B. The Superblock

The superblock on which the Zoning Lot is located is bounded by East 34th Street, Franklin D. Roosevelt Drive, East 30th Street, and First Avenue. The superblock is occupied primarily by Medical Center buildings, but it contains three out parcels which are not part of the Zoning Lot: Lot 1, which is located at the southwest corner of the superblock and is owned by New York City and used for the Office of the Chief Medical Examiner, and Lots 130 and 135, which are owned by Amtrak.

C. The Neighborhood

The neighborhood surrounding the Zoning Lot is characterized largely by medical and other institutional uses. To the south of the Zoning Lot are medical institutions which, together with the Medical Center, define the First Avenue "medical corridor." These institutions extend as far south as East 15th Street and include the Bellevue Hospital Center, located east of First Avenue between East 25th and 30th Streets; the Arron Diamond AIDS Research Center, located on the Bellevue Hospital Center campus; the Hunter College School of Health Professions, located east of First Avenue between East 25th and East 26th Streets; the NYU School of Dental Medicine, located west of First Avenue between East 24th and 25th Streets; and the Veterans Affairs Medical Center, located east of First Avenue between East 23rd and 25th Streets. In addition, the site located east of First Avenue along East 29th Street, between the Medical Center and Bellevue Hospital Center, is being developed as the East River Science Park, a life science and technology campus with over 1 million square feet of rentable space.

The area west of First Avenue is institutional and residential in character. Directly across First Avenue from the Zoning Lot is Kips Bay Towers, a large residential complex consisting of mid- and high-rise residential towers. The towers include two 21-story, pre-cast concrete, modern apartment buildings, oriented in an east-west direction. There is a parking garage located at the northeast corner of the Kips Bay Towers block, which presents a tall, blank wall at the corner of East 33rd Street and First Avenue. Just south of the parking garage is the 10-story Arnold & Marilyn Greenberg Hall, part of the Medical Center.

Other institutional uses in the immediate area of the Zoning Lot include the Chinese Mission to the United Nations building, located at 351 East 34th Street on the corner of First Avenue, and the Chapel of the Sacred Hearts of Jesus and Mary, a church located at 325 East 33rd Street. Residential buildings in the neighborhood include modern 14- and 22-story apartment buildings on the west side of First Avenue at East 33rd and East 34th Streets; the Rivergate residential complex, 35 stories at its tallest point, which occupies the full block bounded by East 34th Street, First Avenue, East 35th Street, and the FDR Drive; four- and five-story tenement buildings on First Avenue near East 34th Street; and a new residential building and tenement buildings on the north side of East 33rd Street west of First Avenue.

The west side of First Avenue north of the continuation line of East 32nd Street, the north side of East 33rd Street, and most of East 34th Street in the vicinity of the Zoning Lot have strong streetwalls, but other areas in the surrounding neighborhood do not. The Kips Bay Towers, located across First Avenue to the west of the Zoning Lot, are also set back from the property line. Other breaks in the streetwall are caused by recessed building entrances, loading docks, and parking garage entrances and egresses. There is additionally a public open space, associated

with the Rivergate residential complex, located at the northeast corner of First Avenue and East 34th Street.

D. Zoning Restrictions Applicable to Zoning Lot

The R8 zoning district in which the Zoning Lot is located permits Use Groups 1 and 2 residential uses and Use Groups 3 and 4 community facility uses, including universities and non-profit hospitals and related facilities. The Zoning Resolution allows a maximum floor area ratio ("FAR") of 6.5 for community facility uses in R8 zoning districts. Zoning Resolution § 24-11. As shown in the drawings prepared by NBBJ Architects, dated March 17, 2010, included with this Application (any such drawing, a "Drawing"), the maximum FAR of 6.5, as applied to the entire Zoning Lot, allows 2,665,322 square feet of community facility floor area. See Drawing Z-1.01. The existing floor area on the Zoning Lot is 2,060,782 square feet, to which the Proposed Expansion would add 3,780 square feet. The Proposed Expansion would not require any waivers of use or floor area regulations.

Rear yard regulations applicable in R8 zoning districts require a 30-foot rear yard for an interior lot. Zoning Resolution § 24-36. The Development Site is considered to be an interior lot because Lot 130, owned by Amtrak, is located to its immediate east. Any building or portion of a building used for community facility uses that does not exceed one story or 23 feet in height is a permitted obstruction. Zoning Resolution § 24-33. As shown in Drawing Z-1.05, although the Proposed Structure located within the required rear yard will be one story, its rooftop mechanical equipment and parapet wall would extend above the allowable height of 23 feet, thus requiring a waiver of Section 24-36.

Signage regulations applicable to community facilities in R8 zoning districts provide that the maximum allowable area for signage is 25 square feet or 15 percent of the street frontage in feet, whichever is less. Zoning Resolution § 22-331. Signs are not permitted to extend above the ground floor ceiling or more than 20 feet above curb level, whichever is less. Zoning Resolution § 22-342. As shown in Drawing Z-1.07, the Proposed Structure would include a vertical panel sign that is integrated into the south façade of the Proposed Structure, perpendicular to First Avenue, as well as other signage at the Proposed Structure's entrances and on the Proposed Structure's façade. The total area of the signage would be 354.2 square feet, and the vertical panel sign and certain façade signage would extend above the height of the ground floor ceiling, thus requiring a waiver of Sections 22-331 and 22-342.

E. The Medical Center

Located in the heart of New York City, the Medical Center is one of the premier academic medical institutions in the country. The origins of the Medical Center date back to the founding of the New York University School of Medicine in 1841. Over the years, NYU physicians and researchers have made countless contributions to the practice and science of health care.

