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of the UPPER EAST SIDE
HISTORIC DISTRICTS

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EXECUTIVE DIRECTOR

March 12, 2021

Ms. Olga Abinader
New York City Department of City Planning
Environmental Assessment and Review Division
120 Broadway, 31st floor
New York, NY 10271

Re: New York Blood Center – Center East, CEQR # 21DCP080M

Dear Ms. Abinader:

This letter is to follow up on our March 4, 2021 conversation regarding additional written comments FRIENDS submitted in February on the Draft Scope of Work for the above referenced project. After the comment period closed, the applicant disclosed to FRIENDS material information about the project and the scope of the environmental review it requires, specifically the inclusion of biosafety level 3 (BSL-3) laboratories. You recognized that this information had also been withheld from the Department of City Planning, the Lead Agency in this application, and assured me the concerns raised by both FRIENDS as well as Manhattan Borough President Gale Brewer would be met with a “robust response,” conversation with the applicant, and fully addressed in the Final Scope of Work.

I appreciate the seriousness with which you are taking this issue and your willingness to accept further written comments. Our understanding of the impact of locating a high-containment research lab, which would typically be sited in industrial zones, in the middle of a low-rise residential block continues to evolve. Specifically, we understand most labs of this nature require high level security due to the materials handled on-site – an aspect of the project not mentioned in the Project Description and at odds with the applicant’s framing of meeting spaces available for Community Board 8 as a benefit of the project.

However, your emphasis on the “draft” nature of the Draft Scope of Work indicates that DCP is unlikely to require the applicant to re-start the scoping process. Given the potential for “Catastrophic Impacts” as instructed in the CEQR Technical Manual and cautioned in the 2016 Department of Health and Mental Hygiene memo, a new Draft Scope of Work is necessary. A September 21, 2020 judicial decision on the flawed environmental review of the proposed jail in lower Manhattan recently required a new



scoping session and new Draft Scope of Work for post-scoping changes to the project that were much less impactful than those considered here (see attached).

While we have very limited information about the details of the BSL-3 laboratory, its presence would likely impact, at minimum, the following sections for purposes of the Scope of Work:

- **Project Description:** Describe the BSL-3 facility, the material it will handle, necessary security procedures, etc.
- **Air Quality:** The current scope of work describes mechanicals that would disperse chemical vapors into the larger neighborhood. Is that appropriate for a facility where there is a risk of biological/pathological contaminants? If not, what kind of changes are necessary? If so, such a risk should be disclosed.
- **Noise:** Do the specialized equipment necessary for a BSL-3 lab make noise? If so, they need to be identified for study.
- **Land Use, Zoning & Public Policy:** This project is following an interpretation that allows BSL-3 labs as UG9 laboratories allowed in most C districts. The Zoning Resolution appears to require hazardous laboratories in M districts and C6 districts with a special permit. What are the impacts to zoning and public policy with this new interpretation? Could that have larger impacts on more sensitive uses like schools and residences?
- **Urban Design and Visual Resources:** How will necessary security measures required by BSL-3 labs be incorporated into the project so that it doesn't impact urban design (e.g. setbacks, security gates, bollards, blank walls, secure loading/parking areas, etc.)
- **Solid Waste and Sanitation services:** BSL-3 labs generate hazardous waste. How will it be managed?
- **Hazardous Materials:** BSL-3 labs generate hazardous waste. How will it be managed? How will it be prevented from escaping into the surrounding area, and if it does, how will it be mitigated?
- **Community Facilities and Services:** Accidents at BSL-3 laboratories need specialized response teams. Does the FDNY have such teams available? Does it have them available in this neighborhood? Will additional teams be needed?
- **Public Health:** How will potential environmental hazards related to materials, noise, air quality, etc. affect potentially exposed populations (e.g. residents, students, pedestrians)? Are there any sensitive or vulnerable populations at higher risk?



