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April 22, 2014

Via Hand Delivery

Hon. Meenakshi Srinivasan, Chair  
New York City Board of Standards and Appeals  
250 Broadway, 29th Floor  
New York, NY 10007

Re: New York Methodist Hospital  
Center for Community Health  
505-525 6th Street (Block 1084, Lots 39, 164, 1001,  
and 1002)  
BSA Cal. No. 289-13-BZ

Dear Chair Srinivasan:

Here are one (1) original and two (2) hard copies of revised and supplementary materials in support of an application (the "Application") on behalf of New York Methodist Hospital ("NYM" or the "Hospital") for a variance to allow the development of a new outpatient care facility, known as the Center for Community Health (the "Center"), on the Hospital's main campus in Park Slope, Brooklyn. An electronic copy of the revised materials will be submitted to the Board by e-mail.

The revised Application materials, which supersede their previously submitted counterparts, consist of the following:

- Revised Statement of Facts and Findings, dated April 22, 2014;
- Letter from Perkins Eastman Architects ("PEA") to the Board, dated April 22, 2014 (the "Architect's Letter"), superseding and modifying the letter from PEA to the Board dated October 15, 2014;

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- Revised Drawings G-01, G-02, and Z-01 through Z-52, dated April 22, 2014, prepared by PEA (the “Drawings”);
- Revised BSA Zoning Analysis Form; and
- Revised Environmental Assessment Statement (“EAS”).

The supplementary materials consist of the following:

- Copy of the presentation given by the Hospital and its consultants at the April 8, 2014, public hearing of the Board;
- Letter from PEA to the Board, dated April 22, 2014 (the “PEA Garage Overbuild Letter”), regarding the alternative building design proposed by Preserve Park Slope in the March 25, 2014, submission by Stuart Klein to the Board (the “Garage Overbuild”);
- Letter from Michael Kwartler and Associates to the Board, dated April 21, 2014 (the “MKA Garage Overbuild Letter”), regarding the Garage Overbuild;
- Letter from Lend Lease to the Board, dated April 22, 2014, regarding the construction logistics plan for the Center (the “Lend Lease Letter”);
- Letter from Philip Habib & Associates (“PHA”), dated April 8, 2014, regarding the traffic analysis provided in the EAS and in the supplementary PHA Traffic Assessment previously submitted to the Board (the “PHA Letter”); and
- Traffic and Parking Management Plan for the Center, prepared by the Hospital in consultation with PHA (the “Traffic and Parking Management Plan”).

### **Modifications to the Center**

As described in our letter to the Board dated April 3, 2014, and at the Board’s public hearing on April 8, 2014, the design of the Center has been modified in response to comments made by the Board and to the conditions set forth in the resolution of Brooklyn Community Board 6 with respect to the height and setback of the building in the R6B and R7B zoning districts. The Hospital has determined that these modifications, while challenging from a programmatic standpoint, can be achieved, and recognizes that the changes will allow the

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Center's design to be more in keeping with the essential character of the neighborhood. The modifications are as follows:

- The building's setback from 5<sup>th</sup> Street at the 6<sup>th</sup> floor in the R7B zoning district has been increased by 21 feet so as to achieve full compliance with applicable height and setback regulations in the R7B district;
- The building's setback from 5<sup>th</sup> Street at the 4<sup>th</sup> floor in the R6B zoning district has been increased by an additional 15 feet, to a total depth of 20 feet from the property line; and
- The building's setback from 5<sup>th</sup> Street at the 5<sup>th</sup> through 7<sup>th</sup> floors in the R6B zoning district has been increased by additional 10 feet, to a total depth of 41 feet from the property line.

As a result of these modifications, the floor area of the proposed Center has decreased from 303,862 square feet to 298,350 square feet. The Drawings, BSA Zoning Analysis Form, Statement of Facts and Findings, Architect's Letter, and EAS have been updated to reflect these design changes. The Architect's Letter also incorporates information previously provided to the Board in materials submitted after the October 16, 2013, filing of the Application.

#### **Responses to Comments by the Board**

Two of the supplementary materials enclosed with this letter provide responses to comments made by the Board at the April 7, 2014, review session and the April 8, 2014, public hearing. The Lend Lease Letter describes the measures that Lend Lease and the Hospital will take to minimize the impact of the construction of the Center on the surrounding neighborhood. The Traffic and Parking Management Plan describes the measures that the Hospital is currently taking and will take, both during the construction of the Center and once the Center is operational, to minimize the project's impact on vehicular traffic. The submission includes an e-mail from Christopher Hrones of the New York City Department of Transportation ("DOT") describing DOT's initial response to the Plan.

