Board agrees that the requested waivers will not change the character of the neighborhood or impact adjacent uses; and

WHEREAS, the Board also notes that the building will serve a vital function to Columbia, an important educational institution within New York City; in this regard, the Board concludes that the variances will enhance public welfare rather than detract from it; and

WHEREAS, finally, the Board notes that the applicant submitted a letter from its design consultant, which establishes that the master plan for the Columbia campus contemplate a building at this location, with a footprint and a configuration similar, though not identical in all respects, to the proposal; and

WHEREAS, the design consultant also represents that the proposal is consistent with the master plan; and  
WHEREAS, the MHDC contested these representations, and submitted a letter regarding them on September 11, 2006; and

WHEREAS, in a further letter dated September 15, 2006, the design consultant reiterates the above and suggests that the proposal is more in keeping with the building contemplated by the master plan than an as of right building; and

WHEREAS, in the same letter, the consultant also represents that the building contemplated in the master plan would require the same waivers as the proposed building; and

WHEREAS, the Board notes, however, that its determination that the instant application meets the finding set forth at ZR § 72-21(c) does not depend on a finding that there is absolute consistency between the master plan and the proposal; rather it is predicated on an assessment of the existing context of the neighborhood and the buildings immediately adjacent to the Development Site;

WHEREAS, in addition to MHDC's concerns, certain individuals expressed concern about the design of the building, alleging that façade was not contextual with the remainder of the Columbia campus; and

WHEREAS, the Board understands the concerns of the opposition in this regard, and notes that the applicant indicated it would continue to engage in a dialogue with the community about architectural design details; and

WHEREAS, however, the Board finds that such concerns do not relate to the requested waivers or application; and

WHEREAS, those opposed to this application also suggested that the street wall height be lowered and that an as of right building might be better, as it would be less bulky and view corridors from within the Columbia campus would be less likely to be blocked; and

WHEREAS, the applicant responds by noting that a lower building would not meet the programmatic needs of Columbia; and

WHEREAS, the applicant also notes that the City's Landmarks Preservation Commission reviewed the EAS and determined that there is no effect on view corridors; and

WHEREAS, based upon the above, 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 Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the existing buildings on the zoning lot and the programmatic needs of Columbia; and  
WHEREAS, additionally, the Board finds that this proposal is the minimum necessary to afford the owner relief, since the Building is designed to address Columbia's present programmatic needs; and **CEQR #BSA-096M**

WHEREAS, based upon the above, 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 pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA096M dated August 15, 2006 and in an EAS addendum for Historic Resources dated September 15, 2006; and

WHEREAS, the EAS and the subsequent addendum for historic resources 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 Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a portion of a site within an R8 zoning district, the proposed construction of a 229'-6" high, 14-story, 163,052 sq. ft. Use Group 3 building, serving as the science facility of Columbia University, which does not comply with applicable zoning requirements concerning lot coverage,

front height, and setback, contrary to ZR §§ 24-11 and 24-522; *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 5, 2006"- twelve (12) sheets; and *on further condition*:

THAT lot coverage, height and setback shall be as indicated 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 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, September 19, 2006.

PREMISES AFFECTED - 1255/57 Amsterdam Avenue and 130 Morningside Drive, Borough of Manhattan.

**362-01-BZ**

**CEQR # 02-BSA-070M**

APPLICANT - Rosenman and Colin, LLP, for Columbia University, owner.

SUBJECT - Application November 20, 2001 - under Z.R. §72-21, to permit the proposed construction of an eleven story building, Use Groups 2, 3 and 6, located in the C1-4 portion of the zoning lot, which does not comply with the zoning requirements for height and setback regulations, minimum distance between buildings, and minimum width of open area, is contrary to Z.R. §§ 33-431, 23-711, and 33-25.

PREMISES AFFECTED - 1255/57 Amsterdam Avenue and 130 Morningside Drive, northwest corner of the block bounded by Amsterdam Avenue, 121<sup>st</sup> Street and Morningside Drive, Block 1963, Lot 56 and Part of Lot 60, Borough of Manhattan.

**COMMUNITY BOARD #9M**

**APPEARANCES -**

For Applicant: James P. Power.

For Administration: Captain Arthur Haven and John Scrofani, Fire Department.

