

HOSPITAL FOR SPECIAL SURGERY
PROPOSED AMBULATORY CARE FACILITY

STATEMENT OF FACTS AND FINDINGS
IN SUPPORT OF AN APPLICATION FOR A VARIANCE
PURSUANT TO ZONING RESOLUTION SECTION 72-21

AFFECTED PREMISES

515-523 East 73rd Street and 512-518 East 74th Street
(Manhattan Block 1485, Lots 11, 14, 40)

Community District No. 8, Manhattan

Fried Frank Harris Shriver & Jacobson LLP

One New York Plaza

New York, New York 10004

I. Introduction

This application is made on behalf of the Hospital for Special Surgery and its affiliate, HSS Properties Corporation (collectively, the "Applicant") under Section 72-21 of the Zoning Resolution of the City of New York (the "Zoning Resolution" or "ZR") and Section 666 of the New York City Charter to allow for the development of a thirteen-story ambulatory care facility (the "Proposed Facility") at a through-block development site located at 515-523 East 73rd Street and 512-518 East 74th Street, New York, New York (the "Property").

The Applicant, an academic medical center and worldwide leader in orthopedics, rheumatology and rehabilitation, needs a new ambulatory care facility in close proximity to its existing facilities with floor plates suitable for full-service operating floors, physicians offices, testing and diagnostic equipment, educational and training facilities, and rehabilitation facilities and parking for patients and doctors. After a long search for a suitable site, the Applicant has located the Property. However, the irregular "Z" shape of the Property and the limits of its footprint restrict the configuration and dimensions of the Proposed Facility's floor plates. Additionally, subsurface conditions at the Property, including an elevated water table, contaminated groundwater, and the location of bedrock close to the surface, would make the construction of more than one level below-grade cost-prohibitive and infeasible.

Due to the constraints of the Property, the programmatic needs of the Applicant as an academic medical center cannot be satisfied by a development in compliance with the Zoning Resolution. As described herein, the Proposed Facility would comply with applicable use regulations over approximately 97% of the Property but would require modification of the regulations controlling permitted use in a 5.59-foot wide portion of the Property that is within an M3-2 zoning district. The Proposed Facility would also require waivers with respect to floor area ratio, the number of permitted accessory off-street parking spaces, and on one street frontage of the through-block site, the rear yard equivalent and height and setback regulations.

The Proposed Facility has been designed to harmonize with the surrounding built context and to utilize the minimum variance necessary to satisfy the Applicant's programmatic needs.

II. Statement of Facts

A. The Property

The Property consists of Lots 11, 14, and 40 in Manhattan Block 1485. The Property has a lot area of 20,434 square feet, of which 19,863 square feet is located in an M1-4 zoning district and a sliver of 571 square feet (5.59 feet in width by 102.17 feet in depth) is located in an M3-2 zoning district. The Property is an irregular Z-shaped lot that consists of a through lot portion in the center and one small interior lot portion on each street frontage. The through lot portion measures 75 feet in width by 204 feet in depth. The 73rd Street interior lot, to the east of the through lot portion, measures 25 feet in width by 102 feet in depth, and the 74th Street interior lot, to the west of the through lot portion, also measures 25 feet in width by 102 feet in depth.

There are currently three buildings on the Property, a one-story building at 515-521 East 73rd Street, a two-story building at 512-518 East 74th Street and a three-story building at 523 East 73rd Street. 512-518 East 74th St/ 517-519 East 73rd Street is currently occupied by an automotive repair garage. 523 East 73rd Street is occupied by an orthopedic rehabilitation device company located on the first floor. The existing buildings on the Property would be demolished to allow for the construction of the proposed ambulatory care facility.

B. The Surrounding Area and Neighborhood

The Property is located primarily in an M1-4 manufacturing zoning district between an M3-2 heavy manufacturing district and an R10 high density residential zoning district. (As noted above, a 5.59 foot wide strip is in the M3-2 district.) Uses in the area are mixed, and include institutional, commercial, industrial and residential uses, and a large concentration of medical uses similar to the proposed ambulatory care facility.

Directly to the east of the Property along the 73th Street frontage is a large vacant through-block property under the jurisdiction of the Department of Sanitation (“DSNY”). New development for the DSNY site may include uses such as a health care, education, or scientific research. Between the DSNY site and the Property on the East 74th Street frontage (Block 1485, Lot 39) is a 3-story building last used by a catering company. To the immediate west of the Property on the 74th Street frontage (Lot 45) is a four-story building used for a nursery school. Directly west of the Property at the 73rd Street frontage (Lot 10) is a six-story multi-family walk-up building. Directly north of the Property across East 74th Street is a Con Edison facility at Lot 5 in Block 1486 with approximately 600 feet of street frontage on the north side of East 74th Street.

The Property is located between one and two blocks from the Applicant’s existing medical facilities in the area. The Applicant’s main hospital building (the “Main Hospital”) is located between East 70th and East 71st Streets between York Avenue and extending over the FDR Drive (Block 1482, Lot 20). Directly north of the Main Hospital (across East 71st Street) is the Applicant’s Caspary Research Building located on the northeast corner of FDR Drive. To the west and north of the Caspary Research Building is the Applicant’s Belaire building located on East 72nd Street between York Avenue and FDR Drive (Block 1483, Lot 33). The Applicant’s Dana Center is located on East 73rd Street between York Avenue and FDR Drive (Block 1484, Lot 7501). The Applicant’s existing facilities are shown on an area map annexed hereto as **Exhibit A**.