- Finally, there needs to be something to address the requirements for disclosing Reasonably Foreseeable Catastrophic Impacts (CEQR Technical Manual 242.1)

In light of the serious nature and impact of including a BSL-3 lab in this project, and the many added layers of CEQR technical analysis now necessary, DCP should restart the scoping process. There must be a full disclosure of the size, type, location, and use of the BSL-3 laboratories, and a more complete explanation of the risks posed by such labs, and the related mechanical and security needs. This should come from subject matter experts from DOHMH who can speak to these issues directly.

For further detail, please refer to the enclosed memo from George M. Janes, urban planning consultant to FRIENDS.

Sincerely,

Rachel Levy
Executive Director

Cc:

Council Member Ben Kallos, New York City Council
Manhattan Borough President Gale Brewer
Edith Hsu-Chen, Department of City Planning
Russell Squire, Chair, Community Board 8
Paul Selver, Kramer Levin Naftalis & Frankel LLP
George M. Janes, AICP, George M. Janes & Associates
Dr. Fred Hyde, Fred Hyde & Associates

MEMORANDUM

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Date: March 12, 2021

To: Rachel Levy
Friends of the Upper East Side Historic Districts

From: George M. Janes, AICP

RE: Draft Scope of Work for the Blood Center

Thank you for relaying the discussion you had with Olga Abinader regarding the Blood Center's flawed Scoping Document.

Background

As you know, my concern with the Blood Center's scoping is related to the applicant's revelation that the proposed facility will contain a high containment research laboratory rated Biosafety Level 3 (BSL-3). This detail was not disclosed in the Project Description, or, indeed, anywhere in the Draft Scope of Work. It was only revealed to your office after the comment period on the Draft Scope of Work had ended.

The New York City Department of Health and Mental Hygiene (DOHMH) has stated that:

"Work performed in a BSL-3 or BSL-4 facility would present the greatest potential risk to public health if an incident occurs. ... The Department is concerned that an accident in a New York City-based high containment research laboratory could have catastrophic consequences, given the population density of nearly 70,000 per square mile in Manhattan"

As I understand it, the nature of the laboratory proposed was not disclosed to the Lead Agency, the Department of City Planning (DCP). In response to your letter notifying DCP of BSL-3 labs in the proposed project and urging a new scoping process, you have said that Ms. Abinader's implied that this omission does not require a new Draft Scope of Work. Instead, Ms. Abinader used her discretion to invite you to submit additional scoping comments to address this new information. Ms. Abinader suggested that this issue would be fully addressed when the Final Scope of Work is released, without any further public input.

A new Draft Scope of Work is necessary

I believe Ms. Abinader is mistaken, especially considering a recent judicial decision.

The CEQR Technical Manual (1-11) states that the Draft Scope of Work:

“describes the proposed project with sufficient detail about the proposal and its surroundings to allow the public and interested and involved agencies to understand the environmental issues.”

The public, along with interested and involved agencies, should have been informed that this project was for a BSL-3 laboratory. This detail is material considering the DOHMH’s guidance on the potential environmental hazards of such uses. Further, as we’ve learned, BSL-3 labs typically require high security, and some of the project’s benefits, such as the continued use of the auditorium by the local Community Board and community-based organizations, might be impossible considering that this facility will need very high security. Considering the increased risk to the community and reduced benefits resulting from this use, public comment would have certainly been different had the true nature of the project been disclosed.

But more than community understanding of the proposed project, the environmental review itself must be different, and include an analysis for the potential for “Catastrophic Impacts,” as instructed in the CEQR Technical Manual:

“242.1. Reasonably Foreseeable Catastrophic Impacts

Depending on the nature of the project, and as may be required by SEQR, an EIS may need to contain certain information regarding reasonably foreseeable catastrophic impacts.”

The CEQR Technical Manual and the DOHMH even use the same adjective: “catastrophic.” This use needed to be disclosed in the Draft Scope of Work and the environmental review needs to study it, as the manual describes.

