CARTER LEDYARD MILBURN

Memorandum

To: Members of the New York City Planning Commission
Hon. Marisa Lago, Chair
From: Karen Meara
Nicholas Tapert
Subject: New York Blood Center – Center East, ULURP # C210351ZMM, N210352ZRM, C210353ZSM
Date: August 9, 2021

We write as counsel to Friends of the Upper East Side Historic Districts to expand on our oral testimony on the application (the "Application") of the New York Blood Center (the "Applicant").

The Applicant is asking you to approve a proposal that, in use and bulk, is the equivalent of a commercial tower in a central business district. The proposed tower footprint would rival the Empire State Building or One Vanderbilt (see Exhibit A). Perhaps such a tower might be appropriate in East midtown, 10 blocks south, or even possibly somewhere along the FDR, which the Commission deemed an appropriate site to map a C6 zone for the Alexandria Center. But you are being asked to site such a tower on a mid-block, narrow street site surrounded by quintessential residential uses – a park, a library, a school, and multifamily residential buildings (see Exhibit B). That is unprecedented, and respectfully, not warranted.

We urge you to reject the Application for several reasons: it is contrary to fundamental planning principles and practice; it is not necessary to meet any legitimate policy goal; it constitutes spot zoning; the Draft Environmental Impact Statement ("DEIS") fails to accurately evaluate adverse impacts; and even accepting, for argument's sake, the DEIS as drafted, the proposal does not minimize adverse impacts to the maximum extent practicable. Finally, even if the Commission were inclined to approve the map and text amendments, the Applicant cannot meet the resulting conditions required for a special permit.

The Proposal

The Applicant seeks to replace its existing 3-story, 159,347 gsf community facility on the proposed project site with a 16-story, 10 FAR tower that would rise to 334 feet and include combined community facility and commercial lab space of 596,200 gsf. Approximately one third of the new space would be owned and used by the Applicant as a community facility, and two-thirds would be owned by Longfellow, a private developer, and leased to commercial labs.

To achieve this substantial shift in use and bulk, the Applicant seeks several actions: (i) a map amendment, from R8B to C2-7, of the Applicant's 45,000 square foot tax lot located on the mid-block of east 66th and east 67th Streets between First and Second Avenues (the "Development Site"); (ii) a map amendment, from C1-9 to C2-8, of two tax lots fronting 2nd Avenue extending from 66th to 67th Streets, one of which is immediately adjacent to the

Applicant's site, which have no connection to the proposed project except adjacency; (iii) a text amendment (to NYC Zoning Resolution sections 32-32 and 74-48), allowing, by special permit, in C2-7 districts in Community Board 8 in Manhattan, "scientific research and development facilities", waiver of height, setback and yard regulations, and waiver of the 2.0 FAR limit on commercial uses to allow up to 10 FAR of commercial uses; (iv) a special permit for a scientific research and development facility on the Development Site (assuming approval of actions i and iii above) with waivers of commercial FAR limits, setbacks, and yard requirements (among other actions).

The Existing Conditions

The Development Site is currently improved with a 3 story building that complies with the use and height restrictions of the current R8B zoning. As detailed on p. 1-2 of the DEIS, buildings on the surrounding blocks are primarily residential, with some ground floor commercial on the avenues. There are several institutional buildings, including the Julia Richman Educational Complex ("JREC") to the north, a public library to the east on 67th Street and Memorial Sloan Kettering facilities to the southwest on Second Avenue and north on 68th Street. There is a large public park adjacent to the JREC complex on the block immediately north of the project site. As detailed in the testimony of Ronda Wist and reflected in the attached R8B compliance map displayed during Ms. Wist's July 29th testimony, the vast majority of the buildings in the nearby midblocks comply with the R8B height limits, and those that do not have heights between 75 and 150 feet. (See Exhibit B). Tall residential towers are found almost exclusively on the Avenues. Blocks to the east of First Avenue were excluded from the R8B rezoning due to significant non-compliance with the R8B envelope. These blocks, which are predominantly zoned R8 and R9, have accommodated substantial growth by major health care institutions including Memorial Sloan Kettering and Weill Cornell.

The Application is unprecedented and contrary to the City's core planning principles

The Application violates one of the most fundamental principles of urban planning that has been consistently embraced by this Commission: in residential neighborhoods, growth and density belong on wide streets, and lower scale residential development belongs on narrow mid-blocks. It also violates the principle that commercial uses in residential neighborhoods should be limited, cater to the needs of the community, and comply with residential bulk controls. Finally, the Application is contrary to the City's land use planning around expansion of the life sciences sector.

The change in use and bulk sought here truly is unprecedented. The project would insert nearly 7 FAR of commercial lab space (see, e.g. DEIS at 2-6[1]) onto a residential midblock that currently allows no commercial uses, between wider avenues that allow only 2 FAR of commercial uses. See DEIS Table 2-1. It would also destroy the R8B bulk controls that the City Planning Commission and City Council enacted in 1985 to preserve the midblock scale in this otherwise very dense residential neighborhood. For a detailed discussion of the history and current status of the R8B midblock zoning and the impacts the Application would have on that zoning scheme, we refer the Commission to the written comments of Friends, submitted together with these comments.