Additional area medical facilities include New York-Presbyterian Hospital on East 69th Street between First Avenue and York Avenue (Block 1464, Lot 21), Memorial Sloan-Kettering Hospital on York Avenue between East 67th and East 68th Streets (Block 1462, Lot 5) and Memorial Sloan-Kettering Integrative Medicine Outpatient Center on First Avenue between East 74th and East 75th Streets (Block 1449, Lot 23), Gracie Square Hospital located on East 76th Street between First Avenue and York Avenue (Block 1470, Lot 33), Rockefeller University Hospital on York Avenue between East 65th and East 66th Streets (Block 1480, Lot 10).

The block in which the Property sits and adjacent blocks to the north and south include a mix of uses including institutional, manufacturing, commercial and residential uses. To the west

of the Property, the subject block is predominantly developed with five to six story residential buildings; along York Avenue, a portion of 73rd Street, and much of 74th Street, these buildings contain ground floor commercial uses. On the block directly south of the Property (Block 1484), existing development includes two residential towers of 38 stories (River Terrace) and 50 stories (East River Place), as well as a number of five- and six-story mixed use or residential buildings.

The Property contains three buildings, one used by a car repair garage and the other occupied on the first floor by a medical supply company. The proposed ambulatory care facility will replace the auto repair facility and medical supply company and will provide a transition buffer between the residential buildings to the south and west, the Con Ed facility to the north, and the anticipated institutional development on the DSNY Site to the east. The Proposed Facility, at thirteen stories (including rooftop mechanical floor), is significantly lower in height than the 38-story and 50-story buildings on the residential block to the south. The medical facility use is similar to the concentration of other medical facilities in the surrounding area.

C. Zoning Restrictions Applicable to the Property

The proposed use, an ambulatory diagnostic and treatment health care facility (Use Group 4A), is permitted as-of-right in the M1-4 district. Use Group 4A is not permitted as-of-right, however, in the narrow (5.59-foot wide) portion of the Property in the M3-2 district. Because the ambulatory care facility will be housed in one building on the Property, a waiver is required to allow the Proposed Facility to be constructed within this narrow strip.

Floor Area

The Property includes 19,863 square feet of lot area in the M1-4 district and 571 square feet in the M3-2 district. ZR Section 43-122 provides that the maximum FAR for community facility use in the M1-4 district is 6.5, allowing 129,110 square feet of floor area (19,863 x 6.5). There is no applicable floor area ratio for Use Group 4A uses in the M3-2 district, however the maximum FAR for uses allowed in the M3-2 district is 2.0, allowing 1,142 square feet of floor area (571 x 2.0). The total maximum zoning floor area on the Property is 130,252 square feet (129,110 + 1,142). This is less than the 163,472 square feet (8.0 FAR) which is the minimum zoning floor area necessary for the Applicants.

Rear Yard Equivalent

ZR Sections 43-28(b) and 43-23(b) provide that on a through lot with a depth greater than 110 feet, one of the following rear yard equivalents must be provided:

(a) an open area with a minimum #lot depth# of 40 feet midway (or within five feet of being midway) between the two #street lines# upon which such #through lot# fronts;

(b) two open areas, each adjoining and extending along the full length of the #street line#, and each with a minimum depth of 20 feet measured from such #street line#; or

(c) an open area adjoining and extending along the full length of each #side lot line#, with a minimum width of 20 feet measured from each such #side lot line#.

To provide contiguous floor plates on the through lot as needed for the proposed ambulatory care facility, it is not possible to provide a rear yard midway between the two street lines as that would divide the floor plate in two (option (a)), or along the length of each side lot line which would result in a floor plate width of only 35 feet (option (c)). The other permitted rear yard equivalent is option (b), which provides for 20-foot open areas along the length of each street line. The Applicant seeks relief from one of these two required open areas for the first five floors of the proposed building, where no rear yard equivalent is provided along the street line on East 73rd Street. This build out allows for a street wall and setback consistent with the adjacent six-story building.

Height and Setback – Alternate Front Setback

The Zoning Resolution provides two alternate sets of height and setback regulations, under Sections 43-43 (Maximum Height of Front Wall and Required Front Setbacks) and 43-44 (Alternate Front Setbacks). The applicant is using the Section 43-44 alternative as it permits somewhat larger floor plates on the upper floors, which are important for the Applicant's Program. ZR Section 43-44 requires a 15 foot front open area up to a height of 60 feet, above which height and setback are controlled by a sky exposure plane of 3.7 feet of vertical distance for every one foot of horizontal distance. On the 74th Street frontage of the Property, the proposed ambulatory care facility would comply with the required front open area of 15 feet. However, on the 73rd Street frontage, the proposed building is built to the property line (consistent with the adjacent residential building) until the fifth floor, where an approximately 5-foot setback is provided. The waiver is requested only for the East 73rd Street frontage of the Property.

Accessory Parking & Loading

Section 13-133 of the Zoning Resolution allows, in a community facility development in Manhattan Community District 8, one accessory parking space per 4,000 square feet of floor area, or 100 spaces, whichever is less. For the proposed 163,472 square foot ambulatory care facility, this would allow 41 spaces; the Applicant seeks 98 spaces.