The Medical Center's legacy of research and innovation continues today with state-of-the-art clinical programs in virtually every medical specialty and subspecialty, including, but not limited to: aging and dementia; arthritis and rheumatology; breast, skin and prostate cancer; child mental health; ear, nose and throat disorders; epilepsy, neurology and neuroscience; kidney and liver transplantation; minimally invasive cardiovascular surgery; reconstructive and plastic

surgery; stroke; and weight loss surgery. The Medical Center is guided by the principles of "translational medicine," by which scientific discoveries are urgently translated into innovative treatments for patients. Its clinical services are continually informed and enhanced by hundreds of ongoing basic and clinical research projects.

The Medical Center consists of NYU School of Medicine and the three hospitals of NYU Hospitals Centers: Tisch Hospital (an acute care general hospital), Rusk Institute of Rehabilitation Medicine (a leading rehabilitation hospital for both outpatients and inpatients), and NYU Hospital for Joint Diseases (a leader in musculoskeletal care). The Medical Center is also home to the NYU Cancer Institute, one of 41 National Institutes of Health (NIH)-designated comprehensive cancer centers. These institutions have grown to become a significant presence in New York City. Today the NYU School of Medicine has approximately 1,400 full-time faculty and 2,200 part-time faculty, with 26 endowed professorships, 975 residents/fellows, 68 MD/PhD candidates and 4,788 post-graduate registrants. NYU Hospital Centers operates a total of 916 licensed beds.

The strengths of the Medical Center extend far beyond the walls of its own medical facilities. The Medical Center is closely allied with Bellevue Hospital Center and the Department of Veterans Affairs New York Harbor Health Care System, for which it provides medical staff, clinical services for patient bases, and a research space alliance. These facilities and many others are part of a "biomedical corridor" that stretches from East 15th to East 36th Streets along First Avenue. In 2007, NYU School of Medicine became the largest academic affiliate for New York City's Health and Hospitals Corporation (HHC), which has allowed the Medical Center to extend its reach and expertise to other communities, while also providing outstanding training for students and residents at sites with very diverse patient populations.

Notwithstanding the Medical Center's reputation as one of the country's premier medical institutions, it recognizes that significant recent advances in medical services and technologies and increased patient populations have necessitated new investments in its facilities. In 2005 NYU and the Medical Center Boards appointed a Trustee Strategy Committee to develop a strategic framework and roadmap for the future of the Medical Center. The Committee concluded that, with only a few exceptions, the Medical Center's facilities have exceeded their useful lives and recommended a long-term strategy to physically rebuild the institution. The expansion and renovation of the ED to respond to inadequacies of the ED's current layout and increased patient volumes is part of that strategy.

F. The Need for the Proposed Expansion

The Proposed Expansion is needed to create a more flexible and efficient environment for the delivery of emergency care to adults and children in the ED. As described in the letter from NYU Langone Medical Center submitted with this Application (the "Applicant Letter"), the existing ED is undersized and, as a result, inefficiently organized for its intended use. All ED patients enter at the same location off First Avenue, resulting in an undesirable mixing of patient types—walk-in patients with patients arriving by ambulance, and pediatric patients with adult patients. Further, space constraints result in poor patient flow and minimal acoustic and visual privacy. The mechanical and electrical systems serving the ED are inadequate. By reorganizing and expanding the existing ED space, the Proposed Expansion would allow the separation of

pediatric patients from adult patients, the separation of walk-in patients from ambulance patients, and enhanced acoustical and visual privacy. The Proposed Expansion would also provide a layout that facilitates access among all areas of the ED, reducing staff travel times and patient waiting times, and would allow for upgrades to mechanical and electrical systems.

The ED, like other emergency departments in the City and nation, is experiencing increased patient loads, with approximately 39,000 visitors per year. Visits to the existing ED have increased in recent years by between three and five percent per year, and are projected to continue to increase at such rate with or without the Proposed Expansion. Patient loads are especially high in the case of the ED because of the closing of Cabrini Hospital and population growth in the area, including an increase in non-insured and under-insured patients. The existing ED, consisting of approximately 9,250 gross square feet within the ground floor level of the Tisch Hospital building, is significantly undersized for this patient load. The Proposed Expansion, including the 3,780 square feet of floor area in the Proposed Structure, would increase the size of the ED to approximately 33,290 gross square feet, which, in accordance with commonly accepted planning benchmarks, would satisfy the current and projected patient volumes.

Such increased space would also permit an upgrade of the ED facility to meet current guidelines. The Proposed Expansion would increase patient care capacity by providing a total of 29 exam/treatment positions, three triage/treatment rooms, and an eight-position disposition lounge. The existing ED facility contains only 18 exam/treatment positions, one triage/treatment room, and no disposition seats. In addition, the imaging capability of ED Radiology would be enhanced.

There is a need for effective signage to provide way-finding for ED patients who are visiting the building under urgent and stressful circumstances. As explained in greater detail in the letter from NBBJ Architects submitted with this Application and dated May 12, 2010, (the "Architect Letter"), such signage must satisfy basic standards for visibility and legibility and must be sensitive to the ED's location and surrounding conditions. ED signage should be visible to approaching northbound First Avenue traffic from a distance of approximately 650 feet, or approximately three blocks—the distance between the ED and the south end of the Medical Center campus—so as to ensure effective way-finding and identification. The combination of the urgency of ED visits, the visual barriers of the dense urban environment, and the complexity of approach given the close proximity of the ED to other hospitals require that signage err on the side of being larger rather than smaller. Because traffic back-up at the East 33rd Street intersection often includes buses, delivery vans, and other tall vehicles, signage should also be located at a sufficient height so as to remain visually unobscured by such vehicles. Last, additional signage is needed to clearly identify the ED facility as part of the Medical Center, at both close and distant ranges, so as to distinguish it from the nearby Bellevue Hospital Center and Veterans Affairs Medical Center.