[1] Noting that the proposed development would have an FAR of 10, split between 389,200 gsf of commercial lab space and 206,400 gsf of community facility space.

Although the Applicant asks the Commission to map the Development Site as a C2-7 district, there is nothing about this Application that is consistent with the planning principles that underpin C2 districts. The City's own materials describe C2 districts as "predominantly residential in character . . . mapped along major thoroughfares" having "typical retail uses [that] include grocery stores, dry cleaners, drug stores, restaurants and local clothing stores that cater to the daily needs of the immediate neighborhood," and limited to 2.0 FAR of commercial uses.[2] The proposed project would not be located on a major thoroughfare, would not be residential in character, would not cater to the needs of the neighborhood, and would not limit commercial uses to 2.0 FAR. In other words, the project would be a C2 in name only.

This proposal is contrary to the City's own planning around life science labs. Historically, commercial scientific research labs have been allowed as-of-right only in M-zones and, since 1990, by special permit in C6 zones. In 2016 the City issued a memo suggesting that certain life science labs could be treated as use group 9A instead of use group 17, and therefore would be deemed permissible uses in certain C zones, including C2 (the "2016 Memo" attached hereto as Addendum 1). While Friends takes issue with the 2016 Memo, even if one agreed with its conclusion regarding the appropriateness of siting commercial lab uses in C2 districts, that memo did not consider, let alone recommend, changes to where such districts should be mapped, to the permissible commercial FAR within them, or to the C2 bulk controls. Yet this Application would require the Commission to do each of these things: change where C2 districts are mapped (on narrow streets instead of major thoroughfares – see Exhibit C for map of existing C2's), increase the permissible commercial FAR from 2.0 to 10, and grant substantial waivers of building setback and yard requirements. As noted earlier, the bulk waivers are so substantial the resulting floorplates rival the City's major skyscrapers. See Exhibit A. By contrast, although there are some tall residential towers on the Upper East Side, these have dramatically smaller floorplates and cover far less of the zoning lot than the tower proposed here. See Exhibit D.

Notwithstanding the 2016 Memo, as recently as 2018, the City made clear the type of sites it deems appropriate for life science development when it identified three City-owned sites as part of a Life Science RFEI. One was located in an M zone, one in a C6 zone, and one in a non-contextual high-density R zone on a wide street across First Avenue from the Bellevue campus. As George Janes noted in his testimony (submitted together with this memo), these sites bear no resemblance to the proposed Development Site in virtually every respect except lot size. (See the exhibits submitted with the Janes testimony)]

In sum, the Applicant asks you to violate virtually every sound planning principle articulated by the City over decades, including in recent neighborhood and other area rezonings regarding residential mid-blocks, commercial lab development and C2 districts. What the Applicant asks you to do here would be truly unprecedented.

The Application is not Necessary

The Applicant claims that the project is necessary because the Blood Center's facilities are outdated and the City has prioritized expansion of the life sciences industry. However, it is not necessary to compromise the already extremely limited light and air on side streets in one of the City's densest neighborhoods to achieve the Applicant's or the City's goals. According to

[2] See Zoning: Districts Guide - Commercial Districts - C1 & C2 - DCP (nyc.gov)

the DEIS, in the future "no action" condition, the Applicant would construct a brand new, larger, zoning compliant facility:

> Absent the Proposed Actions, the Applicant would construct a new building as-of-right containing laboratory space (including a BSL-3 laboratory space and certified clean room facility space for NYBC) as well as other UG-4 community facility uses. The new building would be an approximately 229,092-gsf split between 40,161 gsf of medical offices and 188,931 gsf of space for the Applicant's operations. The cellar level of the structure would occupy the entire Development Site and six-story-wings would rise on both street frontages to a maximum base height of approximately 60 feet, a maximum roof height of approximately 75 feet. Six interior parking spaces would be provided for the Applicant's vehicle fleet.

DEIS at 1-6. According to the DEIS, regardless of whether the Application is approved or not, the rebuilt Blood Center would employ 580 people, two and a half times the 230 it currently employs: "The Applicant would have the same number of daily visitors for blood donations, the same private vehicle fleet size and operations for transporting blood samples and other related materials, the same daily incoming deliveries for supplies and outgoing waste, and would have the same number of employees (approximately 580) under the No Action and With Action conditions." DEIS at 1-7. And to the extent the Applicant argues that the No Action building would have less than ideal layout, Friends and others have expressed openness to an alternative that would allow full coverage floorplates but respect the R8B height limits. (See Janes testimony and exhibit A attached thereto.)