#### **Responses to the Preserve Park Slope Submission**

A number of the materials in the March 25, 2014, submission to the Board on behalf of Preserve Park Slope concern the Garage Overbuild, a proposed alternative design for an ambulatory care center that includes five stories of new construction over the existing NYM

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garage. As described in the PEA Garage Overbuild Letter, the Garage Overbuild has most of the same infirmities as the Complying Development studied in the Application, with issues relating to circulation, operations, structural conflicts, program and planning, and access and traffic, and would not satisfy NYM's programmatic needs. Further, as discussed in the MKA Garage Overbuild Letter, the Garage Overbuild would not require a lesser variance than the proposed Center and would, in fact, require several additional zoning waivers.

The March 24, 2014, written testimony by Beth Morrow and Valerie Zilbersher of Preserve Park Slope and the February 2014 letter from Environmental Project Data Statements Company (EPDSCO), both included in the Preserve Park Slope submission, raise concerns with the traffic impacts of the proposed Center and PHA's assessment thereof. The PHA Letter responds to these comments by, among other things, summarizing the key findings of the EAS's traffic analysis and the PHA Traffic Assessment; discussing how the methodologies underlying these findings are consistent with, or are more conservative than, the *CEQR Technical Manual* guidelines; and describing the design features of the proposed Center that help minimize the project's projected traffic impacts.<sup>1</sup>

The March 25, 2014, letter to the Board from Stuart Klein makes a number of arguments in opposition to the Application, many of which are factually incorrect and all of which have already addressed by the Hospital in oral or written testimony. Two points in the Application are nonetheless worth reiterating in response to the Klein letter:

1. *NYM's Application should be afforded deference by the Board under the Cornell doctrine.*

In Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986), the Court of Appeals held that educational institutions 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." 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.

As described in the Statement of Facts and Findings, NYM is a teaching hospital, with ten graduate medical education programs, and is affiliated with Weill Cornell Medical College. It is also affiliated with the NYM Center for Allied Health Education, which provides

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<sup>1</sup> There was testimony by the author of the EPDSCO letter at the April 8, 2014, public hearing that some or all of the comments in the EPDSCO letter had been made in error. Nonetheless, the PHA Letter addresses these comments to ensure that the record is clear on these matters.

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training in five allied health professions. Medical students, residents, and fellows across many specialties—including primary care, surgery, pediatrics, obstetrics and gynecology, anesthesiology, and emergency medicine—receive focused training that teaches these new clinicians to feel comfortable practicing medicine in any setting. The Hospital's experienced faculty not only supervise and educate these young doctors at the patient bedside, but also promote learning through weekly conferences and rounds, including professional rounds, morbidity and mortality conferences, journal club, quality improvement seminars, subspecialty seminars, book reviews, and service rounds. The Center would facilitate this educational function and would more generally further NYM's mission as a teaching hospital.

The Board has consistently applied the Cornell doctrine to variance applications made by hospitals with educational functions, including for the proposed development of new ambulatory care facilities. See Memorial Hospital for Cancer and Allied Diseases, 1133 York Avenue (BSA Cal. No. 183-11-BZ) (variance from floor area, rear yard, height and setback, and curb cut regulations to allow construction of outpatient surgical center); New York Presbyterian Hospital, 1273-1285 York Avenue (BSA Cal. No. 325-12-BZ) (variance from height and setback, lot coverage, rear yard, floor area and parking regulations to permit a new maternity hospital and ambulatory diagnostic or treatment health care facility); see also NYU Langone Medical Center Science Building (BSA Cal. No. 163-12-BZ) (variance from height and setback, rear yard equivalent, lot coverage, and tower coverage regulations to accommodate floor plate requirements and to allow for integration of building with existing campus facilities); NYU Langone Medical Center Kimmel Program, 400-424 East 34<sup>th</sup> Street (BSA Cal. No. 186-10-BZ) (variance from rear yard, rear yard equivalent, height and setback, rear yard setback, tower coverage, maximum permitted parking, minimum square footage per parking space, and curb cut requirements to accommodate floor plate requirements of hospital and energy buildings and to allow for required connections to existing buildings); NYU Langone Medical Center Emergency Department Expansion, 522-566 & 596-600 First Avenue (BSA Cal. No. 41-10-BZ) (variance from rear yard and signage regulations to accommodate the floor plate requirements of emergency department enlargement and because development site was compromised by irregular dimensions and existing improvements); Weill Cornell Medical College Biomedical Research Building, 411-431 East 69<sup>th</sup> 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 floor plate 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 floor plate 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

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distance between buildings and side yard requirements granted to accommodate floor plate requirements of school building). Granting deference to the Hospital's Application under Cornell is consistent with these cases.