G. The Complying Expansion

This Application includes plans for an ED expansion that would be as-of-right, i.e. that would not create any non-compliance with the Zoning Resolution (the "Complying Expansion") and would not require a variance. The Complying Expansion would include a reconfiguration

and expansion of the existing ED within the cellar and ground floor levels of the Tisch Hospital building, as well as a new structure on the Development Site (the "Complying Structure"). The dimensions and layout of the Complying Structure would be constrained by the on-site air intake shaft that serves air handlers located in the cellar of the Tisch Hospital building. The air intake shaft, located on the eastern portion of the Development Site, limits the footprint and entrance area of the Complying Structure. Entrances to the ED cannot be located at the southern end of the Development Site because the curb level at such location is higher than the floor level of the ED. See Drawing Z-0.06. As a result of these constraints, the Complying Expansion would not address the inadequacies of the existing ED.

The Complying Expansion would include a reconfiguration and expansion of the existing ED to 20,910 gross square feet within the cellar and ground floor levels of the Tisch Hospital building. The Complying Structure would add 9,390 gross square feet, for a total of 30,300 gross square feet. The floor area of the Complying Structure would be 3,245 square feet. An approximately 7,565-square-foot area to the north of the Complying Structure would be improved with ambulance drop-off and parking, new sidewalks, and landscaping.

As a result of the Complying Expansion, the ED would contain 28 exam/treatment rooms, three triage exam/treatment rooms, and four disposition seats. As shown in Drawings Z-0.03 and Z-0.04, the constrained entrance space and smaller building footprint would result in a compromised floor plan, with no separation between walk-in patients and ambulance patients or between pediatric patients and adult patients. In addition, plan efficiency would be reduced as compared to the Proposed Expansion, with increased staff travel distances and increased patient waiting times. Upgrades to the ED's mechanical and electrical systems would not be possible.

Signage in the Complying Expansion would be minimal and would not exceed the area or height limitations of the Zoning Resolution. Two signs—"AMBULANCE ONLY" and "EMERGENCY WALK-IN"—would be installed on the canopy over the entrance to the Complying Structure, and a small business address sign would be installed over the entrance. See Drawing Z-0.06. The total surface area of the signage would be 23.5 square feet. This signage would be inadequate because its size and height would not provide sufficient way-finding for pedestrians and drivers approaching the ED along First Avenue.

H. The Proposed Expansion

The Proposed Expansion would include the reconfiguration and renovation of the existing ED space, an expansion within the Tisch Hospital building, and the Proposed Structure. The expansion within Tisch Hospital would result in a total of 20,910 gross square feet for the ED within the building's ground and cellar floors. The Proposed Structure would add an additional 12,380 gross square feet, or 3,780 square feet of floor area. The additional area would provide a significant upgrade in space per patient. An approximately 7,400-square-foot area to the north of the Proposed Structure would be improved with ambulance drop-off and parking, new sidewalks, and landscaping. The Proposed Expansion would address the inadequacies of the existing ED facility.

The Proposed Expansion would require the elimination of the air intake shaft located on the eastern portion of the Development Site and an air handling unit located in the cellar of the

Tisch Hospital building. As shown in Figure ASK.1.41, attached to the letter from NBBJ Architects dated May 12, 2010 (the "Supplementary Architect Letter"), both the air intake shaft and the air handling unit lead to an existing vertical shaft located in the cellar of the Tisch Hospital building, which shaft distributes air throughout the western portion of Tisch Hospital. Following the removal of the air intake shaft and air handling unit, air handling would be accomplished by two HVAC units located on the roof of the Proposed Structure. The removal of the existing air intake shaft would allow more appropriate dimensions and an improved layout of the Proposed Structure.

The Proposed Expansion would result in a total of 29 exam/treatment rooms, three triage exam/treatment rooms, and eight disposition seats in the ED, as compared to 18 exam/treatments, one triage exam/treatment room, and no disposition seats in the existing ED. As shown in Drawings Z-1.03 and Z-1.04, the larger floor plate and, more specifically, entrance area afforded by the removal of the on-site air intake shaft would allow for significant increases in plan efficiency. A walk-in access point would be separate and visually distinguishable from the ambulance entrance and corridor, and a dedicated space for pediatrics would ensure the separation of pediatric patients from adult patients. Staff travel distances and patient waiting times would be reduced as compared to the Complying Expansion. The installation of mechanical equipment on the Proposed Structure rooftop would afford a cost-effective opportunity to upgrade the ED's mechanical and electrical systems.

The rooftop mechanical equipment, including the equipment encroaching within the required rear yard, would be surrounded by a screen wall. The screen wall would reach a height of 40.17' above mean curb level. See Drawing Z-1.04. The screen wall is a design element of the Proposed Structure and would also serve to hide the equipment from all vantage points when the building is viewed from street level. As indicated on Drawing Z-1.04, the height and location of the mechanical equipment may vary, but the equipment would not extend above the height of the screen wall.