Similarly, the DEIS does not assume that the project is necessary to the future expansion of the life science sector in New York City. Rather, it assumes that, in the future no action condition "the City's policy to support life science development and laboratory uses is expected to continue in other locations in the city." DEIS 2-5. Indeed, successful life science projects have been developed under existing zoning on institutional campuses and in commercial and manufacturing zones across the City, including in mid-town south, Hudson Square, East Harlem, the Bellevue Campus, in Long Island City, and on industrial and institutional sites in Brooklyn. According to a recent CBRE report, the City is projected to have over five million square feet of lab space by 2025 – one year before the Blood Center project is projected to be completed. This would more than achieve its goals of adding 3 million square feet to the current 1.9 million square feet over the next four years.

It is particularly perplexing that the city would agree to develop commercial lab space in a residential neighborhood when it faces a pandemic induced crisis of commercial office vacancies just blocks away.[3]

To the extent the Applicant claims that the east 67th Location is somehow essential because of its proximity to major medical institutions, Friends questions the basis of that claim, and, in addition to directing the Commission to the testimony of Alison Bell, Friends will be submitting additional materials pointing out the flaws in the HR&A analysis and conclusions. For starters, HR&A fails to note that many of the academic studies on which it relies are based on data that pre-date the explosive expansion in internet fostered virtual collaboration.[4] It also

[3] See NYTimes, July 1, 2021 "Office Vacancies Soar in New York, a Dire Sign for the City's Recovery" (Manhattan office vacancies 18.7%).
[4] *See, e.g.* "Geographic scope of proximity effects among small life sciences firms." *Small Business Economics*, 2012. (relying on data from a 23 year period)

selectively focuses on and maps facilities that are located near institutions while failing to mention that millions of square feet of life science lab space in major hubs like Boston and San Francisco are not co-located near academic institutions and yet are thriving. Similarly, in NYC, the HR&A report focuses on the adjacency of the Alexandria Center to NYU Langone, but neglects to mention that NYU Langone has a commercial lab partner 2.5 miles away in Hudson Square.

In fact, it seems the Applicant's only goal that could not be more appropriately satisfied through alternative means would be the goal of subsidy: under the DEIS No Action condition, the Applicant would have to pay the cost of constructing its replacement facility, but under the proposed project, the commercial lab developer would assume the burden of financing that construction. Why would Longfellow assume such a cost? Presumably because it would otherwise get something for nothing: free commercial FAR of 389,200 gsf (313,000 zsf) in a prime Manhattan location. (see also comments of Manhattan Borough President Gale Brewer describing the rezoning as a "subsidy" at p. 6 of 7). Assuming average asking prices for commercial space are approximately $775 per square foot, that's at least a 240 million dollar subsidy. And the Blood Center would get a new space for free. The Commission should not participate in such a blatant giveaway that is not necessary to advance any City policy goal and in fact would undermine the goal of solving the commercial vacancy crisis.

The Application is Illegal Spot Zoning

The definition of spot zoning is – "singling out one parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners. 15 Warren's Weed New York Real Property § 157.13 (2021). As discussed above, this Application singles out the development site for commercial lab use for the benefit of the Applicant and its commercial partner to the detriment of the surrounding community.

When asked about spot zoning during the July 29th public hearing, Applicant's counsel stated that a finding of spot zoning requires more than just a finding that one tax lot has been singled out for change – it requires a finding that a proposed land use change "is in accordance with a well-considered plan for the general welfare of the City." Hearing at 3:31:40. Friends agrees, but takes issue with any claim that the proposal meets that test. The cases cited by the Applicant are not to the contrary. The first, *Preserve our Brooklyn Neighborhoods v. City of New York*, 2019 N.Y. Slip Op. 31751 (Sup. Ct, New York County, June 18, 2019) involved a rezoning of a lot from R7A to R8A to facilitate affordable housing. Unlike the current project, that project involved no change in use, a modest upzoning, and was fully consistent with the City's longstanding and consistently applied policy to use such upzonings to expand affordable housing.[5] The second, *Residents for Reasonable Development v. City of New York*, (1st Dept, 2015), involved a large, city-owned site between 73rd and 74th Streets that was the subject of a City-sponsored RFP seeking proposals for a large-scale community facility. The site was zoned M3-2, and had historically housed a New York City sanitation garage, and then a parking lot. The site abutted the FDR drive to the east, an M3-2 zone to the north (occupied by a Con Ed steam plant), an M1-4 zone to the west and an M1-4 and R10 zone to the south. The portion of the R10 zone to the south across 73rd St. is developed with a large tower. Thus, in contrast to the current proposal, the 73rd street project site was surrounded primarily by non-residential zoning, a wide street (the FDR), and a residential district that allowed high density. The 73rd

[5] *See, e.g.,* Mandatory Inclusionary Housing- DCP (nyc.gov), and documents linked therein.