**ACTION OF THE BOARD -** Application granted on condition.

**THE VOTE TO GRANT -**

Affirmative: Chairman Chin, Vice-Chair Babbar, Commissioner Korbey and Commissioner Caliendo....4

Negative: .....0

**THE RESOLUTION -**

WHEREAS, the decision of the Borough Commissioner, dated February 26, 2002 acting on Applic. No. 102020328 reads:

- "1. Proposed new building on a zoning lot located in C1-4 overlay and R8 zoning districts (the "subject Zoning Lot") does not comply with the height and setback regulations of the Zoning Resolution section 33-431 along Amsterdam Ave. and Morningside Drive.
2. Proposed new building on the subject Zoning Lot does not provide the minimum distance between a residential building and any other building on the same Zoning Lot required by Zoning Resolution section 23-711.
3. Open area provided along a portion of the subject Zoning Lot's southern side lot line does not have the minimum width required by Zoning Resolution section 33-25."

WHEREAS, a public hearing was held on this application on February 12, 2002 after due notice by publication in *The City Record* and laid over to March 19, 2002 for decision; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chairman James Chin, Vice-Chair Satish Babbar, Commissioner Mitchell Korbey and Commissioner Peter Caliendo; and

WHEREAS, this is an application under Z.R. §72-21, to permit the proposed construction of an eleven story building, Use Groups 2, 3 and 6, located in the C1-4 portion of the zoning lot, which does not comply with the zoning requirements for height and setback regulations, minimum distance between buildings, and minimum width of

open area, is contrary to Z.R. §§ 33-431, 23-711, and 33-25; and

WHEREAS, the applicant seeks to construct an 11-story, 121,982 square foot building with 8,410 square feet of retail use in a portion of the first floor and 113,345 square feet of school use on the first through eleventh floors; and

WHEREAS, the applicant states that the Zoning Lot lies partially within an R8 zoning district and partially in a C1-4 overlay district, and is located on the southeast corner of the intersection of Amsterdam Avenue and Morningside Drive, on a block bounded by Amsterdam, Morningside and West 121<sup>st</sup> Street; and

WHEREAS, the Zoning Lot is comprised of Lots 56 and 61 on Block 1963 and has a total lot area of 24,652 square feet; and

WHEREAS, the applicant represents that the Zoning Lot is irregularly shaped, with 155 feet 8 inches of frontage on the east side of Amsterdam Avenue and 200 feet of frontage on Morningside Drive; and

WHEREAS, evidence in the record indicates that the Lot 61 portion of the Zoning Lot is currently occupied by a 54-space parking lot used by affiliates of the school; and

WHEREAS, the applicant states that the Lot 56 portion of the Zoning Lot is currently occupied by a 6-story residential building, also owned by the university, which is currently under renovation and will contain 50 residential units upon completion used mainly for student housing; and

WHEREAS, the applicant contends that the existing building is underbuilt, and 20,840 square feet of unused development rights from Lot 56 would be incorporated into the Proposed Building; and

WHEREAS, the proposed building is 11 stories and 152 feet 8 inches tall with mechanical bulkheads rising 20 feet above the roof; and

WHEREAS, the applicant states that the proposed building maintains a continuous streetwall up to the 10<sup>th</sup> floor on Amsterdam Avenue and Morningside Drive, except for 32 feet 4 inches along the eastern end of the Morningside frontage, where the Proposed Building rises only 4 stories, and 30 feet along the southern end of the Amsterdam frontage, where the Proposed Building rises only 5 stories; and

WHEREAS, the applicant represents that the proposed building sets back 8 feet away from the Existing Building to the east along Morningside Drive and sets back 8 feet on the interior of the lot from the adjacent residential building to the south, 431 West 121<sup>st</sup> Street; and

WHEREAS, the applicant contends that the 8-foot distance from the existing Building, the 4-story height at the eastern end of the Morningside frontage, the interior lot setback from 431 West 121<sup>st</sup> Street, and the 5 story height at the southern end of Amsterdam frontage are all provided to ensure sufficient light and air for tenants of the two residential buildings; and

WHEREAS, the applicant has stated that although there are as yet no firm plans for the retail space, it is the school's policy to use ground floor retail space in its buildings to provide needed neighborhood services; and

WHEREAS, the applicant states that there are unique physical conditions which create practical difficulties and unnecessary hardships in constructing a building in compliance with the underlying district regulations; and

WHEREAS, the applicant denotes a steep downward slope on the site - 9 feet from the south to the north along Amsterdam Avenue and 4.5 feet from east to west on Morningside Drive that equates to the loss of one full floor that could have been built below the required setback; and

