

New York's Frankenstein zoning rules creates monster problems for city laboratories

BY ELISE WAGNER AND PATRICK SULLIVAN

Life sciences has emerged as one of real estate's rare bright spots during the pandemic. Continued investment in the sector, from West Harlem to Long Island City, has benefited from city and state support.

But a key to maximizing the industry's potential is to make life sciences development less cumbersome. That begins with updating the zoning that governs it.

The list of permitted uses contained in the Zoning Resolution has barely changed in the past 60 years. In some cases uses are almost comically outdated: Use Group 7 lists "trade embalmers" as a permitted use, and Use Group 9 includes typewriter repair shops. These antiquated categories often generate confusion when considering whether a relatively new use such as life sciences is allowed.

Currently life sciences may be classified in several use groups. Laboratories in hospitals or universities may be classified as community facility uses. Commercial life sciences laboratories are classified as either research or medical laboratories, or as offices with accessory laboratories, with the classification dependent on the types of activities planned and whether the space can satisfy Building Code requirements. Lines between these use categories are not clear.

It's easy to see how murky this can get for developers deciding whether to pursue a project. Use Group 17 laboratories are a manufacturing use, allowed only in manufacturing zoning districts (except by special permit). This use category allows the most intensive laboratories, with hazardous chemicals and production or manufacturing activities.



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But Use Group 9 laboratories are a commercial use, defined as laboratories "not involving any danger of fire or explosion ... or other objectionable effects," and they are permitted in most commercial zoning districts. They traditionally comprised laboratories performing a medical function such as blood testing.

But should a laboratory be considered to have "objectionable effects" if it complies with state and federal safety standards? And should production activities be considered "manufacturing" if they are small in scale and used to create drug samples for clinical trial use?

The first effort to eliminate the lines between these categories came in 1990. To facilitate the development of Columbia University's Audubon Research Park, the city created a special permit allowing research laboratories in certain commercial zoning districts. East River Science Park at Bellevue Hospital employed the mechanism in 2001. But that special permit is only available in limited areas, and a special-permit process is lengthy and uncertain.

In an evolving city with a broad swath of areas ripe for life sciences development, there need to be as-of-right tools for developing these facilities.

Our firm assisted with one such project in 2015 by confirming that a life sciences laboratory could be classified as a Use Group 9 "medical laboratory" and therefore situated in a Midtown office building. In 2016 the de Blasio administration formalized this approach by issuing a memorandum confirming that certain research laboratories could be classified as Use Group 9 laboratories and may include some amount of production activities in connection with associated research.

Now, with life sciences having a moment, the city should update the Zoning Resolution to facilitate development of life sciences facilities. Updates could include use classifications that focus on performance standards rather than specific uses and that incorporate safety standards used by the life science industry itself. Industry experts should help craft these changes.

The city should take every opportunity to work with industries in strong position to do business here for the long term as we work to recover from the pandemic. Right now, there are few better ways to do that than by making it easier for life sciences developers to invest in the city's future.

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