Section 44-52 of the Zoning Resolution requires one off-street loading berth for up to 300,000 square feet of "hospitals and related facilities". The proposed ambulatory care facility would have two loading berth located on the East 73rd Street frontage of the Property.

D. About the Applicant

The Hospital for Special Surgery, founded in 1863, is a not-for-profit, acute care, academic medical center predominantly focused on orthopedics, rheumatology, rehabilitation and pain management of related disorders. The Applicant's services cover 25% of inpatient and 27% of orthopedic ambulatory surgery in Manhattan and 15% of inpatient and 12% of ambulatory surgery in New York City. Its mission is to provide the highest quality patient care, improve mobility, and enhance the quality of life for all and to advance the science of orthopedic surgery, rheumatology, and their related disciplines through research and education.

The Applicant's Department of Orthopedics serves as the Department of Orthopedics for Weill Cornell Medical College and other medical staff members serve as faculty at Weill Cornell in disciplines such as medicine anesthesiology, radiology, neurology and pathology. The Applicant has over 100 residents and fellows in training, along with approximately 200 residents and fellows who rotate from other institutions in the U.S. and abroad. The Applicant also provides training for several hundred medical students, physical therapy students, nursing students, public health and health care administration students.

The Applicant is recognized as a leader in Orthopedics and Rheumatology around the world. In 2011, the Applicant was ranked by U.S. News and World Report as number one in Orthopedics and number two in Rheumatology, and the Applicant has been top-ranked in the northeast for twenty-two consecutive years. The American Nurses Credentialing Center has three times granted Magnet Recognition to the Applicant and Consumer Reports Health has ranked the Applicant as number one in patient experience among all New York hospitals. Providing the highest level of care is a critical part of the Applicant's mission.

During 2011, the Applicant performed over 26,000 surgeries and had over 300,000 outpatient visits for non-surgical services such as radiology (diagnostic and interventional), rehabilitation, neurology, and laboratory work.

E. The Need for the Proposed Facility

From 2007 to 2011 the Applicant has experienced an average annual growth rate in demand for its services of approximately 6 percent for inpatient admissions and 8 percent for ambulatory surgeries. Many indicators point to a continuation of this growth momentum. These include:

- Continued and growing acceptance of joint replacement, spine surgery, sports medicine, and other orthopedic procedures due to new technologies and capabilities, superior devices and implants, high success rates, and quick recovery period;
- The general aging of the population;
- A growing number of younger individuals electing to have orthopedic procedures;
- Increasing awareness of the Applicant's unique and specialized services;
- Current backlogs and waiting times for surgeries.

Based on forecasted volume, current inpatient beds and operating rooms will be at full capacity utilization by 2015. The Applicant will need approximately 48 operating rooms (an additional 13 operating rooms) and 240 inpatient beds (an additional 35 inpatient beds) to accommodate expected demand through 2020.

Currently, the Applicant's inpatient surgeries (such as hip and knee replacements) are performed in the same building as outpatient surgeries (otherwise known as "ambulatory care", for procedures for injuries to rotator cuffs and anterior cruciate ligaments, known as "ACL").

Inpatient care has different operational needs than outpatient care, and the current sharing of space in the Applicant's main hospital building results in operational challenges that are exacerbated by increasing demand for both inpatient and outpatient care.

To meet the growing demand for its medical and training services, the Applicant needs to relocate its ambulatory care facilities (including physician offices, diagnostic equipment, rehabilitation, and teaching areas) to a separate integrated facility. The consolidation of inpatient services in the main hospital building, with a full-service ambulatory care facility in a separate location will vastly improve the Applicant's level of patient care and allow it to respond to increasing demand and continue to fulfill its mission in the years to come.

In addition to its general need to accommodate an expansion of the uses described above in close proximity to its current facilities, the Applicant has specific needs with respect to size and layout of floors in order to have a functional ambulatory care facility. These needs include the following:

- On-site training facilities: While much of the teaching or medical students and residents is done on the job (through patient consultations and in operating rooms), additional teaching occurs when students or residents can gather for lectures or discussions. It is important to have a dedicated space for this learning function within the ambulatory care facility.
- On-site physician's offices: The physicians who would perform the surgeries in the ambulatory care facility perform a wide range of functions, including patient evaluation, surgery, research, and teaching. To effectively utilize the limited time of the physicians, it is crucial that they can perform as many of these functions as possible in a single location.
- On-site diagnostic services: Patients often come in with exceedingly painful conditions that require immediate diagnosis and which severely limit mobility. The ability to diagnose (through X-ray or MRI) in the same facility where the patient's doctor is located is crucial to timely care of acute injuries.
- Critical mass of operating rooms on each operating floor: Operating rooms share certain central functions such as pre-operative holding areas, orthopedic surgical equipment staging, and support areas. Additionally, the flow of staff, patients and equipment to operating rooms is controlled by a single nurse supervisor on a floor. These ancillary services and supervision are extremely sensitive to economies of scale, as the same ancillary facilities and staffing that are needed for one operating room can also service up to sixteen operating rooms or more. If there is a lower number of operating rooms on a given floor, therefore, there are tremendous losses in efficiency and tremendous increases in the cost of each surgery. The Applicant has determined that six operating rooms is the smallest number on a single floor that would be economical.
- Even number of operating rooms on a floor: An even number of operating rooms allows each physician to be assigned to two rooms at a time, one where the

surgeon will be operating on a patient and the other where a patient will be prepped for surgery with that same doctor.

