

130-01-BZ
CEQR # 01-DCP-050M

APPLICANT - Friedman & Gotbaum, LLP, by Shelly S. Friedman, Esq., for Memorial Sloan-Kettering Cancer Center, owner.

SUBJECT - Application May 25, 2001 - under Z.R. §§72-21 and 73-642 to permit in an R8 zoning district, the proposed construction of a new 23-story research building and seven-story addition to replace the existing 11-story building (Use Group 4) and a special permit to allow a temporary failure to comply for the two-year time period defined in this resolution.

PREMISES AFFECTED - 411/425 East 68th Street, mid-block portion bounded by East 68th and East 69th Streets, between First and York Avenues, Block 1463, Lots 5 (Part of) and 11, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES -

For Applicant: Shelly Friedman.

For Administration: Battalion Chief Phil Parr and John Scrofani, Fire Department.

ACTION OF THE BOARD - Application granted on condition.

THE VOTE TO GRANT -

Affirmative: Chairman Chin, Vice-Chair Babbar and Commissioner Caliendo.....3

Negative:0

Not Voting: Commissioner Korbey.....1

THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated March 15, 2001, acting on Alt. Applic. No. 102494329 reads:

A Proposed building exceeds maximum permitted lot coverage in an R-8 zone, set forth in Section Z.R. 24-11.

Proposed building exceeds maximum floor area permitted in an R-8 zone pursuant to Section Z.R. 24-11.

Proposed building does not comply with height and setback regulations of Section Z.R. 24-522 along East 68th Street and East 69th Street, because a portion of the building will penetrate the sky exposure place.

Proposed building does not comply with rear yard equivalent requirements of Section Z.R. 24-382 for through lots in an R-8 district.

WHEREAS, a public hearing was held on this application on July 10, 2001 after due notice by publication in *The City Record* and laid over to October 2, 2001, October 16, 2001, and closed on a motion to close the hearing on November 20, 2001, setting December 4, 2001 for decision; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chairman James Chin, and Commissioner Peter Caliendo; and

WHEREAS, this is an application for a variance under Z.R. §72-21 to 1) address the need for lot coverage waivers to remedy Objection 1, 2) address the need for height and setback waivers on East 69th Street to remedy Objection 3 and 3) address the need for rear yard equivalency waivers to remedy Objection 4, all of which will permit in an R8 zoning district, the proposed construction of the New Research Building to be maintained as a community facility to replace the existing 11-story Use Group 4 building and for a special permit under Z.R. §73-03 and §73-642 (Temporary failure to comply) to address the temporary creation of excess zoning floor area, to remedy in part Objection 2 for the time period following the completion of Phase I and the demolition of the existing building on Lot 11; and

WHEREAS, the Board takes note of the fact that it has been informed by the Department of City Planning that the permanent noncompliance noted in Objection 2 and that part of Objection 3 which regards the noncompliance with height and setback along East 68th Street will be addressed by the City Planning Commission in its consideration of ULURP Applications 010548 ZMM and 010548 ZSM respectively, such applications having been approved by the City Planning Commission on November 28, 2001 but remain subject to City Council action; and

WHEREAS, the Board notes approval of City Planning Commission actions set forth above and the BSA actions as set forth in this application are all required for the development of the New Research Building proposed New Research Facility; and

WHEREAS, Memorial Sloan-Kettering Cancer Center (“MSKCC”) is a nationally designated cancer center providing clinical care and research; and

WHEREAS, MSKCC currently operates the existing Kettering Laboratory on Block 1463, Lot 11 in connection with its research activity which is designated as a Use Group 4 use; and

WHEREAS, MSKCC has determined that the existing laboratory building is no longer suitable for its purposes due to its inadequate footprint, its lack of sufficient floor area and its aged infrastructure; and

WHEREAS, MSKCC has purchased a portion of the adjacent Lot 5 from St. Catherine’s of Sienna Church, said lot currently partially vacant and partially occupied by a Church and an attached Rectory; and

WHEREAS, MSKCC proposes to build a New Research Building utilizing the footprint of Lot 11 and the portions of Lot 5 which are either presently vacant or occupied by the Rectory, further incorporating the unused development right over the existing Church structure; and

WHEREAS, MSCKK is obligated to rebuild the Rectory which will be demolished on Lot 5 so as to locate it within the lower floors of the New Research Building; and

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WHEREAS, MSKCC has proposed to build a New Research Building consisting of a 23-story community facility building for its research and the replacement Rectory on the footprint within Lot 5 not occupied by St. Catherine's of Sienna Church, which will also include a double-height main lobby, conference space, storage space, two enclosed loading bays, three floors of mechanical equipment and a cooling tower at the roof level (the "Phase I Building"), and a seven-story addition for research (the "Phase II Building") which will be built on Lot 11 after the completion of the Phase I Building, as more fully set forth and described in the plans submitted with this application; and

WHEREAS, MSKCC has demonstrated that its programmatic needs for future growth as a world renowned cancer center require the requested state-of-the-art laboratories and related equipment and office units which will provide for research and related clinical integration within the limited land which it has available for development in immediate proximity to its other clinical and research buildings; and

