

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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In the Matter of the Application of

Index No. 165880/2025

COMMITTEE TO PROTECT OUR LENOX HILL  
NEIGHBORHOOD, INC., CIVITAS CITIZENS INC., 145  
EAST 76<sup>TH</sup> STREET CORPORATION, EAST 76<sup>TH</sup>  
REALTY CO., INC., 829 PARK AVENUE  
CORPORATION, PARK AND 76<sup>TH</sup> ST. INC., 885 PARK  
AVENUE CORPORATION, 863 PARK AVENUE, INC.,  
PARK AVENUE AND SEVENTY-SEVENTH STREET  
CORPORATION, 875 PARK AVENUE CORPORATION,  
1065 LEXINGTON AVENUE CORPORATION, ANDREW  
PEARCE, BARBARA MINTZ, ELIZABETH  
HERKELRATH, WILLIAM HERKELRATH, HILARY  
CECIL-JORDAN, LENORE PASSAVANTI, PIERRE VAN  
BOCKSTAELE, and WENDY LEHMAN LASH,

**SUPPLEMENTAL AFFIRMATION  
OF LOIS UTTLEY**

Petitioners/ Plaintiffs,

For a Judgment Pursuant to Article 78 and Sections 3001  
and 6301 of the New York Civil Practice Law and Rules,

-against-

THE CITY OF NEW YORK, NEW YORK CITY  
COUNCIL, NEW YORK CITY PLANNING  
COMMISSION, LENOX HILL HOSPITAL and  
NORTHWELL HEALTH,

Respondents/Defendants.  
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I, LOIS UTTLEY, affirm as follows:

1. I am a Manhattan resident and co-convenor of Community Voices for Health System Accountability. I submit this supplemental affirmation in support of the amended petition to vacate and annul the City’s zoning approvals granted in connection with the proposed redevelopment and expansion of Lenox Hill Hospital.

2. On or about February 3, 2025, the City Planning Commission (the “CPC”) certified Lenox Hill Hospital’s application for ULURP review. On March 10, 2025, the Daily News published my op-ed, coauthored with David R. Jones, entitled “Two hospitals with two different paths” (Ex. A). In the op-ed, we stated:

Lenox Hill Hospital already has more beds than it can fill. Last week, 43% of its beds were vacant, compared to 18% at Mount Sinai and 11% at NYU. Harlem Hospital had a vacancy rate of just 2% and Northwell’s own Queens-based Long Island Jewish Medical Center had 4%.

These numbers came from the New York State Department of Health (“DOH”) Hospital Capacity Dashboard which displays bed occupancy data reported by the hospitals themselves to DOH’s Hospital Capacity Bed Access Data Collection system. The occupancy data is updated on a daily basis, Monday through Friday, and can be accessed here:

[https://www.health.ny.gov/facilities/hospital/bed\\_capacity/](https://www.health.ny.gov/facilities/hospital/bed_capacity/).

3. Shortly thereafter, Lenox Hill Hospital reduced the number of beds it was reporting to DOH resulting in a significantly lower vacancy rate. At the CPC’s May 21, 2025 public hearing, Dr. Daniel Baker, the President of Lenox Hill Hospital, asserted that the hospital’s “occupancy rate is 80% when we look year over year so that puts the vacancy rate at about 20 percent” (NYSCEF Doc. No. 64, p. 29).<sup>1</sup>

4. In response to Dr. Baker’s assertion, the CPC’s chairman, Daniel R. Garodnick, Esq., asked:

CHAIRMAN GARODNICK: How does -- just to orient that, how does that compare to other peer hospitals in Manhattan? That’s, again, the reason I’m asking this, is this a point that we’ve heard from community advocacy and so I just want to make sure that you address it.

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<sup>1</sup> This assertion was plainly incorrect. As I stated in my previous affirmation, in 2024, the hospital had a 70% occupancy rate (see NYSCEF Doc. No. 18, ¶ 6).

MR. BAKER: Yes. So I think one of the things -- and we thank the community for bringing this to our attention -- one of the things that highlighted this was, unfortunately, the statistics that we were reporting were not the correct statistics originally to the New York State Department of Health and [the Health Emergency Response Data System], which is when the community started citing vacancy rates, which were very low.

Those were not vacancy rates that we were experiencing. They're also incongruent with actually being able to operate the hospital. It happened to do with a denominator error. We have corrected that, which is now showing again, the 80 percent occupancy rate that we had all along. (NYSCEF Doc. No. 64, p. 30-31) (emphasis added)

5. In my letter to the CPC, dated May 29, 2025, I noted that Lenox Hill Hospital's reduction in the number of reported beds, allegedly to correct what Dr. Baker referred to as a "denominator error", occurred only after we publicized the higher vacancy rate (NYSCEF Doc. No. 75, p. 160). At that time, the hospital reduced its reported beds from 455 to 344 without explaining why 111 beds were no longer being counted. *Id.* On May 29, 2025, DOH's Hospital Capacity online dashboard showed 71 out of 344 beds vacant with a seven-day average vacancy rate of 23%. *Id.* However, if the 111 mysteriously "missing" beds were added back in, the vacancy rate would be 40%. *Id.*

6. At the same time that the hospital was reporting 344 total beds to DOH, its applications before the CPC sought an increase in beds from 450 to 475. However, after the City approved the applications, the hospital once again reversed course and reverted to reporting a larger number of beds. Thus, on January 25, 2026, DOH's online dashboard showed 136 out of 424 beds vacant and a 32% vacancy rate. That level of vacancy has continued. On March 11, 2026, the same dashboard showed 127 out of 424 beds reported vacant for a previous day vacancy rate of 30%. The rate was much lower at some other Manhattan hospitals such as Bellevue Hospital Center (6%),

Mount Sinai Hospital (11%), and Mount Sinai Morningside (9%).