- Post-anesthesia care unit (PACU) on a single floor: The patient recovery area requires certain staffing and ancillary services that are highly scalable; due to economies of scale, locating the PACU on a single floor is crucial to operational efficiency and reducing the cost of patient care.
- On-site rehabilitation services: Following ambulatory surgery, most patients will need to begin an intensive physical therapy program; to be able to receive a rehabilitation program immediately following surgery improves patient recovery times and long-term prognosis.
- Parking: The facility needs sufficient off-street parking spaces to serve a patient population with mobility limitations and the family and staff that attend them.
- Proximity to existing facilities: Although the physicians whose offices will be located in the Proposed Facility would do much of their work there, it is vital that such physicians have convenient access to the Applicant's other facilities when needed for inpatient care, research conferences, and other aspects of their work within the larger HSS community.

In 2009, the Applicant, after a long search for an existing building or a development site that would meet the above programmatic needs, found the Property.

F. The Proposed Facility

The Proposed Facility would be thirteen stories (including rooftop mechanical floor), with a total zoning floor area of 163,472 square feet, a street wall height of 60 feet along East 73rd Street and 131.5 feet along East 74th Street, and a total height of 185.5 feet (including a rooftop mechanical floor of 18 feet in height). Along the East 74th Street frontage, floors one through ten would be set back twenty feet from the street line, floors ten through twelve would be set back a total of 31.75 feet from the street line, and the thirteenth floor and bulkhead would be set back 41.75 feet. Along the East 73rd Street frontage, floors one through four would be built to the street line, the fifth floor would be set back five feet, floor six through nine would be set back twenty feet, floors ten through twelve would be set back 34 feet, and the thirteenth floor, used for building mechanical systems, would be set back a total of 50.5 feet.

The cellar level of the Proposed Facility would contain 98 accessory off-street parking spaces to accommodate the parking needs of patients and visitors without causing traffic congestion and parking shortfalls in the surrounding area.

The first floor would contain the building entrance and main lobby. A through-block drive lane would allow drop-off and pick-up of patients, and would serve as queuing and reservoir space for the below grade accessory garage. At the East 74th Street frontage of the building, along the sidewalk there would be a nine-space bicycle parking area to the west of the drive-through lane; along the East 73rd Street frontage of the building, there would be two

loading berths to the west of the drive-through lane and bulk oxygen storage to the east of the drive-through lane.

The second floor of the Proposed Facility would contain the post-anesthesia care unit servicing the operating rooms in the building, along with a visitor waiting area.

Floors three through five of the Proposed Facility would be the operating floors, containing six operating rooms per floor with ancillary facilities including pre-operative holding, orthopedic surgical equipment staging, support areas for doctors to perform post-surgery patient follow-up, and family waiting areas.

The sixth floor of the Proposed Facility would contain the building's sterilization facilities, as well as staff lockers and break areas. The seventh floor would contain mechanical and building support facilities. The eighth floor would contain MRI and X-Ray facilities, ten examination rooms, five physician office suites, and the proposed new teaching center. Floor nine would contain the building's rehabilitation, sports medicine, and occupational therapy departments, including a large exercise room, a hydrotherapy room, eight examination rooms, ten treatment plinths, and a performance testing room. Floors ten through twelve of the Proposed Facility would contain additional X-Ray facilities as well as offices for thirty physicians.

The thirteenth floor of the building would contain mechanical systems for the building.

G. The Complying Program

In addition to plans for the Proposed Facility, described above, this application includes a massing diagram for a building (the "Complying Building") that would comply with all applicable provisions of the Zoning Resolution. (An alternative approach to as-of-right development would be a 254-foot high tower, set back approximately 50 feet from each street line and shown on the drawing labeled 'AOR-Tower'. This alternative approach to complying development is not discussed here as the floor plates created would be further from meeting the Applicant's programmatic needs.

As indicated in the As-of-Right drawing set attached to this variance application, the Complying Building consists of a facility with twelve floors (including rooftop mechanical floor), a zoning floor area of approximately 129,110 square feet, 20-foot setbacks from the property line along each of East 73rd Street and East 74th Street, 32 accessory off-street parking spaces, and an 8 foot open side yard between the Property and the adjacent DSNY property. (Without a waiver of permitted use in the M3-2 district, the portion of the Property located in this district would be left vacant.) The Complying Building would be 173'6" in height, including rooftop mechanical floors totaling 32 feet in height.

Below grade in a cellar level would be parking for only 32 spaces, along with mechanical space. At the ground level would be loading and lobby areas as well as queuing and reservoir space for the accessory parking garage below. The second floor would contain the post anesthesia care unit, with 30 beds. Similar to the Proposed Facility, the third through fifth floors of the building would house ambulatory surgery floors; the constrained floor plates, however,

resulting from compliance with the height and setback regulations along East 73rd Street would allow for a maximum of only four operating room per floor (versus six in the Proposed Facility) and a total of only twelve operating rooms (versus 18 in the Proposed Facility), a reduction of 33%. This substantial reduction in the number of operating rooms per floor would result in great inefficiencies in staffing and ancillary services, and a corresponding substantial increase in the cost of patient care. Additionally, the medical equipment staging space and storage areas for the operating rooms would be substantially undersized in the Complying Building affecting the speed of access to operating equipment and patient care.