This is not just my opinion

Perhaps most importantly, this is not just my opinion, but the opinion of Justice John Kelley who wrote that the major flaw in the environmental review for the new jail proposed at 124-125 White Street involved scoping.¹ In that case, the City moved the location of the proposed jail about 600 feet (from 80 Centre to 124-125 White Street) but did not revise the Draft Scope of Work, nor did they hold a new scoping session. In his September 21, 2020 decision, Justice Kelley required:

“(1) the scheduling and convening of a new site-specific scoping session referable to 124-125 White Street, New York, New York, with preparation and circulation of an appropriate amended Draft Scope of Work document and the provision of adequate notice to the public,
(2) the provision of an appropriate public comment period on the amended the Draft Scope of Work document, . . .”

From an environmental standpoint omitting the BSL-3 laboratory from the Blood Center Scope of Work is much more significant than moving the jail just 600 feet

¹ NEIGHBORS UNITED BELOW CANAL vs. MAYOR BILL DEBLASIO

to the north. Simply, the movement of the jail had absolutely no potential for “catastrophic consequences” as the Blood Center’s BSL-3 laboratory has. If DCP moves forward without requiring a new Scoping Session, Justice Kelley’s decision suggests that another court will simply require one later. It is better for everyone to do it now and without delay.

The pre-application process would have been different, too

As I understand it, critical information about the nature of the project was not provided to the Lead Agency. I suggest that this information would have likely impacted DCP’s guidance of this proposal during the pre-application phase of the project. Details regarding the hazardous nature of BSL-3 laboratories may have also changed DCP’s participation in the 2016 “Life Sciences in Commercial Zoning Districts” memo, which I have attached.

As any land use planner understands, the segregation of uses required by Euclidean zoning is partly driven by public safety. Hazardous and dangerous industrial uses are segregated from more sensitive land uses like residences and elementary schools. If the DOHMH is on record supporting legislation to track these uses because of their potentially “catastrophic consequences,” any land use planner would question if this location, directly across the street from a public school and abutting residences, is the appropriate place for such use.

Had DCP understood the hazardous potential for such uses, would it have advised the applicant differently during the pre-application process? It might have. Indeed, if it understood the hazards of the use, would it have signed-on to the “Life Sciences in Commercial Zoning Districts” memo, which doesn’t even mention high containment laboratories or anything about biosafety levels. I doubt it would have, since in our Euclidean zoning, hazardous uses are rightly segregated from more sensitive uses.

The 1961 Zoning Resolution does not reference BSL-3 terminology either, but it did understand that laboratory uses can be hazardous, and so it classified two different types of laboratories: commercial labs as Use Group 9, and industrial labs as Use Group 17. Use Group 17 is an industrial land use that is generally limited to the City’s industrial zones (i.e. M-zones), where sensitive uses are segregated from high risk uses. New York City has many such districts but this block is not one of them.

Consequently, while the court requires a new Draft Scope of Work and comment period, I would suggest that DCP not only restart the scoping process, but also roll back the clock completely; and invite the applicant in for a pre-application meeting, so that it can learn about BSL-3 laboratories, where they are sited, their mechanical and security needs, and the risks that they pose and if the applicant’s land use solution is appropriate. The pre-application process is important, and omission of this critical information about the nature of the proposal undermines that process. DCP should also consider including subject matter experts from DOHMH in the process.

Life Sciences in Commercial Zoning Districts

To: Alicia Glen, Deputy Mayor for Housing and Economic Development
From: DOB: Thomas Fariello, First Deputy Commissioner
DCP: Carl Weisbrod, Commissioner
EDC: Maria Torres-Springer, President
Subject: Life Sciences in Commercial Zoning Districts
Date: December 13, 2016

This memo summarizes the conclusions based upon discussion among the Department of Buildings (DOB), the Department of City Planning (DCP) (collectively, “the agencies”) and the Economic Development Corporation (EDC) about the zoning implications of life sciences research, testing, and development (“Life Sciences”) in commercial zoning districts.