WHEREAS, the applicant's proposal would require to provide a reasonable height for the proposed building's lobby at the south end of the site and to provide a constant level for the second floor, 6 feet of additional height has been included at the 1<sup>st</sup> floor level; and

WHEREAS, the applicant represents that the existing building is significantly underbuilt, consumes a large amount of lot area relative to the floor area that it generates, and significantly reduces the footprint of a new development and the sufficiency of the floorplates for school use; and

WHEREAS, the applicant contends that the school requires floorplates large enough for classrooms, offices, and research space and with the proper size, location and adjacencies and these requirements cannot be met in the complying building because of the unique conditions of the zoning lot; and

WHEREAS, the applicant contends that if the existing building was not on the zoning lot, the school would have a very large footprint to work with, and could easily design a building that complies with the height, setback and minimum distance requirements; and

WHEREAS, the applicant represents that these circumstances create a unique burden on the school, creating the need for a non-complying design that is better suited to its programmatic needs; and

WHEREAS, the applicant further represents that based upon the existing structures at the site, the irregular shape of the lot, its split zoning designations, unique topographic conditions and the steep slope of the lot, there are unique physical conditions that create practical difficulties in building in strict conformity with the Zoning Resolution; and

WHEREAS, the applicant states that the proposed building is required to meet the school's programmatic needs the front height and setback variance is needed to provide the required floor area and adjacencies for the offices and research space; and

WHEREAS, where a non-profit community facility's programming needs create practical difficulties and unnecessary hardship in complying strictly with the Zoning Resolution, a variance should be granted unless it inarguably contravenes public health, safety or welfare or creates a detriment to the character of the neighborhood; and

WHEREAS, the Board finds that evidence in the record shows that the requirements of the school's programmatic needs cannot be met in a complying building because of the unique conditions on the Zoning lot; and

WHEREAS, the Board finds that the applicant need not address Z.R. §72-21(b) since the applicant is a not-for-profit organization and the development will be in furtherance of its not-for-profit status; and

WHEREAS, the applicant states that the neighborhood is primarily comprised of residential buildings, many of which have ground floor retail uses on the avenues as well as a large number of institutional buildings; and

WHEREAS, the applicant represents that the Proposed Building is contextual, as most buildings along Amsterdam Avenue between 118<sup>th</sup> and 122<sup>nd</sup> Streets rise to between 7 and 11 stories with uninterrupted streetwalls, without setback, up to the full height of their facades; and

WHEREAS, evidence in the record indicates that the surrounding buildings in the area are often organized into a number of blocks separated by narrow courtyards for light and ventilation, and are detailed with strong horizontal and vertical banding to provide a scale along the street; and

WHEREAS, the applicant maintains that the proposed project would not alter the neighborhood character, since the proposed project would be similar to those in the vicinity of the Zoning Lot; and

WHEREAS, the applicant represents that the proposed addition will not have any impact on any adjacent property, will not be visible or obstruct views from many cross street locations, will not alter the essential character of the neighborhood, that the addition is modest in size, the existing building is taller than the adjacent properties, and that the subject proposal will not adversely affect the nature of the area residence district; and

WHEREAS, the Board finds that the proposed application will not alter the essential character of the surrounding neighborhood, impair the use or development of adjacent properties nor be detrimental to the public welfare; and

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

WHEREAS, the Board finds that the variance is the minimum variance necessary to afford relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §72-21; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has carefully considered all relevant areas of environmental concern; and

WHEREAS, the evidence demonstrates no foreseeable significant environmental impacts that would require the preparation of an Environmental Impact Statement.

*Therefore, it is Resolved* that the Board of Standards and Appeals issues a Type II Determination, under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §72-21, and *grants* a variation in the application of the Zoning Resolution, limited to the objections cited, to permit the proposed construction of an eleven story building, Use Groups 2, 3 and 6, located in the C1-4 portion of the zoning lot, which does not comply with the zoning requirements for height and setback regulations, minimum distance between buildings, and minimum width of open area, is contrary to Z.R. §§ 33-431, 23-711, and 33-25; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received, March 12, 2002"-(28) sheets; and *on further condition*;

THAT the development comply with all Fire Department conditions;

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

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) and/or configuration(s) not related to the relief granted; and

THAT a new certificate of occupancy be obtained within four years from the date of this resolution.

Adopted by the Board of Standards and Appeals, March 19, 2002.