WHEREAS, MSKCC has demonstrated that its programmatic requirements require 16 floors in the New Research Building must provide per floor, 18 Lab Bench Modules, each with a minimum depth of 10'6"; and

WHEREAS, MSKCC has demonstrated that the Lab Bench Modules must be situated within the same building as other basic science labs, support space, administrative space and must also be in close proximity to the clinical treatment facilities located immediately across the street from Lots 5 and 11; and

WHEREAS, MSKCC has demonstrated that the proposed shaft ways, mechanical space and elevator banks must be located within the New Research Building so as to maximize the number of Lab Bench Modules and to provide for corresponding lab support and administrative space, while at the same time maximizing light and air to the surrounding area to the greatest extent possible; and

WHEREAS, MSKCC has demonstrated that the New Research Building's floorplates for the Lab Bench Modules must provide adequate natural light and air, as well as provide necessary square footage per unit to allow a safe, healthy and uncrowded shared environment for researchers, physician/investigators, staff, graduate students, technicians and other support staff; and

WHEREAS, the application states that MSKCC intends to build the New Research Building in two phases so that the research currently being conducted on the existing building on Lot 11 can continue without interruption; and

WHEREAS, the application states that Phase I of the New Research Building is anticipated to require 42 months of construction and that Phase II of

the New Research Building will require 26 months of construction; and

WHEREAS, the phasing of the Phase I and Phase II buildings must be timed so that the Phase I Building can be built and occupied by the uses in the existing laboratory building on Lot 11, and that only thereafter can the existing laboratory be demolished to provide the footprint for Phase II; and

WHEREAS, the schedule for phasing will create a temporary situation in which the Phase I Building and existing Church on Lot 5 and the existing laboratory building on Lot 11 will occupy the combined Lots; and

WHEREAS, MSKCC submitted plans to the Department of Buildings for permits to construct the New Research Building in conformity with the programmatic requirements set forth above; and

WHEREAS, the footprint of the New Research Building is located in an R8 zoning district, which permits an FAR of 6.5 for community facilities and provides for height and setback and yard regulations; and

WHEREAS, in conjunction with a comprehensive plan for the future development of its properties adjacent to these Lots, MSKCC has filed with the City Planning Commission a request for a zoning map amendment (010549 ZMM) which will, *inter alia*, modify the midblock zoning district in which Lots 5 and 11 are located from R8 to R9, thereby increasing the permitted floor area for a community facility to FAR 10, such application having been approved by the City Planning Commission on November 28, 2001 but remains subject to City Council action; and

WHEREAS, the lot coverage of New Research Building, upon completion of both Phases, when combined with the lot coverage of the existing Church which is to remain will be 73.9 percent, which exceeds the 65 percent maximum lot coverage requirement in an R8 district; and

WHEREAS, the configuration of Lots 5 and 11 as a single zoning lot results in a portion of the lot to be considered as a through lot and a portion of the lot to be considered as an interior lot for the purposes of rear yard requirements in R8 districts; and

WHEREAS, the rear yard equivalent for that portion of the combined Lots 5 and 11 which is deemed a through lot, upon completion of both Phases (which rear yard equivalent currently includes the existing Church, which is to remain and provides neither a yard nor a rear yard equivalent) will be insufficient to comply with the yard equivalent requirements in Z.R. §24-382 applicable to community facilities in an R8 district; and

WHEREAS, Lot 5 is a partially through lot with a frontage of 165' on the northern side of East 68th Street and a frontage of 23.8' on the southern side of East 69th Street; and

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WHEREAS, its depth is 200.10' at its western lot line and 100.5' at the easternmost point of its eastern lot line; and

WHEREAS, the application states, and the Board agrees, that requiring MSKCC to build in compliance with Z.R. §24-382 and Z.R. §24-522 would create a hardship, in that the resulting development could not contain the necessary state-of-the-art Lab Bench Modules in the New Research Building, nor could it contain the support spaces that must accompany these Lab Bench Modules in close proximity; and

WHEREAS, furthermore, the application states, and the Board agrees, that MSKCC would suffer the following additional extreme hardship if the Temporary Failure to Comply was denied: MSKCC's critical research programs in the existing laboratory building would be completely disrupted and virtually halted, with grave consequences for both ongoing research and the ability to maintain clinical treatments in the adjacent hospital buildings for up to five years if the Board required the existing laboratory building to be demolished prior to construction of the New Research Building; and

WHEREAS, the application states and the Board agrees, that the New Research Building proposed in this application must be in close proximity to MSKCC staff residences and to hospital facilities; and

WHEREAS, the application states, and the Board agrees, that with no alternative developable site available, the New Research Building is the best available design to provide the number of Lab Bench Modules required by MSKCC to sustain its existing research and provide for room for additional research in accordance with its position as a leader in cancer research and treatment; and

WHEREAS, the numbers of unique of special spaces (i.e. wet and dry laboratories, support space and administrative offices, auditorium and conference space, and the replacement Rectory) require a specific amounts of floor area, spatial configurations, unique mechanical equipment and atypical floor-to-floor heights; and