Street project was also the result of a City-sponsored RFP that, after careful consideration, had proposed this site for this type of development.[6]

The DEIS is flawed

a. The Purpose and Need are not supported

As discussed on pages 3-5 above, the Application is not necessary to advance any legitimate policy goal. Approval would be akin to handing the Applicant and its commercial development partner a subsidy of at least 240 million dollars.

b. Future No Action Condition contradicted by Applicant's Testimony

The DEIS analysis measures the incremental impacts of the proposed project against an assumed "no action" condition in which the Applicant would construct a new facility for itself plus 40,000 square feet in medical offices. However during the July 29, 2021 public hearing on the Application, the Applicant strongly suggested that it would be more reasonable for the Commission to assume a future no-action condition in which the Applicant continues operating out of its current facility. In other words, the Applicant lead the Commission to believe that, if the Commission does not approve the Application, the Applicant will not, as the DEIS currently assumes, build itself a brand new, larger facility on the Development Site. If that's the Applicant's position, the DEIS's analysis and conclusions are fatally flawed because incremental impacts are being measured against an artificially inflated baseline, and thus artificially reducing incremental impacts. Either the Commission must demand that the Applicant revise the DEIS to measure impacts against a no-build scenario, or the Commission must accept the current DEIS assumption that with or without approval, the Applicant will have a new facility in 2026 (the Build Year). The Applicant can't have it both ways.

To elaborate, the DEIS currently assumes that if the Commission declines to grant the Applicant the approvals it needs:

> the Applicant would construct a new building as-of-right containing laboratory space (including a BSL-3 laboratory space and certified clean room facility space for NYBC) as well as other UG-4 community facility uses. The new building would be an approximately 229,092-gsf split between 40,161 gsf of medical offices and 188,931 gsf of space for the Applicant's operations. The cellar level of the structure would occupy the entire Development Site and six-story-wings would rise on both street frontages to a maximum base height of approximately 60 feet, a maximum roof height of approximately 75 feet. Six interior parking spaces would be provided for the Applicant's vehicle fleet . . . .

DEIS at 1-6. But at the July 29 Public Hearing the Applicant's counsel stated in no uncertain terms just the opposite: "the project under the as-of-right scenario is not a project which the Blood Center believes is viable from its point of view at this time." Public Hearing at 3:35:32.

The DEIS must analyze the environment impacts of the proposed project against "the future projected development that may reasonably be expected to occur on that site by the build year." CEQR Technical Manual at 2-5. The Technical Manual goes on to explain that:

[6] *See* Project Details (nyc.gov) for link to environmental review documents.

> Sometimes, private applicants state an intention to develop their property in the future, with or without approval of a proposed project. In these cases, the lead agency should consider the reasonableness of the applicant's No-Action development scenario by utilizing the relevant factors listed under "Soft Site Criteria." If the lead agency determines it is reasonable to assume that the applicant's stated no-action scenario would occur in the future without the proposed project, the scenario would constitute the no-Action scenario for analysis purposes.

Technical Manual at 2-7.[7] Here, the Commission must question the reasonableness of the DEIS's current no action assumption or, alternatively the sincerity of the Applicant's testimony. If the Commission determines that, as the Blood Center representatives testified, the "the as-of-right scenario is not a project which the Blood Center believes is viable," the Commission, as lead agency for environmental review purposes, must require the revision of the DEIS to measure environmental impacts against an accurate No-Action development scenario.

If an as-of-right development scenario is not expected by the Applicant, the DEIS is fundamentally flawed in its guiding assumption that:

> for the purposes of the environmental review, the net difference between the No Action and With Action conditions is the approximately 389,800 gsf of commercial research laboratory floor area in the With Action condition as compared to approximately 40,100 gsf of medical offices in the No Action condition.

DEIS at 1-8. If, instead of the above assumptions the DEIS assumed a no-build no action condition, we would expect substantially more significant adverse incremental impacts, particularly in the areas of transportation, construction, and shadows.

Either the Applicant must retract its representations at the Public hearing suggesting it would not pursue an as-of-right development without approval of the Application or the DEIS must be revised so that consistent with SEQRA/CEQR, the Project's environmental impacts are compared against a future no-build condition, which would provide an accurate assessment of the Project's significant environmental impacts.

c. The DEIS's analysis of adverse Impacts to Land use, Zoning and Public Policy, Urban Design and Visual Resources, and Neighborhood Character is incomplete and understates the significance of the proposed changes and the resulting impacts.

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[7] The "Soft-Site Criteria" include:

- The amount and type of recent as-of-right development in the area;
- Recent real estate trends in the area;
- Recent and expected future changes in residential population and employment in the study area;
- Government policies or plans, such as a building on site being identified for a landmark designation, that may affect the development potential of a site or sites;
- Site specific conditions that make development difficult; and
- Issues relating to site control or site assemblage that may affect redevelopment potential.

Technical Manual at 2-6.

i. Land Use, Zoning and Public Policy

According to the CEQR Technical Manual, a proposed action has adverse impacts when it "would result in significant material changes to existing regulations or policy." CEQR Technical Manual at 4-25. It would also cause an adverse impact if "the project would create a land use conflict or would itself conflict with public policies and plans for the site or surrounding area." Id at 4-25. As discussed at length above, the proposed changes to the existing land use and zoning could not be more significant and inconsistent with current land use regulations and policy, for the surrounding area and otherwise.