The sixth floor of the building would house sterilization functions, mechanical systems and staff lockers, and the seventh floor would have mechanical and physician locker areas. The seventh floor of the complying building would accommodate fewer support and “back of house” spaces than the Proposed Facility; the functions that could not be accommodated would need to be housed off-site.

The eighth through tenth floors of the Complying Building would contain physician offices with a capacity of thirty physicians (as opposed to thirty-five in the Proposed Facility). Although the number of physicians to be located in the Complying Building would be reduced by 14%, because the number of operating rooms in the Complying Building would need be reduced by 33%, there would not be enough operating rooms to meet the needs of these physicians; consequently a significant number of outpatient surgeries would need to be performed in the Main Hospital, requiring patients and physicians to travel between various buildings. The eleventh and twelfth floors would contain mechanical systems for the building.

The Complying Building would contain two fewer program floors, less floor area, and significantly limited floor plates; these constraints would result in a facility that fails to meet the Applicant’s programmatic needs. As noted above, the substantial reduction in operating rooms per floor would result in the need for a much higher ratio to staff to operating rooms or alternatively, levels of staffing and equipment and other availability of services untenable for the type of patient care provided by the Applicant. Significantly, the Complying Building would not have space at all for the proposed teaching center, nor for MRI facilities or rehabilitation facilities. As described above under “Need for the Proposed Facility,” these affect both patient care and the efficacy of the facility as a teaching hospital. Additionally, the Complying Building would not have space to provide a dedicated staff elevator for the operating rooms. This will result in longer wait times for staff and operational inefficiencies that will negatively impact wait times and the Applicant’s ability to meet demand. A lack of dedicated OR elevator will also result in “clean” staff who have changed in operating attire sharing elevators with patients, considered not clean for these purposes. The Complying Building would also limit the number of accessory parking spaces to 32, significantly limiting available parking for patients with mobility limitations.

H. Department of Buildings Objections

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

- 1) **Proposed floor area ratio for a community facility in M1-4 zoning district portion of the lot, exceeds the maximum 6.5 FAR and is contrary to ZR 43-122. The community facility use does not have a maximum FAR in M3-2 portion of the lot.**

ZR Section 43-122 provides that the maximum FAR for community facility use in the M1-4 district is 6.5, allowing 129,110 square feet of floor area (19,863 x 6.5). There is no applicable floor area ratio for Use Group 4A uses in the M3-2 district, and the maximum FAR for permitted uses in the M3-2 district is 2.0, allowing 1,142 square feet of floor area (571 x 2.0). The total maximum zoning floor area on the Property is 130,252 square feet (129,110 + 1,142). The Proposed Facility is 163,472 square feet, approximately 8.0 FAR. *See* Drawing Z-01 A (Proposed Zoning Analysis, 4-19-12).

- 2) **The proposed ambulatory diagnostic or treatment health care facility located in M3-2 zoning portion of the lot is not a permitted use per ZR 42-12 (for the zoning lot not existing prior to 1961).**

Under ZR Section 42-12 of the Zoning Resolution, Use Group 4A is not permitted as-of-right in M3 zoning districts. The Proposed Facility locates Use Group 4A use in the 5.59 foot wide portion of the Property in the M3-2 District. *See* Drawings Z-01 A (Proposed Zoning Analysis, 4-19-12) and Z-01 C (Massing Diagrams Comparison – 74th Street, 4-19-12).

- 3) **Proposed structure 75 feet in height, along the street line of East 73 Street is not a permitted obstruction in the rear yard equivalent, contrary to ZR 43-28 (b), and ZR 43-23(b).**

Under ZR Section 43-28, on any through lot in an M1-4 or M3-2 district and with a maximum depth from street to street of at least 110 feet, a rear yard equivalent with a total depth of 40 feet must be provided, either a single midblock open area, or as a twenty foot open area on each street frontage. The Proposed Facility would be built to the street line on East 73rd Street, in the area otherwise required for the 20 foot rear yard equivalent on this frontage, in order to accommodate the needed floor plates. *See* Drawings Z-01 B (Massing Diagrams Comparison – 73rd Street, 4-19-12), Z-01 C (Massing Diagrams Comparison – 74th Street, 4-19-12), Z-04 (Proposed Second Floor Plan, 4-19-12), Z-05 (Proposed 3rd and 4th Floor Plans, 4-19-12) and Z-06 (Proposed 5th Floor Plan, 4-19-12).

- 4) **Proposed 75 feet in height structure, along the East 73 Street is not permitted in the Depth of Optional Front Open Area of 15 feet, for the Alternate Front Setback, as per ZR 43-44.**

The height and setback regulations of ZR Section 43-44 require a 15 foot front open area up to a height of 60 feet (above which height and setback are controlled by a sky exposure plane). Since, as described in #3 above, the Proposed Facility would be built to the street line on

4-27-12

East 73rd Street to provide the needed floor plates, this open area is not provided. *See* Drawings Z-01 B (Massing Diagrams Comparison – 73rd Street, 4-19-12), Z-03 (Proposed First Floor Plan, 4-19-12), Z-04 (Proposed Second Floor Plan, 4-19-12) and Z-05 (Proposed 3rd and 4th Floor Plans, 4-19-12).

5) Proposed accessory parking for community facility in Community Board No. 8 in Manhattan, exceeds 1 space per 4,000 square feet of floor area, and is contrary to ZR 13-133.