Signage in the Proposed Expansion would be designed to provide way-finding to Medical Center patients. As shown in Drawing Z-1.07, the Proposed Structure would include a vertical panel sign that is integrated into the south façade of the Proposed Structure, perpendicular to First Avenue, as well as other signage at the Proposed Structure's entrances and on the Proposed Structure's façade. The total area of the signage would be 354.2 square feet, and the vertical panel sign and certain façade signage would extend above the height of the ground floor ceiling.

I. The Department of Buildings Objections

The Department of Buildings has raised the following objections with respect to the Proposed Expansion:

1. Proposed enlargement does not comply with the rear yard regulations of ZR Section 24-36 (Minimum Required Rear Yards).

Under Section 24-36 (Minimum Required Rear Yards), in an R8 district, a rear yard with a depth of not less than 30 feet must be provided on any zoning lot. The required rear yard may contain a building or portion of a building used for community facility uses, provided that the height of such building does not exceed one story or 23 feet above curb level. Zoning Resolution

§ 24-33 (Permitted Obstructions in Required Yards or Rear Yard Equivalents). Although the Proposed Structure located within the required rear yard would be one story, its rooftop mechanical equipment and parapet wall would extend above the allowable height of 23 feet.

2. Proposed signage does not comply with ZR Section 22-331 (Permitted illuminated accessory signs for hospitals and related facilities) and ZR Section 22-342 (Height of signs).

Under Section 22-331 (Permitted illuminated accessory signs for hospitals and related facilities), illuminated non-flashing accessory signs are permitted for hospitals and related facilities located in an R8 zoning district, provided that the total surface area of the signs does not exceed 25 square feet or 15 percent of the street frontage in feet, whichever is less. Under Section 22-342 (Height of signs), no sign is permitted to extend above the ground floor ceiling or more than 20 feet above curb level, whichever is less. Signage on the Proposed Structure would have a total area of 354.2 square feet, including a large vertical panel sign on the Proposed Structure's south facade, and other identifying signs installed on the Proposed Structure's facade. The vertical panel sign and certain facade signage would extend above the height of the ground floor ceiling, thus requiring a waiver of Sections 22-331 and 22-342.

III. Statement of Findings

The following is a statement of how this case meets each of the required five findings under Section 72-21 of the Zoning Resolution:

A. There are unique physical conditions or exceptional topographical conditions peculiar to and inherent in the zoning lot which create practical difficulties and unnecessary hardship in complying with the bulk limitations of the Zoning Resolution which are not due to circumstances created generally by the strict application of the provisions of the Zoning Resolution in the neighborhood or district in which the zoning lot is located.

As set forth below, the irregular, shallow configuration of the Development Site and existing improvements on, and surrounding conditions of, the Zoning Lot constitute unique physical conditions creating practical difficulties or unnecessary hardship in complying with the rear yard and signage requirements of the Zoning Resolution. In addition, where a non-profit community facility's programmatic needs create practical difficulties and unnecessary hardship in complying strictly with the Zoning Resolution, a variance should be granted unless it contravenes public health, safety, or welfare. Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986).

1. Practical Difficulties

The irregular, shallow configuration of the Development Site and existing improvements on the Zoning Lot significantly limit the development of an ED expansion that satisfies the Medical Center's programmatic needs, as follows:

- It is integral that the Medical Center's emergency care operations not be disrupted by the expansion of the ED. The ED expansion must be adjacent to the existing ED, located within the Tisch Hospital building to the south of the Development Site, so that construction and renovations may be carried out in phases that allow for the continued operation of the ED. The Development Site is the only site that satisfies this fundamental criterion.

- The Development Site's irregular, shallow configuration constrains development on the site. The Development Site has approximately 138 feet of frontage on First Avenue and a depth that varies from approximately 50 feet to 125.5 feet. The northernmost portion of the Development Site on which construction is permitted is effectively made even shallower by an existing air intake shaft located on the eastern portion of the site.

- The northern portion of the Development Site, consisting of a portion of the bed of former East 33rd Street, is subject to an access easement in favor of Amtrak. See Drawings Z-0.03 and Z-1.03. A significant portion of this area is also subject to a sewer easement. The access easement was granted to Amtrak over the bed of former East 33rd Street from First Avenue to the Amtrak property located to the east of the Development Site. Permanent obstructions are not permitted within the easement area. This prevents expansion of the ED into the area to the north of the Proposed Structure.[1]

- The Development Site is bounded by the Medical Center's Perelman Building to the north, an Amtrak ventilation tower to the east, and the Medical Center's Tisch Hospital to the south. To the extent that the constraints on the Development Site are attributable to the inability to demolish these existing buildings, which either serve the Medical Center's programmatic needs or are owned by Amtrak, such existing buildings may be considered a "unique physical condition" inherent in a zoning lot causing a practical difficulty or unnecessary hardship to satisfy finding (a) set forth in Section 72-21 of the Zoning Resolution (see discussion of the Cornell doctrine, below).

- Existing mechanical equipment in the Tisch Hospital building distributes air throughout the west portion of Tisch Hospital through a vertical shaft located at that end of the building. As shown in Figure ASK.1.41, attached to the Supplementary Architect Letter, this vertical shaft leads to an air handling unit (AHU-38) located within the Tisch Hospital cellar and to the existing air shaft on the Development Site to the north of Tisch Hospital. The new equipment replacing the above air handling unit and air shaft must be located as close as possible to the existing vertical shaft located within Tisch Hospital so that it can continue to serve Tisch Hospital efficiently.