In terms of use, the Application would introduce a commercial use to a residential mid-block that does not now allow commercial uses, and allow it at a density more than three times the density permitted for commercial uses on nearby avenues. In terms of bulk, the proposed project would produce a building with 4 times the height allowed under existing zoning, allow a mid-block tower – a form deemed incompatible with narrow mid-blocks by this Commission both in 1985 when R8B was initially mapped on the Development Site and dozens of times since then -- and allow a tower with an unprecedented 72% lot coverage (compared to maximum 30-40 percent tower coverage permitted on the avenue under C2-8 zoning.) The resulting bulk would be comparable to commercial buildings in Hudson Yards and mid-town Manhattan. Inexplicably, the DEIS fails to acknowledge these and the other substantial changes detailed above on pages 2-3 and in the documents referenced therein.

Instead, the DEIS glosses over these departures with conclusory statements. For example, the DEIS states that the "Proposed Project would not result in a substantial change in the land use on the Development Site because it would replace an existing community facility building containing laboratories with a new community facility and commercial laboratory building." DEIS at 2-1. Deeming "insubstantial" the siting of 389,000 gsf of commercial lab uses onto a residential midblock that has no such uses and does not permit such uses is a blatant distortion of the facts. The DEIS attempts to justify its irrational conclusion by pointing to nearby community facility uses: "The Proposed Project is not expected to result in significant adverse land use impacts on adjoining uses or be incompatible with existing uses in the study area, which already include several similar community facility uses (i.e., the two Memorial Sloan-Kettering Centers)." DEIS 2-1. See also DEIS 2-8. Once again, this conclusory statement evades the reality that community facilities are permitted uses in R8B districts, commercial labs are not. Existing zoning compliant uses do not justify an unprecedented new use. Moreover, the focus on community facility uses ignores the fact that the project site is also surrounded by residential buildings, a park, a library and a public school complex. Any objective assessment of whether the proposed land use change is "substantial" must consider compatibility with these other uses. The DEIS does not. If it had, it would have had no choice but to conclude that the use was inconsistent with these nearby residential uses.

The DEIS Zoning, Land Use and Public Policy analysis also fails to meaningfully acknowledge, let alone evaluate, the substantial changes in bulk, and the inconsistency of that proposed bulk with decades of land use policy, starting with the principles articulated in the 1985 study and the CPC's 1985 Report adopting the R8B zoning in this neighborhood, and continuing through 36 years of consistent application of bulk controls on residential mid-blocks through contextual zoning. Instead, again in conclusory form, the DEIS states that the proposed changes "would be consistent with the predominantly residential and commercial zoning districts in the study area" even though there is not a single zoning district mapped in the study area that allows 6 or 7 FAR of commercial uses, and even though there is not a single commercial tower

in the study area, let alone one with a 180x181 floorplate and 72% tower coverage, on a narrow sidestreet or elsewhere.

The DEIS's policy discussion not only fails to address the Application's inconsistency with City policies that have lead to the consistent mapping of contextual zones on low-mid-rise residential side streets, but also fails to address the inconsistency with commercial zoning policy. See discussion of C2 zoning districts at p. 3 above. Finally, the DEIS fails to address the inconsistency of the proposed rezoning with the City's policy statements in the 2016 Memo, the 2018 RFEI, and elsewhere regarding appropriate locations for life science labs. See p. 3 above.

In sum, it is difficult to imagine an application with more significant adverse land use impacts; the proposal is entirely inconsistent in use and bulk with existing regulations, entirely inconsistent in use and bulk with the proposed new C2-7 zoning and incongruous with the surrounding area in both bulk and use. The chapter must be revised to accurately identify the adverse impacts, and the Applicant and the lead agency must consider reasonable alternatives that could mitigate those adverse impacts.

ii. Urban Design and Visual Resources

An Urban Design analysis considers how a project "may change the experience of a pedestrian." CEQR Technical Manual 10-1. The analysis requires "consideration of the degree to which a project would result in a change to the built environment's arrangement, appearance, or functionality and whether the change would negatively affect a pedestrian's experience of the area."

Like the Land Use Chapter, the Urban Design chapter states in conclusory fashion that there would be no adverse impacts: "development facilitated by the Proposed Actions would be compatible with the urban design of the study area, and would not adversely impact the pedestrian experience." As noted above, the proposed change would introduce a mid-block tower, unprecedented in scale, that would be even larger than the type of tower that this Commission intended to block when, in 1985 it voted to map these blocks as R8B. In the 1985 study preceding the rezoning, the Commission staff stated "The balancing of high-density zoning on the avenues by low-scale development in the midblocks has been a policy upheld consistently by the City Planning Commission." (see Upper East Side Midblock Study, Department of City Planning, February 1985, page 10). In recent years, the Commission has made similar public statements regarding the mapping of contextual zoning on residential midblocks throughout the City. For example, the Land Use chapter of the East New York Rezoning FEIS stated that R5B, R6B and R6A was being mapped to "preserve the character of existing low-density neighborhoods along East New York's residential core side streets, through contextual zoning." East New York FEIS at 2-40. Thus, the DEIS's conclusion that the proposed commercial tower would not have any adverse impacts on the pedestrian experience is wishful thinking at best, contrary to the facts, and inconsistent with decades of planning principles.