ZR Section 13-133 allows for community facility uses in Manhattan Community District 8 one accessory parking space per 4,000 square feet of floor area or 100 spaces, whichever is less. For the proposed 163,472 square foot ambulatory care facility, this would allow 41 spaces. As more spaces are needed for the particular populations served by HSS, the Proposed Facility provides 98 spaces. *See* Drawings Z-01 A (Proposed Zoning Analysis, 4-19-12) and Z-02 (Proposed Cellar, 4-19-12).

III. Statement of Findings

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

A. That there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular #zoning lot#; and that, as a result of such unique physical conditions, practical difficulties or unnecessary hardship arise in complying strictly with the #use# or #bulk# provisions of the Resolution; and that the alleged practical difficulties or unnecessary hardship are not due to circumstances created generally by the strict application of such provisions in the neighborhood or district in which the #zoning lot# is located.

The Applicant's programmatic needs require, among other things, location of the new ambulatory care facility in proximity to its main hospital building and other nearby facilities. After a long search, the Applicant located the Property. As explained in more detail below, however, the narrowness and shape of the Property as well as the Property's subsurface conditions create practical difficulties or unnecessary hardship in meeting the Applicant's programmatic needs in a building that complies with all of the use, bulk and accessory parking regulations of the Zoning Resolution. Where the programmatic needs of such an educational institution create practical difficulties and unnecessary hardship in complying strictly with the Zoning Resolution, a variance should be granted unless it can be shown to have an adverse effect upon health, safety or welfare of the community. *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986).

1. **Practical Difficulties**

The physical conditions of the Property result in practical difficulties and unnecessary hardship in strict compliance with the Zoning Resolution. The Property is an irregular Z-shaped lot. The Applicant has specific needs with respect to minimum size and the layout of each floor in order to have a minimally efficient ambulatory care facility for this premier teaching hospital. Given this layout of the Property, contiguous floor plates for the proposed ambulatory care facility are limited to the through-block portion of the lot that is only 75 feet in width. Squeezing the floor plate back another 20 feet to have a rear yard equivalent and street line setback, given the physical condition of the lot, would make it impossible to accommodate the minimum of six operating rooms per floor, together with the required medical equipment staging areas and surgery support areas, that are necessary to meet the Applicant's programmatic needs.

The subsurface conditions of the Property further result in practical difficulties and unnecessary hardship in strict compliance with the Zoning Resolution. The Applicant initially explored the development of three full floors below grade. Because "cellar" space does not count toward maximum floor area under the Zoning Resolution, the location of three floors below grade would have resulted in a building complying with the applicable floor area regulations. However, due to the conditions outlined in a May 24, 2011 Geotechnical Report by

Mueser Rutledge Consulting Engineers (the "MRCE Report") it is not feasible for the Applicant to construct more than one level of the Proposed Facility below grade:

Groundwater: Groundwater at the Property is present beginning at approximately 8 feet below grade in certain areas of the Property, and such groundwater is known to be contaminated. Any excavation to a level below the groundwater level requires dewatering of the site (i.e. pumping and disposal of the groundwater) as well as measures to protect the new development from water infiltration.

With respect to dewatering, if groundwater is contaminated it must be treated prior to disposal, whereas uncontaminated groundwater can be pumped into municipal drainage systems. The removal of contaminated water is therefore far more costly than removing non-contaminated water. According to the MRCE Report, there are underground fuel storage tanks at the Department of Sanitation property directly to the east of the Property, and long-term leakage from such tanks may have caused groundwater contamination. Additionally, contamination has been found at the Con Edison facility to the north of the Property that may similarly have caused groundwater contamination. A Phase II Subsurface Investigation conducted by AKRF, Inc. in April 2011 confirms the presence of contaminants in groundwater samples taken from the Property.

The single cellar level that is proposed will extend 14 feet below grade; because this is below the presence of groundwater, costly dewatering and decontamination measures will be required even for the single cellar level. If the Applicant were to excavate further to allow for additional cellar levels, as originally considered, the dewatering and disposal costs would multiply substantially.

In addition to the need for dewatering, any below-grade levels of the Proposed Facility would need to be waterproofed. Any below-grade levels beyond the cellar parking level that is planned for the Proposed Facility would be located entirely below the groundwater level, and the water pressure on these additional floors would be substantially greater than the proposed single cellar level. The MRCE Report notes that in below-grade areas intended to serve as "high-quality space" (i.e. other than parking or storage), additional costly waterproofing measures would be needed to reduce the likelihood of water infiltration. The MRCE report further states that depression of the water table due to excavation and dewatering may cause migration of contaminant plumes toward the Property, and that if there is contamination adjacent to the basement, waterproofing would need to prevent vapors from entering the basement space. Additional sealing measures that would be needed for water and vapor protection for two additional cellar levels would add substantially to the cost of the Proposed Facility and would not be feasible for the Applicant.

Site Geology: Bedrock at the Property is encountered as high as 1 foot below grade, with rock quantity increasing in depth, therefore construction of below grade levels requires substantial excavation. The proposed single cellar level would require excavation of a variety of materials, including fill, till, decomposed rock, and bedrock. Because a portion of the materials located in the area of the single cellar level are looser materials than bedrock, the cost of excavation of this level is similar to what can be expected on other properties in the City of New York. However, the additional two below-grade levels that were initially considered for the

Proposed Facility would be located predominantly in bedrock, therefore substantial blasting would be required in order to construct the two additional below-grade levels that were initially considered by the Applicant. The intensive excavation (including drilling, chipping, hoe-ramming, and/or blasting) and associated shoring and foundation work required for such additional below-grade levels would substantially increase development costs for the Proposed Facility and would not be feasible for the Applicant.