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[1] The location and configuration of the Proposed Structure would provide the most appropriate solution to the Medical Center's programmatic needs even absent the Amtrak easement. The northern portion of the Development Site is needed for ambulance drop-off and parking and, as explained below, is not close enough to Tisch Hospital to offer a suitable location for mechanical equipment.

- The roof of the proposed enlargement is the only feasible location for the mechanical equipment that is within a reasonable distance of the existing ventilation shaft. There is no space available within Tisch Hospital to the south that can accommodate the mechanical equipment and provide access to the ventilation shaft. The mechanical equipment cannot be located to the east of the proposed enlargement because that property is owned by Amtrak. The equipment cannot be located to the north of the proposed enlargement because that area is too remote from the ventilation shaft and, under the terms of the access easement benefitting Amtrak, must remain clear of permanent obstructions. See Drawing Z-1.03.

In order to comply with the rear yard regulations of the Zoning Resolution, the Complying Structure contains no rooftop mechanical units in the rear yard area. As a result, the existing air intake shaft located on the eastern portion of the Development Site and the air handling unit in the cellar level of the Tisch hospital building cannot be removed. The continued presence of such units in their current locations limits the space available for the ED expansion, resulting in floorplates of inadequate size and dimension to satisfy NYU Langone Medical Center's programmatic needs.

The Proposed Expansion would entail eliminating the air intake shaft on the eastern portion of the Development Site and an air handling unit in the cellar of the Tisch Hospital building. Mechanical units would instead be located on the rooftop of the Proposed Structure, including within the required rear yard area. The elimination of the air intake shaft would permit floorplates that allow for the satisfaction of NYU Langone Medical Center's programmatic needs and that provide a more flexible and efficient environment for the delivery of emergency care to adults and children in the ED.

The failure of the Complying Expansion to satisfy the Medical Center's programmatic needs, as contrasted with the Proposed Expansion's ability to do so, may be summarized as follows:

- The constrained entrance space and small floorplate of the Complying Structure result in an inefficient floor plan. There is no separation between walk-in patients and ambulance patients, or between pediatric patients and adult patients. In addition, staff travel distances and patient waiting times are suboptimal.

  The Proposed Expansion's floor plan would provide for the separation of walk-in patients and ambulance patients, with a visually distinguishable access point for walk-in patients and a separate entrance corridor for ambulance patients. A dedicated space for pediatrics would similarly ensure that pediatric patients are separated from adult patients. The efficient layout of the ED would ensure decreased staff travel distances and patient waiting times.

- The Complying Expansion increases the area of the ED to only 30,300 gross square feet and contains only 28 exam/treatment rooms, three triage exam/treatment rooms, and four disposition seats, which would not be sufficient to handle current and projected future patient volumes.

The Proposed Expansion, in contrast, would increase the area of the ED to 33,290 gross square feet—3,290 gross square feet more than the Complying Expansion—and contain 29 exam/treatment rooms, three triage exam/treatment rooms, and eight disposition seats. The Proposed Expansion would satisfy the Medical Center's current and projected patient volumes.

- The Proposed Expansion would allow for the cost-effective upgrade to the ED's mechanical and electrical systems.

The Medical Center also has a programmatic need for signage that provides adequate way-finding and identification for visitors approaching the ED from First Avenue. For community facilities in R8 zoning districts, the maximum allowable area for signage is 25 square feet or 15 percent of the street frontage in feet, whichever is less. Zoning Resolution § 22-331. Signs are not permitted to extend above the ground floor ceiling or more than 20 feet above curb level, whichever is less. Zoning Resolution § 22-342. As shown on Drawing Z-0.06, the maximum allowable signage would be 25 square feet and would not be permitted to extend above the ground floor ceiling. The Proposed Structure would include a vertical panel sign that is integrated into the building's south façade, perpendicular to First Avenue, as well as other signage at the Proposed Structure's entrances and on the Proposed Structure's façade. The total area of the signage would be 354.2 square feet, and the vertical panel sign and certain façade signage would extend above the height of the Proposed Structure's ground floor ceiling.

The signage program for the Proposed Structure is designed to satisfy the Medical Center's programmatic needs and to respond to the conditions surrounding the site. As described in the Architect Letter and in the signage analysis prepared by Two Twelve, submitted with this application, the signage must satisfy basic standards for visibility and legibility in order to provide effective way-finding for ED patients, and must be sensitive to the ED's location and surrounding conditions. The ED is one of three emergency departments located along the First Avenue medical corridor, and it is situated among a number of other buildings on the Medical Center campus. The lack of signage distinguishing the ED from other facilities causes confusion for visitors, who often are drawn into the wrong building and lose critical time in urgent situations. The ED entrances must therefore be clearly identified as part of the Medical Center, rather than other hospitals along First Avenue, and must be clearly distinguished from other Medical Center entrances. In addition, the ED signage must be visible to northbound motorists on First Avenue well before they must enter the emergency drop-off lane. The signage should be visible to northbound motorists from a distance of approximately 650 feet (approximately East 30th Street) to give drivers sufficient maneuvering distance as they are approaching the drop-off lane. Because traffic back-up at the East 33rd Street intersection often includes buses, delivery vans, and other tall vehicles, signs for motorists must also be located at a sufficient height so as to remain visually unobscured by these vehicles.