Friends also notes that despite a high degree of compliance or near compliance with the R8B envelope from a pedestrian perspective within the study area, particularly on East 67th and East 66th streets, the vast majority of this DEIS chapter's discussion focuses on non-conforming buildings and buildings on the avenues. See, e.g., DEIS at 7-5. This chapter must be revised to accurately reflect the built context, acknowledge the adverse impacts to the pedestrian

experience that any rational person would recognize must flow from replacement of a 3 story building with a 334 foot building that is 180 feet wide, and identify alternatives to mitigate those adverse impacts.

iii. Neighborhood Character

An analysis of neighborhood character "considers how elements of the environment combine to create the context of a neighborhood and how a project may affect that context." CEQR Tech Manual at 21-1. Like the Land Use and Urban Design chapters, the DEIS glosses over the impacts to neighborhood character. In the first instance, its identification of the defining features of the neighborhood fails to recognize the built R8B context as a defining feature of much of the study area, particularly west of First Avenue. It also fails to make clear that the high density institutional uses referenced in the discussion are located primarily east of First Avenue and nowhere on R8B mid-blocks. See DEIS at 15-3, 15-4. Finally, the DEIS pays no attention to the fact that the project would add 6 to 7 FAR of commercial uses on a block where none currently exist and fails to consider how the introduction of a tower of unparalleled bulk (10 FAR) on a midblock would impact the defining feature of the neighborhood codified in the R8B zoning. The analysis is also flawed in as much as it builds on prior erroneous conclusions. See, e.g. DEIS at 15-5 (stating that the project would result in no adverse land use impacts). In sum, the neighborhood character analysis obfuscates the defining features of the area around the Development Site and then relies on that obfuscation to avoid acknowledging and having to mitigate adverse impacts.

d. Traffic assumptions deeply flawed

The transportation chapter is deeply flawed due to a material inconsistency between the employee estimates and the trip generation rates used.

The DEIS assumes a trip generation rate of 6.98 daily person trips per 1,000 gsf, for the proposed 389,000 gsf of biomedical lab space, which rate was sourced from the 2019 FEIS of the Bronx Psychiatric Center Land Use Improvement Project. Using this rate would mean that the Project could be expected to generate approximately 2,783 daily person trips. This number cannot be reconciled with the DEIS's projected employee count. Table 1-1 of the DEIS projects that the biomedical lab space would employ 2,630 workers (580 of these would be for the Blood Center and the remaining 2,050 workers would be for the biomedical lab space). Thus, under these projections, the number of trips per worker in the biomedical lab spaces would be approximately 1.36, which cannot be accurate as it assumes certain employees do not return home at the end of the day, and not to make any trips to and from the premises during the middle of the day. Based on the assumptions used for studies that analyzed similar lab or research uses, it is typically assumed that a lab employee makes 3.5 trips a day (this assumes around 75 percent of workers would leave the lab midday for lunch, errands, etc.). This was the assumption used in the analysis of the 2007 *Proposed Manhattanville in West Harlem Rezoning and Academic Mixed-Use Development FEIS* and the 2013 *Cornell NYC Tech FEIS*. Another more recent study, the 2020 *Public Health Lab EAS* assumed, after NYC DOT consultation, that approximately 2/3 of workers would leave the lab in the midday, which equates to 3.33 worker trips a day.

If the projected daily trip generation rate was based on projected employee count, and a reasonable expectation of daily trips per person (e.g., 3.5 versus 1.36) the number of trips generated would be over 2.5 times greater than what was analyzed in the DEIS. A Level 2 screening analysis may be needed for traffic, subway, and pedestrian trips and detailed transportation analyses may be warranted. The DEIS must be revised so that its transportation analysis is based on sound estimate of how many daily person trips the proposed project is likely to generate.

Also, as noted in subsection (b) above, if the reasonable future no-action condition is a no-build condition, the transportation chapter's assumptions would be even further off-base.

e. The DEIS fails to analyze "with action" as-of-right under C2-7

The DEIS is flawed in that it fails to analyze an as-of-right development for the project action. An approval to rezone the Blood Center site to C2-7 would enable the site to be redeveloped not only with the proposed project, but also with an as-of-right R9 residential use or 10 FAR community facility use, each of which would have different and possibly more significant adverse impacts. Absent an enforceable restriction on the Development Site preventing other as-of-right developments under the rezoning without further environmental review, the Commission has an obligation to take a hard look at the reasonably foreseeable potential consequences of its actions.

As the CEQR Technical Manual succinctly states:

> Discretionary actions sometimes permit a range of project characteristics, or development scenarios, to occur even though the action may be sought in order to facilitate a specific development. From the range of possible scenarios that are considered reasonable and likely, the scenario with the worst environmental consequences is chosen for analysis. This is considered to be the "Reasonable Worst Case Development Scenario," the use of which ensures that, regardless of which scenario actually occurs, its impacts would be no worse than those considered in the environmental review.