The Applicant, to meet its programmatic needs as an academic medical center, seeks a minimally efficient critical mass of operating rooms on each floor along with certain other critical functions that can only be accommodated in the Proposed Facility. These other critical needs include the following:

- On-site training facilities: While much of the teaching of medical students and residents is done on the job (in patient consultations and in operating rooms), additional teaching occurs when students or residents can gather for lectures or discussions. It is important to have a dedicated space for this learning function within the ambulatory care facility.
- On-site physician's offices: The physicians who would perform the surgeries in the ambulatory care facility perform a wide range of functions, including patient evaluation, surgery, research, and teaching. To effectively utilize the limited time of the physicians, it is crucial that they can perform as many of these functions as possible in a single location.
- On-site diagnostic services: Patients often come in with exceedingly painful conditions that require immediate diagnosis and which severely limit mobility. The ability to diagnose (through X-ray or MRI) in the same facility where the patient's doctor is located crucial to timely care of acute injuries.
- On-site rehabilitation services: Following ambulatory surgery, most patients will need to begin an intensive physical therapy program; to be able to receive rehabilitation diagnosis and a program immediately following surgery greatly improves the patient recovery times and long-term prognosis.
- Parking: The facility needs to contain sufficient off-street parking spaces to serve a patient population with mobility limitations and the family and staff that attend them.

2. **Cornell Doctrine**

As noted above, the requested variances are needed for the Applicant to meet its programmatic needs: floor plates large enough for the layouts needed for a functional medical facility, including operating floors with six operating rooms per floor; diagnostic, rehabilitation and training facilities in proximity to the operating rooms; consolidation and expansion of the Applicant's services at a location proximate to the main campus; accommodation of the increased demand for outpatient and inpatient facilities and to relieve overcrowding and free up space in the other buildings; and sufficient accessory off-street parking spaces to accommodate a

patient population with mobility limitations. The Applicant is a non-profit teaching hospital. The principals established by the New York State Court of Appeals in *Cornell University v. Bagnardi* 68 N.Y.2d 583 (1986) for educational institutions and followed by the courts in numerous subsequent cases are applicable here. In those cases, and as recognized by the Board of Standards and Appeals in its decisions, the Courts have held that both religious and educational institutions have a presumed beneficial effect on the community which may be rebutted only with evidence of “a significant effect on traffic congestion, property values, municipal services and the like.” *Cornell* at 597. Further, “[t]he imposition of...[any] requirement unrelated to the public’s health, safety or welfare, is...beyond the scope the municipality’s police power...” *id.*

In order to respond to increasing demand for its training and patient care services, the Applicant is in need of a new integrated ambulatory care center, with capacity for diagnosis, surgery, rehabilitation and physician training related to its ambulatory care services. The Proposed Facility must be located in proximity to the Applicant’s existing facilities to maintain an integrated medical community, efficiency of operations, and research capabilities. There is a critical need for sufficiently large and contiguous floor plates to accommodate a minimum of six operating rooms per floor to allow for the most basic operational efficiency. The Facility needs certain ancillary function to achieve the level of patient care the Applicant’s program requires and to provide both active and passive learning opportunities. These needs are directly tied to the Applicant’s ability to function as a teaching institution and meet the growing demand for its services. The Proposed Facility would satisfy these programmatic needs, whereas the Complying Program would not.

As discussed in greater detail under finding (C) of this statement and in the Environmental Assessment Statement (the “EAS”), the Proposed Facility would be consistent with the scale and general character of the surrounding neighborhood. The variances would not result in any significant effect on traffic, municipal services, air quality or other environmental impacts. The Proposed Facility would replace an auto repair shop. Consistent with the principles of the *Cornell* decision, the variance should be granted because it is necessary to meet the Applicant’s programmatic needs and would not result in any significant adverse impacts on “the public’s health, safety or welfare”.

B. Because of such physical conditions there is no reasonable possibility that a #development#, #enlargement#, extension, alteration or change of #use# on the #zoning lot# in strict conformity with the provisions of this Resolution will bring a reasonable return, and that the grant of a variance is therefore necessary to enable the owner to realize a reasonable return from such #zoning lot#; this finding shall not be required for the granting of a variance to a non-profit organization.

Because the Applicant is a non-profit organization and the ambulatory care facility will be in furtherance of its non-profit mission, a finding of reasonable return is not applicable to this application.

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

The proposed use, bulk, floor area and parking variances would not have a negative effect on the essential character of the neighborhood and adjacent properties. The Property is located in an M1-4 manufacturing zoning district between an R10 high density residential zoning district and an M3-2 heavy manufacturing district. Like the mix of residential and manufacturing zoning, the uses in the area are mixed as between institutional, commercial, industrial and residential uses, with a large concentration of medical uses similar to the proposed ambulatory care facility.