- A. Scope of research and testing: As stated in ZR 32-18 (Use Group 9A), “*Medical or dental laboratories for research or testing, or the custom manufacture of artificial teeth, dentures or plates....*” are permitted in C2, C4, C5, C6, C8, M1, M2, and M3 districts. The agencies and EDC are in agreement that the synthesis and manipulation of chemical substances, biological matter, and animal models (as described further below) are integral activities in commercial medical laboratories devoted to research and testing, as referenced in ZR 32-18. Activities in these laboratories may also include the assembly of medical technologies, diagnostic devices, and research instrumentation for use in prototype experimentation, pre-clinical studies or clinical testing.
- B. Regulation of objectionable effects: ZR 32-18 further defines Use Group 9A as “*not involving any danger of fire or explosion nor offensive noise, vibration, smoke or other particulate matter, odorous matter, heat, humidity, glare or other objectionable effects*”. Due to regulatory guidelines at the city, state and federal levels, commercial life sciences laboratories are not permitted to conduct operations that pose danger of objectionable effects, as cited in ZR 32-18. These laboratories must be designed and certified by licensed professionals and are subject to the same guidelines followed by non-profit medical laboratories. Accordingly, the agencies and EDC understand that commercial medical laboratories do not carry objectionable effects if, as applicable, they meet the necessary environmental health and safety guidelines of agencies such as:
- a. Fire Department of New York (FDNY)
 - b. National Fire Protection Association (NFPA)
 - c. NYC Department of Health and Mental Hygiene (DOHMH)
 - d. NY State Department of Health (DOH)
 - e. NYC Department of Environmental Protection (DEP),
 - f. NY State Department of Environmental Conservation (DEC)
 - g. Environmental Protection Agency (EPA)
 - h. National Institutes of Health (NIH)
 - i. Center for Disease Control (CDC)

C. Representative facilities and operations: Pursuant to item A. above, early-stage life sciences research and development is typically performed in facilities that may include offices, meeting rooms, common pantries, and medical laboratory space. With specialized and appropriate mechanical, electrical, plumbing and ventilation systems, these commercial laboratories accommodate the safe operation of research and testing protocols, including but not limited to:

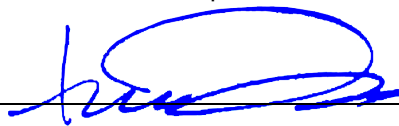
- Small-scale chemistry experimentation and synthesis
- Small-scale molecular biology and biotechnology experimentation or biological engineering
- Physical prototype development activities, such as 3D printing, assembly of devices or materials with medical or research applications
- Small animal husbandry for the production of animal testing models in pre-clinical trials

Such protocols constitute examples of pilot production activities that are integral to the principal use of research and testing, and meet the performance standards related to such principal use

D. Scope of principal use: The principal use of medical laboratories for research or testing may include research and development of technologies with commercialization potential or the development and piloting of processes to enable such research and development – e.g.:

- The creation and/or testing of therapeutics technologies, including but not limited to:
 - Small molecules
 - Biologics
 - Gene therapies
 - Cell therapies
 - Vaccines
- The creation and/or testing of non-therapeutics technologies, including but not limited to:
 - Mechanical/Electronic medical devices (e.g. prosthetics)
 - Diagnostic devices (e.g. EKG sensors)
 - Molecular diagnostics (e.g. genetic tests)
 - Treatment devices (e.g. intravenous pumps)
 - Research instrumentation (e.g. gene sequencing machines)
 - Bio-materials (e.g. artificial tissue)

E. Non-research life sciences facilities: Commercial life sciences establishments may also be seeking facilities primarily for the production, storage, and distribution of pharmaceutical or scientific products available for sale. The agencies and EDC are in agreement that these establishments are permitted to perform such activities in M-districts under Use Group 17, or in C6 districts by way of a Special Permit from DCP under ZR Section 74-48.



12/13/2016

Thomas Fariello, RA
First Deputy Commissioner
New York City Department of Buildings



12/13/2016

Maria Torres-Springer
President
New York City Economic Development Corporation