2. *NYM has a demonstrated programmatic need for adequate and appropriately configured space for outpatient treatment facilities.*

As discussed in the Application, NYM has a programmatic need for adequate and appropriate space for ambulatory care facilities, located on its main campus. Both the Board and the Court of Appeals have established that zoning officials should not second-guess the expansion needs of a non-profit institution. See In re Pine Knolls Alliance Church v. Zoning Board of Appeals of the Town of Moreau, 5 N.Y.3d 407 (2005) (“We made clear in Cornell University that it is not the role of zoning officials to second-guess the expansion needs of religious and educational institutions.”); see also Mount Sinai Medical Center, Center for Science & Medicine, 220-236 West 28<sup>th</sup> Street (BSA Cal. No. 257-07-BZ) (“[T]he 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 . . . .” (internal citations omitted)); Columbia University Northwest Science Building, 3030 Broadway, Manhattan (BSA Cal. No. 113-06-BZ) (“[T]he Board credits the applicant’s statements as to Columbia’s programmatic needs and the limitations of a complying building.”). Nonetheless, the Hospital has provided ample evidence and analysis to establish its programmatic need for the proposed Center. In particular, the Application includes the following:

- Letter from NYM, dated March 4, 2014 (the “NYM Letter”), discussing, among other things, the Hospital’s mission; the effects of healthcare industry trends, technological advances, changes in patient populations, and changes in insurance reimbursement systems on the Hospital’s programmatic needs; the Hospital’s existing facilities and their programmatic deficiencies; and the ability of the proposed Center to satisfy the Hospital’s programmatic needs;
- NYM Statistical Exhibits, attached to the NYM Letter, providing numerical data on the Hospital’s current and historic patient populations;
- 10-Year Surgical Case Summary, attached to the NYM Letter, providing numerical data on the Hospital’s current and historic inpatient and ambulatory surgical case volumes;
- Historical Growth Data, attached to the NYM Letter, providing, with respect to each Institute proposed to be located in the Center, numerical data on current and historic

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patient volumes, projections for future patient volumes, and descriptions of current and projected facilities and levels of service;

- Space Planning and Allocation Summary table and Relocated and New Program Space table, attached to the NYM Letter, describing, with respect to each clinical program component of the proposed Center, (i) the current location of the program, (ii) the existing square footage allocated to the program, (iii) the square footage allocated to the program in the proposed Center, (iv) the need for the proposed amount of square footage, and (v) the Hospital's plans for the existing program space following the relocation and/or expansion of the program to the Center;
- Table G-1 of the EAS, providing existing and projected staff and visitor volumes for each clinical program component of the Center; and
- The Architect's Letter, describing, among other things, why the Center's proposed program necessitates floor plates with certain dimensions and configurations.

It is worth noting that, although the Application contains data to support the proposed amount of program in the Center, the requested bulk waivers concern the configuration of the building's floor plates, not the building's overall size. The Complying Development, in fact, contains more floor area than the Center. In this respect, the Hospital's programmatic need for the Center is one based primarily on qualitative standards for healthcare planning, particularly with respect to a building's programmatic adjacencies and circulation networks. The Architect's Letter from PEA, a leading and trusted expert in the field of healthcare design, describes these requirements in great detail. The Letter also explains why the Center would satisfy the Hospital's programmatic needs, whereas the Complying Development would not.

Mr. Klein states in his letter that NYM has not provided sufficient data to verify its programmatic needs, comparing the Application to the applications by Columbia University for a new scientific research building at 3030 Broadway (BSA Cal. No. 113-06-BZ); by Weill Cornell Medical College for a new research building at 411-431 East 69<sup>th</sup> Street (BSA Cal. No. 170-08-BZ); by New York Presbyterian Hospital for a new maternity hospital and ambulatory care facility at 1273-1285 York Avenue (BSA Cal. No. 325-12-BZ); and by Memorial Sloan-Kettering for an ambulatory care facility (BSA Cal. No. 183-11-BZ). As we wrote in our letter to the Board dated December 20, 2013, variance applications that seek different zoning waivers for different kinds of facilities on zoning lots with different physical conditions must incorporate different forms of supporting materials. Notably, scientific research buildings—such as those for which Columbia University and Weill Cornell Medical College were granted variances—are

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designed in accordance with industry standards that are almost entirely unrelated to those for an ambulatory care center.

In any event, our review of the variance applications cited in Mr. Klein's letter revealed that the programmatic need information included in the Application is comparable in detail to that provided in the cite applications. In particular, the applications for ambulatory care centers by New York Presbyterian Hospital and Memorial Sloan-Kettering—the two applications cited by Mr. Klein that may be considered analogous to the Hospital's—relied on information provided by the owner with respect to staff and patient populations and existing and needed facilities, as well as on a qualitative analysis of how the needed program would be best configured on the subject site. The Application provides this same information, as described above, and, in our opinion, with more substantiating data.

Very truly yours,



Elise Wagner

Enclosures

cc: Brooklyn Community Board 6  
Hon. Eric Adams – Brooklyn Borough President  
Hon. Brad Lander – City Council Member 39<sup>th</sup> District  
Ira Gluckman, R.A. – Department of Buildings, Brooklyn  
Purnima Kapur – Department of City Planning  
Christopher Holme – Department of City Planning

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