Essential Character of the Neighborhood

The Proposed Facility is consistent with the concentration of medical facilities in the surrounding area and complements the essential character of the neighborhood. The Property is located between one and two blocks from the Applicant's existing medical facilities in the area. The Applicant's main hospital is located on the midblock between East 70th and East 71st Streets between York Avenue and extending over the FDR Drive (Block 1482, Lot 20). Directly north of the Main Hospital (across East 71st Street) is the Applicant's Caspary Research Building located on the northeast corner of FDR Drive. To the west and north of the Caspary Research Building is the Applicant's Belaire building located on East 72nd Street between York Avenue and FDR Drive (Block 1483, Lot 33). The Applicant's Dana Center is located on East 73rd Street between York Avenue and FDR Drive (Block 1484, Lot 7501). Additional area medical facilities include New York-Presbyterian Hospital on East 69th Street between First Avenue and York Avenue (Block 1464, Lot 21), Memorial Sloan-Kettering Hospital on York Avenue between East 67th and East 68th Streets (Block 1462, Lot 5) and Memorial Sloan-Kettering Integrative Medicine Outpatient Center on First Avenue between East 74th and East 75th Streets (Block 1449, Lot 23), Gracie Square Hospital located on East 76th Street between First Avenue and York Avenue (Block 1470, Lot 33) and Rockefeller University Hospital on York Avenue between East 65th and East 66th Streets (Block 1480, Lot 10).

The design of the Proposed Facility would be consistent with the urban design of the surrounding area, which contains buildings that rise without setbacks, forming consistent street walls on the side streets. The material of the building would be consistent with the more contemporary buildings in the area which are clad in metal and glass curtain walls, including the 1 East River Place and Sotheby's World Headquarters.

As further discussed in Attachment D (Urban Design and Visual Resources) of the EAS, the Proposed Facility would be compatible with the existing range and mix of buildings in the study area and would not obstruct views to natural or built visual resources.

Use and Development of Adjacent Property

The Proposed Facility would not impair the use of immediately adjacent properties. In the M3-2 district adjacent to the Property, a new institutional facility is anticipated to be

developed on the vacant DSNY property directly east of the Property and a large Con Edison facility takes up the majority of the block directly north of the Property. These facilities will not be adversely affected by the Proposed Facility, which is consistent with the concentration of other medical facilities in the area. Between the DSNY site and the Property on the East 74th Street frontage (Block 1485, Lot 39) is a 3-story building used by a catering company. To the immediate west of the Property on the 74th Street frontage (Lot 45) is a four-story building used for a nursery school. And directly west of the Property at the 73rd Street frontage (Lot 10) is a six floor multi-family walk-up building. The adjacent residential building, catering facility, and nursery school are currently adjacent to an active through-block automotive repair shop, with vehicles frequently double-parked in the street and noises and fumes associated with automotive repair shops. The Proposed Facility, with a through block drop-off area and below grade parking will be consistent with current uses of adjacent properties and will not impair the use or development of such properties.

The Proposed Facility is also consistent with the built context and uses beyond immediately adjacent properties. On the block directly south of the Property (Block 1484), existing development includes two residential towers of 38 stories (River Terrace) and 50 stories (East River Place); the Proposed Facility, at 13 stories, is significantly lower in height than these buildings. Additionally, the medical facility use is similar to the concentration of other medical facilities in the surrounding area.

Public Welfare

As discussed above, the Proposed Facility will be consistent with the existing uses and built context in area. By providing a through-block drive lane and on-site parking, particularly important for mobility-impaired patients, the Proposed Facility will also take its traffic onto its site and away from the surrounding streets. Additionally, the Proposed Facility will increase the level of patient care and physician training at the Hospital for Special Surgery, thus making an important contribution to the public welfare.

D. The practical difficulties or unnecessary hardship claimed as a ground for a variance have not been created by the owner or by a predecessor in title; however, where all other required findings are made, the purchase of a #zoning lot# subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The practical difficulties and hardships identified have not been created by current owner Haug Properties, LLC, or any predecessors in title. Rather, they are inherent in the Property, and result from applicability of the Zoning Resolution to this particular Z-shaped lot.

E. Within the intent and purposes of this Resolution, the variance, if granted, is the minimum variance necessary to afford relief; and to this end, the Board may permit a lesser variance than that applied for.

The modifications requested are the minimum necessary to afford relief from the application of the Zoning Resolution. The new facility must have sufficiently large and contiguous floor plates on the operating and procedure floors so that space can be used efficiently and flexibly, and so that operating and procedure rooms can be increased in number

and size to meet growing demand for the Applicant's training and patient care services. Additionally, the Proposed Facility must serve as a single integrated facility for the Applicant's ambulatory care services, including operating rooms and recovery areas, physician's offices, diagnostic facilities, rehabilitation facilities, and a teaching center.

The floor plates of the Proposed Facility are of the minimum size possible to accommodate the six operating rooms per floor that are needed to meet the Applicant's programmatic needs for efficient and cost-effective surgery floors. Any less than six operating rooms per floor would result in tremendous inefficiency and an increase in the cost of patient care. Additionally, the amount of floor area proposed is the minimum necessary to provide an integrated ambulatory care facility providing a continuum of care and training while meeting the growing demand for the Applicant's services. The modifications of the accessory off-street parking requirements are the minimum necessary to accommodate patient- and visit- generated demand for parking in connection with the services provided by the Proposed Facility.

The Proposed Facility meets the Applicant's programmatic needs, whereas the Complying Program does not, and the variances requested are the minimum necessary to afford relief.

4-27-12

Exhibit A

Area Map Showing Locations of the Applicant's Facilities