Technical Manual at 2-3. The DEIS devotes only two sentences to analyzing the Reasonable Worst Case Development Scenario ("RWCDS") and entirely fails to consider the possibility that under the rezoning the Development Site could be redeveloped in a manner different from the specific development proposed, and nowhere considers "the range of possible scenarios that are considered reasonable and likely." Although the Technical Manual allows that in certain instances the RWCDS and the specifically proposed project may be one and the same, say, where "a restrictive declaration, a lease or other agreement between the project sponsor and the City," limit the range of development scenarios, those are not the facts here. The Applicant has made no enforceable commitment by way of a restrictive declaration, agreement with the City, or otherwise that would prevent the site from being developed as an as-of-right R9 residential use or 10 FAR community facility use, each of which may pose more significant adverse environmental impacts.

Accordingly, the DEIS must be revised to include a hard look at the range of possible development scenarios, including the possibility that the Applicant would sell the site for 10 FAR community facility development under the new zoning.

f. Shadows impacts cannot be adequately mitigated at peak times

The DEIS correctly recognizes that the Project would have a significant adverse shadow impacts. The Applicant claims that the alternative it offers in the DEIS to mitigate this impact is not financially feasible [CITE] Both in the DEIS and at the CPC public hearing, the Applicant made vague references to purported additional mitigation measures being explored, but these have remained undefined. Public Hearing at 3:27:10. If the Applicant has additional or alternative mitigation measures to offer the Commission and the public would have been well served by the Applicant disclosing them before the Public Hearing. Any mitigation measures should be disclosed in a revised DEIS, with an opportunity for public to comment. Absent any public disclosure and vetting through the public comment process of such measures, the only reasonable conclusion is that the shadow impacts cannot be adequately mitigated.

g. Missing catastrophic consequences analysis

The DEIS fails to address the fact that the new facility poses a risk of catastrophic consequences by allowing a potentially large expansion of the number of biosafety level 3 laboratories ("BSL-3") on site, a use that the City's own Board of Health has stated poses the potential for "catastrophic consequences" in densely populated areas in Manhattan like the development site.[8] The introduction of 389,000 gsf of commercial lab space into a residential neighborhood also raises numerous questions regarding consistency with land use and zoning, mechanical needs, and separation of uses.

Yet the project description in the DEIS barely mentions the proposed use, let alone explains it in sufficient detail to enable the reviewing agencies and the public to evaluate its impacts. Most importantly, the DEIS is silent as to whether the new commercial labs of the Applicant's partners would or would not include BSL-3 or BSL-4 uses. The DEIS Land Use Chapter merely states that the 389,800 feet of commercial lab space would be used for Use Group 9 laboratories. DEIS at 2-6. Unanswered is whether the Applicant and the lead agency take the position that BSL-3 or BSL-4 labs are permissible uses under Use Group 9. If so, the DEIS must, consistent with its obligation to consider the Reasonable Worst Case Development Scenario, address the potential significant adverse impacts associated with the proposed substantial expansion of such uses in a dense residential neighborhood.

Catastrophic consequences associated with expansion of hazardous uses are not a theoretical risk; in its discussion of catastrophic consequences, the Board of Health lists a number of recent incidents at labs throughout the country.[9] As the development site is located in a dense residential neighborhood across the street from a large public school complex, we urge the Commission to ensure that the environmental review adequately assesses this risk and related issues. At a minimum, the DEIS must be amended (i) to describe the scope of BSL-3 uses proposed and how those uses comply with the Project zoning, and (ii) to evaluate the potential impacts of those uses in relevant chapters in the DEIS, including in a new chapter on catastrophic impacts, or (iii) if no such uses are currently proposed for the commercial FAR, to explain the mechanism by which such uses would be prohibited without further public review.

h. The Application fails to consider a range of reasonable alternatives

[8] See Notice of Adoption of Amendments to Article 13 of the New York City Health Code https://www1.nyc.gov/site/doh/about/hearings-and-notices/official-notices-archive.page.
[9] *Id.*

The Applicant failed to provide a meaningful range of reasonable alternatives, in as much as it claims that anything other than the project and the no action alternative would be financially infeasible. Further, the Technical Manual provides that:

> The EIS should consider a range of reasonable alternatives to the project that have the potential to reduce or eliminate a proposed project's impacts and that are feasible, considering the objectives and capabilities of the project sponsor. If the EIS identifies a feasible alternative that eliminates or reduces significant adverse impacts, the lead agency may consider adopting that alternative as the proposed project.