WHEREAS, the application states, and the Board agrees, that the New Research Building's configuration results in maximized floor area for MSKCC's programmatic requirements, while at the same time maximizing the light and air to the surrounding area; and

WHEREAS, the application states that it would be completely impracticable and self defeating to consider an alternative design scheme for the New Research Building that does not address these programmatic necessities; and

WHEREAS, the application states, and the Board agrees, that an interior reconfiguration of the proposed design for the New Research Building in

such a manner as to decrease the size of the Lab Bench Modules cannot be successfully accomplished because the state-of-the-art research equipment demands a specific square footage and floor-to-floor heights; and

WHEREAS, with regard to minimal qualitative requests, the design for the New Research Building is the most efficient design that provides the maximum number of Lab Bench Modules; and

WHEREAS, therefore, in light of the physical boundaries of Lots 5 and 11, the existing buildings to remain on the site and the critical mission of MSKCC, the Board finds that it is impossible for MSKCC to build a research building on Lots 5 and 11 in strict conformity with strict conformity with the provisions of the Zoning Resolution; and

WHEREAS, the Board finds that the aforementioned physical conditions, including the requirements for adequate configuration of research laboratories create a practical difficulty for MSKCC in developing the site with a complying development for its mission; and

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

WHEREAS, the Board finds that the neighborhood in the vicinity of the New Research Building is atypical of the Upper East Side's midblocks; and

WHEREAS, the Board finds that MSKCC has chosen to construct a building that remains in proportion with the taller of the nearby community facility and residential buildings; and

WHEREAS, the Board finds that the requested variances represent a suitable trade-off among other provisions of the Zoning Resolution, which would be violated if an alternative development program was sought; and

WHEREAS, the site of the New Research Building is situated within an area intensively utilized by community facilities, many of which are MSKCC affiliates; and

WHEREAS, the block immediately to the south of the New Research Building is occupied entirely by MSKCC buildings and includes: 1) the Schwartz Building; 2) the Howard and Bobst Buildings; 3) the Radiation Oncology Building; 4) the Enid A. Haupt Pavillion; 5) the Norman and Rosetta Winston Surgical Pavillion; and 6) Memorial Hospital; and

WHEREAS, within the 400' radius of the New Research Building are buildings used by such other important community facilities as New York Hospital and Cornell Medical College and the Rockefeller University; and

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

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WHEREAS, the Board finds that the practical difficulties or unnecessary hardships are inherent in Lots 5 and 11 lot and were not created by the applicant or its predecessor in title; and

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

WHEREAS, MSKCC also seeks approval of a Special Permit for a Temporary Failure to Comply (Z.R. §73-642) with applicable R8 zoning district floor area regulations because it will temporarily exceed the maximum allowable floor area on Lots 5 and 11 between the time of completion of Phase I of the New Research Building and the relocation of the research staff from the existing laboratory building on Lot 11 so that the existing laboratory building can be demolished to permit the Phase II structure; and

WHEREAS, the applicant assured the Board that the existing laboratory building on Lot 11 is scheduled for demolished within a stated period of time not to exceed two years after completion of Phase I of the New Research Building; and

WHEREAS, the Board shall prescribe as a condition of such permit that the existing laboratory buildings will be removed within a stated period of time not to exceed two years from the date of the issuance of a temporary certificate of occupancy for the entire Phase I of the New Research Building; and

WHEREAS, the Board finds that, MSKCC has provided the community with an essential service with respect to cancer research and cancer care for almost 150 years; and

WHEREAS, the existing laboratory building on Lot 11 is a community facility which is a conforming use as of the date of this application; and

WHEREAS, to require the demolition the existing laboratory on Lot 11 prior to completion of the New Research Building would disrupt and, in some cases, virtually halt important ongoing research of local, national and international importance; and

WHEREAS, the Board finds that the applicant has met the findings required to be made under Z.R. §73-642, and

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

WHEREAS, the New York City Department of City Planning ("NYC DCP"), as lead agency, has conducted an environmental review of the proposed actions and has carefully considered all relevant areas of environmental concern and required the applicant to file an Environmental Impact Statement, which the Board has considered; and

**A true copy of resolution adopted by the Board of Standards and Appeals, December 4, 2001.
Printed in Bulletin Nos. 48-49, Vol. 86.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

WHEREAS, the Board finds that the proposed enlargement will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, the proposed project will not have any significant adverse impacts upon the quiet, privacy, light and air of the surrounding neighborhood; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§73-642 and 73-03.

Resolved that the Board of Standards and Appeals adopts the Final Environmental Impact Statement (FEIS) approved by the NYC DCP on November 16, 2001 through a Notice of Completion under 6 NYCRR Part 617 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under Z.R. §§72-21 and 73-642 and grants to permit in an R8 zoning district, the proposed construction of a new 23-story research building and seven-story addition to replace the existing 11-story building (Use Group 4) and a special permit to allow a temporary failure to comply for the two-year time period defined in this resolution, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received, November 13, 2001"-(19) sheets; and *on further condition*;

THAT the development, as approved, is subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and

THAT a certificate of occupancy shall be obtained within 2 years of this grant.

Adopted by the Board of Standards and Appeals, December 4, 2001.