2. Cornell Doctrine

The requested modifications are required to meet the programmatic needs of the Medical Center for an expanded ED, located within and adjacent to the existing ED's location in the Tisch Hospital building, to enable it to provide flexible and efficient emergency care services, with effective way-finding signage. Because of the Medical Center's status as a non-profit

educational institution and hospital, these programmatic needs must be taken into account in determining if a variance is warranted. In Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986), the Court of Appeals held that schools have a presumed beneficial effect on the community which may be rebutted only with evidence of "a significant impact on traffic congestion, property values, municipal services and the like." Further, "[t]he imposition of . . . [any] requirement unrelated to the public's health, safety or welfare, is . . . beyond the scope of the municipality's police power. . . ." The fundamental premise of the Cornell decision is that land use authorities must afford special treatment to schools and related uses because they "singularly serve the public's welfare and morals" and because of "their presumed beneficial effect on the community." Id. at 593, 595.

Applications in which your Board has considered school and institutional programmatic needs in connection with the grant of variances include the following: Weill Cornell Medical College Biomedical Research Building, 411-431 East 69th Street (BSA Cal. No. 170-08-BZ) (variance from floor area, lot coverage, front and rear height and setback, and rear and side yard regulations granted to accommodate the floor area and floorplate requirements and because of required adjacency of proposed biomedical research building to existing Medical Center campus); Columbia University Northwest Science Building, 3030 Broadway, Manhattan (BSA Cal. No. 113-06-BZ) (variance from lot coverage and height and setback regulations granted to accommodate floorplate requirements of academic research building and because development site was compromised by adjacent existing buildings); Columbia University School for Social Work, 1255-1257 Amsterdam Avenue (BSA Cal. No. 362-01-BZ) (variance from height and setback and minimum distance between buildings and side yard requirements granted to accommodate floorplate requirements of school building); Polytechnic University, 101 Johnson Street, Brooklyn (BSA Cal. No. 164-00-BZ) (variance from sky exposure plane regulations granted on lot with existing buildings because layout of college dormitory to be constructed would otherwise be inefficient); The Nightingale Bamford School, 16-26 East 92nd Street, Manhattan (BSA Cal. No. 207-86-BZ) (school granted variance and special permit to enlarge existing community facility building where the inadequacy of the existing building hampered the school's ability to satisfy educational needs of its students); Actors' Fund of America, 469-475 West 57th Street (B.S.A. Cal No. 116-94-BZ) (variance modifying alternate front setback regulations granted for proposed 30-story community facility where programmatic needs foreclosed removing 10 feet from front of existing church on zoning lot); 142-148 East 57th Street (B.S.A. Cal. No. 74-97-BZ) (variance modifying alternate front setback regulations granted for proposed residential development where removing 10 feet in front of existing MTA substation on zoning lot would have been contrary to MTA's programmatic needs).

As noted above, the Board has also recognized that Cornell establishes that, to the extent that constraints on a development are attributable to the inability to demolish existing buildings on the zoning lot, such existing buildings may be considered a "unique physical condition" inherent in a zoning lot causing a practical difficulty or unnecessary hardship to satisfy the finding set forth in Section 72-21(a) of the Zoning Resolution. See Weill Cornell Medical College Biomedical Research Building, 411-431 East 69th Street (BSA Cal. No. 170-08-BZ); Columbia University Northwest Science Building, 3030 Broadway, Manhattan (BSA Cal. No. 113-06-BZ).

The Cornell decision's principles are directly applicable in this case. As discussed above, the Medical Center has a need for an ED with sufficient space to satisfy current and expected patient volumes. The ED expansion must be adjacent to the existing ED, located within the Tisch Hospital building, so that construction and renovations may be carried out in phases that allow for the continued operation of the ED. The ED must also have a floorplate with regular dimensions, particularly at the northern end of the Development Site, so as to allow the separation of walk-in and ambulance patients, the separation of pediatric and adult patients, an efficient layout that facilitates easy access among all areas of the ED, and upgrades to the ED's mechanical and electrical systems. Additionally, the Medical Center has a programmatic need for effective signage that provides way-finding for patients seeking emergency care services. As discussed above, the Proposed Expansion would satisfy these programmatic needs, whereas the Complying Expansion would not.

This application is consistent with the Cornell decision because the requested variances would not contravene public health, safety or welfare. As discussed in greater detail under finding (C) of this Statement and in the Environmental Assessment Statement (the "EAS") and the Architect Letter, the Proposed Building would be consistent with the scale and general character of the surrounding neighborhood and would not result in any significant adverse environmental impacts.

Thus, the shallow configuration of the Development Site and existing improvements on the Zoning Lot constitute unique physical conditions peculiar to and inherent in this particular zoning lot which create practical difficulties and unnecessary hardship in complying with the rear yard and signage requirements of the Zoning Resolution. These difficulties and hardships are due not to circumstances created generally by the strict application of the provisions of the Zoning Resolution in the neighborhood or district in which the Zoning Lot is located, but rather to the need to design a building that meets the specific programmatic needs of the Medical Center on a shallow and irregular development site constrained by surrounding improvements.

B. Because of such physical condition there is no reasonable possibility that the development of the zoning lot in strict conformity with the provisions of the Zoning Resolution will bring a reasonable return, and the grant of a variance is therefore necessary to enable the owner to realize a reasonable return from such zoning lot, except that this finding shall not be required for the granting of a variance to a non-profit organization.

Since the Medical Center is a non-profit organization, the Section 72-21(b) finding is not required to grant the variance requested by this Application. Rather, the variance requested is necessary to enable the Medical Center to develop the Zoning Lot with improvements that meet its programmatic needs.

C. The variance, if granted, would not alter the essential character of the neighborhood or district in which the zoning lot is located, would not impair the appropriate use and development of adjacent property, and would not be detrimental to the public welfare.