Technical Manual at 23-1. The DEIS considers only two alternatives, the no-action alternative which it is required to consider under SEQRA, 6 NYCRR § 617.9(b)(5)(v), and what the DEIS refers to as the "No Significant Adverse Shadow Impact Alternative," which would reduce the height of the building on the Development Site by "approximately half." The DEIS offers neither a rendering of this alternative or specific dimensions by which members of the public could assess the Applicant's claims regarding its impact on shadows. Although the DEIS acknowledges that this shorter alternative "would reduce—but not completely remove—the shadow impact on St. Catherine's Park, the Applicant writes it off as not "financially feasible" without any explanation of the calculations that support that conclusion. Given the Applicant claims this alternative is "not feasible" and has raised doubts as to the feasibility of the no-action alternative, the DEIS fails to meet the requirement that it consider "a range of reasonable alternatives."

Moreover, if the DEIS adequately identified the full range of adverse impacts, including adverse impacts to Land Use and Zoning, it would need to provide alternatives to mitigate such impacts. As Friends has previously noted, it would support a "full coverage" alternative that waives rear-yard requirements but otherwise respects the R8B envelope (see testimony of G. Janes and attachments), which would meet the Applicant's desire for more efficient floorplates but also substantially mitigate adverse impacts to land use, zoning, visual impacts and community character.

i) The Proposed Project is not the one that reduces adverse impacts to the maximum extent practicable

Even if one accepted, for argument's sake, that the analysis in the DEIS were complete as drafted, the Commission must disapprove the Application, because, among the reasonable alternatives, the proposed project is not one that from among the reasonable alternatives, the project is not one that avoids or minimizes adverse environmental impacts to the maximum extent practicable as required under SEQRA. See 6 NYCRR 617.11(d). The DEIS indicates that under the no action condition, the Applicant would construct a new larger as of right facility, and life sciences lab space would be developed in other locations, without causing any of the significant adverse impacts admitted in the current draft of the DEIS and identified above.

j) Special Permit conditions cannot be met

It would be arbitrary and capricious for the Commission to find that the Applicant has satisfied the standards of the Z.R. § 74-48 special permit, as amended (DEIS, Appx. A). Specifically, the record does not support a finding that the proposed facility "will not unduly

affect the essential character or impair the future use and development of the surrounding area," (Z.R. § 74-48(c)(1)) or that the proposed "modification to any applicable #bulk# regulations will not unduly obstruct the access of light and air to adjoining properties or public #streets#." Z.R. § 74-48(c)(4).

Z.R. § 74-48(c)(1)

The Applicant's project will undoubtedly both "affect the essential character . . . of the surrounding area" and "impair the future use and development of the surrounding area."

As previously discussed, the character of the surrounding area is largely driven by growth and density along wide streets, and lower scale residential development on narrow mid-blocks. But the special permit requested would allow for a a major and unprecedented deviation from this pattern of development and the R8B zoning that dates back to 1985 and has successfully thwarted the construction of towers on mid-blocks in this area. A special permit here would allow development of nearly 7 FAR of commercial lab space on a residential mid-block that currently has no commercial uses. What the applicant is proposing, at 334 feet (16 stories) and with a floor plate that that rivals that of the Empire State Building or One Vanderbilt, is very comparable to a commercial tower that one would expect to see in a central business district, not on a narrow residential street.

The vast majority of midblock buildings in the surrounding area fit the R8B envelope and the small number of buildings that exceed it are less than half the Project's height. And to the extent there are a handful of non-conforming mid-block towers across Second avenue, these non-conforming buildings cannot be used by the Applicant to justify the 16 story tower that a special permit would allow here, as they all predate the 1985 rezoning and are examples of the very type of ill-conceived development that the R8B zoning was designed to thwart. In sum, this unprecedented project would "unduly affect the essential character . . . of the surrounding area" and thus a special permit could not and should not be approved.

Due to the project's unparalleled bulk, on a narrow midblock, the granting of a special permit would also "impair the future uses and development of the surrounding area," by way of the shadows the Project would cast on the neighborhood, and most notably on the Julia Richman Education Complex and St. Catherine's Park. The DEIS properly recognizes that these shadows would pose a significant adverse impact on the park, a conclusion that by itself strongly supports a finding that the development would impair a surrounding use. The shadow impacts and impacts on access to light are discussed in more detail directly below.

Z.R. § 74-48(c)(4)

A special permit here modifying the C2-7 bulk regulations to allow 10 FAR would "unduly obstruct the access of light and air to adjoining properties or public #streets," and therefore should not be granted. The record shows that the Project would cast new shadows on most of St. Catherine's Park during the afternoons in the spring, summer and fall. DEIS at 5-1. Although the DEIS does not specifically analyze the shadow impacts the Project would have on the Julie Richman Education Complex immediately across from the development site on the north side of 67th street the shadow impacts to that institution will be significant as well. The light related impacts go beyond shadows and also include a dramatic reduction in solar radiation. For documentation of these impacts, see Exhibit E, shadow and solar radiation studies prepared by George Janes & Assoc. While these studies focus on afternoon impacts on St. Catherine's Park, light to 67th St. and JREC will extend throughout the day.

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If a special permit is granted on these facts the Commission would be setting a precedent that would render these required findings essentially meaningless, for it is hard to imagine a project that is both more out of sync with the essential character of the surrounding area than this one and that does more injury to nearby properties and their access to light.