The Proposed Expansion would be in keeping with the medical and other institutional uses found in the surrounding neighborhood and would be compatible with other uses in the area. In particular, the Proposed Expansion would be located among a multitude of medical institutions comprising the First Avenue "medical corridor," such as other Medical Center buildings, the Bellevue Hospital Center, the Veterans Affairs Medical Center, and the Hunter College School of Medical Professions. The 197-a Plan for the Eastern Section of Community District 6 (ULURP No. N 060273 NPM) recommended that the area including the Medical Center be rezoned from residential to a Special Hospital Use District. While this proposal has not been implemented by the City, it confirms that the community recognizes this area as an appropriate location for specialized hospital uses. The Proposed Expansion would not result in any significant adverse impacts with respect to land use, infrastructure, solid waste, energy, noise, air quality, traffic or any other impact category. See EAS, p. 7c.

The character of the area in which the Development Site is located is defined by numerous health care facilities. 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. The project site is located on a superblock largely occupied by the many mid-rise and high-rise buildings of the Medical Center. There are also 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, distant from the Development Site. As such, there are no uses adjacent to the Development Site or on the superblock that would be affected by the requested waiver of rear yard requirements. The waiver of rear yard requirements would have no discernable impact on the surrounding neighborhood, as the Development Site would continue to be utilized as part of the Medical Center complex, which is composed of structures of various shapes, sizes, orientations, and designs.

The Proposed Structure and the signage thereon would not obstruct any views to any visual resources and would not detract from the visual quality of the Development Site or surrounding neighborhood. See EAS, p. B-7. The Proposed Structure would be small in scale and would not substantially alter the context of existing views. The Proposed Structure would, in fact, improve the visual quality of the project site, as it would replace a paved parking area, ramp, and entryway to the existing ED with a contemporary steel and glass curtain wall design. See EAS, p. B-6.

The Proposed Structure would be appropriate to the surrounding context. It would not entail any changes to topography, street pattern and hierarchy, block shapes, or natural features on the Development Site. See EAS, p. B-6. The one-story massing of the Proposed Structure would be appropriate in the context of the Zoning Lot, which contains mid- and high-rise buildings connected by one- and two-story structures. The Proposed Structure would be built to the lot line fronting on First Avenue, thereby maintaining the existing streetwall. Further, the steel and glass curtain wall design of the Proposed Structure would strengthen the relationship between NYU Langone Medical Center and First Avenue by maintaining visual connectivity between the inside and outside of the building.

The rear yard waiver would not impact the Amtrak ventilation tower located to the east of the Development Site. The Amtrak building functions as a ventilation shaft for, and emergency

exit stair from, the LIRR train tunnels, which are owned by Amtrak and run beneath the site. It contains mechanical equipment, is occupied only as needed by maintenance workers, and does not have windows. The exhaust louvers at the top of the shaft structure extend from a height of 86.005 feet above mean curb level to the top of the building at 104.380 feet above curb level, well above the top of the Proposed Structure's screen wall, which has a height of 40.17 feet above mean curb level. There are several other small louvers which serve the various machine rooms in the lower portion of the shaft building. The portion of the Proposed Structure in the rear yard would not limit access to, or egress from, any of the Amtrak building's doors, including the emergency exit on the east side of the Amtrak building, and would not be visible from inside the Amtrak building. The Amtrak building's exhaust louvers would not be impacted by the portion of the Proposed Structure located within the required rear yard.

The signage waivers would not adversely impact the surrounding neighborhood. The Development Site is located in an urban area which is defined primarily by the hospital and other institutional uses on superblocks along the First Avenue medical corridor. The 197-a Plan for the area including the Medical Center, described above, confirms that the community recognizes this area as an appropriate location for specialized hospital uses, which by definition require atypical bulk, use, and signage arrangements. First Avenue in the vicinity of the Medical Center campus does not have a residential character, and in fact, the closest residential use to the Development Site is located diagonally across First Avenue, at least 150 feet away. The signage waivers allow signage which is appropriate to the medical corridor and which will not interfere with residential uses in the neighborhood.

The Proposed Expansion would provide a benefit to the surrounding neighborhood and City as a whole by expanding the emergency care facilities of the NYU Langone Medical Center. The size of the Proposed Expansion would allow the ED to meet increasing patient volumes, caused in large part by population growth in the City, and the reconfiguration and expansion of the ED would provide a more flexible and efficient environment for the delivery of emergency care to adults and children in the ED. Additionally, the signage of the Proposed Expansion would increase the visibility of the ED facility for arriving patients and visitors, thereby providing valuable way-finding, as well as for surrounding drivers and pedestrians.

In sum, the Proposed Expansion would not alter the essential character of the neighborhood or district in which the Zoning Lot is located, would not impair the appropriate use and development of adjacent property, would not be detrimental to the public welfare, and would, in fact, provide a great benefit to the neighborhood and the City as a whole.

D. The practical difficulties and unnecessary hardship have not been created by the owner or its predecessor in title.

The practical difficulties and unnecessary hardship to which the Medical Center is subject have resulted from (i) the irregular, shallow configuration of the Development Site, caused primarily by the Amtrak-owned parcel to the immediate east (ii) the programmatic needs of the Medical Center, and (iii) the application of the provisions of the Zoning Resolution to this particular Zoning Lot. The practical difficulties and unnecessary hardship have not been created by the Medical Center or its predecessor in title.

E. Within the intent and purposes of the Zoning Resolution, the variance, if granted, is the minimum variance necessary to afford relief.

The modifications requested are the minimum necessary to afford relief from the application of the Zoning Resolution, since the Proposed Structure is of the minimum size required to satisfy the existing needs of the ED. The Medical Center requires an ED with sufficient space to satisfy current and projected patient volumes and a floorplate with certain minimum dimensions, particularly at the northern end of the Development Site, so as to allow the separation of walk-in and ambulance patients, the separation of pediatric and adult patients, an efficient layout that facilitates easy access among all areas of the ED, and upgrades to the ED's mechanical and electrical systems. In addition, the ED expansion must be adjacent to the existing ED, located within the Tisch Hospital building to the south of the Development Site, so that construction and renovations may be carried out in phases that allow for the continued operation of the ED. The Proposed Expansion meets these programmatic needs, while the Complying Expansion does not.

With respect to the waiver of the applicable rear yard requirements, such waiver is required only for the rooftop mechanical unit and parapet wall located within the rear yard area. The relocation of the existing air handlers to the Proposed Structure rooftop results from the reorganization of space within the Tisch Hospital building to accommodate the expansion of the ED. The Proposed Structure is in compliance with all other bulk requirements of the Zoning Resolution.

The signage for which a waiver is sought is of the minimum size and height necessary to ensure the visibility of such signs by pedestrians and drivers approaching the ED along First Avenue.

In short, the variances requested are the minimum necessary to afford relief.

IV. Conclusion

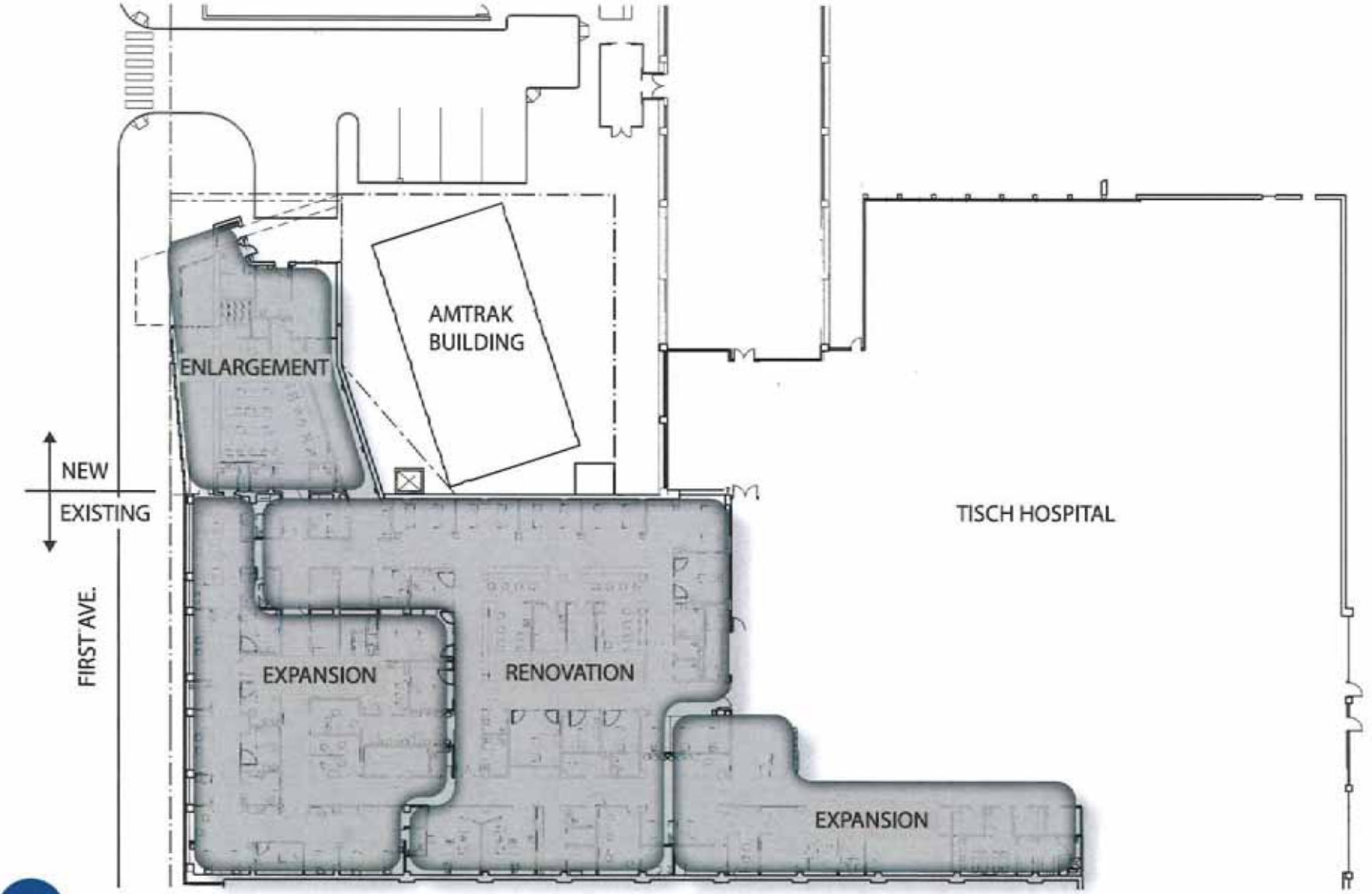
For the foregoing reasons, we respectfully request that the Board approve this Application for a variance.

Respectfully submitted,

Kramer Levin Naftalis & Frankel LLP

By: Elise Wagner
Elise Wagner

New York, New York
May 12, 2010



NYU **Langone Medical Center**

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Emergency Department Expansion