7. Unfortunately, the hospital appears to have repeatedly changed its occupancy and vacancy rates to secure the City's approvals. Clearly, the hospital should not be rewarded for this conduct. The hospital already has more beds than it can fill and there is simply no need for a larger institution. Indeed, a smaller number of beds would be far more appropriate and would free up money which Northwell could use to expand capacity in underserved areas of the City.

I affirm this 12<sup>th</sup> day of March, 2026, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, except as to matters alleged on information and belief and as to those matters I believe it to be true, and I understand that this document may be filed in an action or proceeding in a court of law.

*Lois Uttley*

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LOIS UTTLEY

# **EXHIBIT - A**

OPINION

# Two hospitals with two different paths



Barry Williams for New York Daily News

Lenox Hill Hospital in Manhattan. (Barry Williams for New York Daily News)



By **DAVID R. JONES** and **LOIS UTTLEY**

PUBLISHED: March 10, 2025 at 5:00 AM EDT | UPDATED: March 10, 2025 at 11:30 AM EDT

Two aging Manhattan hospitals need renovations to deliver modern medical care. Which hospital should get a makeover and expansion? Which should close? Astoundingly, our de-regulated health care marketplace is delivering the wrong answers:

- Lenox Hill Hospital, which charges high prices and serves an overwhelmingly white, middle- and upper-class Upper East Side community that has four other hospitals, is asking city officials for massive zoning changes to allow a \$2 billion-plus expansion project.
- Beth Israel Medical Center, which charges lower prices and is the historic community hospital for the diverse Lower East Side, where many people are older, have disabilities, and are more likely to be low-income and/or people of color, is slated to close on March 26.

The stark contrast between these two situations exemplifies the chaos left by the Pataki administration's moves to deregulate hospital prices and health care planning 25 years ago. That deregulation has resulted in a wave of hospital closures, maldistributed hospital beds and skyrocketing hospital prices.

Take the example of Beth Israel, which would become the 54th hospital to close in New York State since 1997. The closure would continue a pattern of more frequent closures in communities of color, as revealed by a new Community Service Society of New York study.

It didn't have to be this way. Beth Israel was acquired by Mount Sinai in 2013, which proceeded to turn its break-even financial picture into a decade of financial losses. Mount Sinai stripped vital community services (maternity, pediatrics, cardiac surgery) from Beth Israel, redirecting patients to other Mount Sinai facilities uptown. A community coalition has fought the proposed closure for more than a year through the state regulatory process and the courts.





Meanwhile, Long Island-based Northwell's proposed expansion of its Lenox Hill Hospital exemplifies all that is wrong with our de-regulated health care marketplace. It ignores parts of our city that lack adequate hospital capacity in order to build a giant new medical tower in a neighborhood that already has more than four times the citywide rate of beds per 1,000 residents.

Further, Lenox Hill Hospital already has more beds than it can fill. Last week, 43% of its beds were vacant, compared to 18% at Mount Sinai and 11% at NYU. Harlem Hospital had a vacancy rate of just 2% and Northwell's own Queens-based Long Island Jewish Medical Center had 4%.

Our state and city can do better to allocate hospital beds wisely, by properly regulating hospital closures and expansions. The proposed Local Input for Community Healthcare Act (S1226/A6004), would require a truly public process in which the community and policymakers are informed about a potential closure and have the opportunity to have their concerns addressed. It passed the state Legislature last year but was vetoed by Gov. Hochul.

In situations like the proposed Beth Israel closure, community residents would be notified and engaged in a process that would thoughtfully consider whether patients could actually obtain needed care at alternative locations, and how equity concerns would be addressed.



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For ill-considered hospital expansions in over-bedded communities like the Upper East Side, the state should follow the path of California and set up an independent Office of Health Care Affordability. It would review mergers, acquisitions and expansions to ensure that proposals like Northwell's Lenox Hill expansion would serve a public need without increasing prices.

For now, we are left to rely on the city's Uniform Land Use Review Process (ULURP) — conducted by officials with little health care expertise — to consider Northwell's requested zoning changes. New Yorkers will have the opportunity to speak out against the Lenox Hill plan, beginning with a public hearing before Community Board 8 on Wednesday.

New York has the second most expensive health care in the country thanks to Pataki-era deregulation of hospital pricing and planning. Lenox Hill Hospital, for example, charges commercial health insurers more than three times what it charges Medicare for the same services, among the highest prices in Manhattan. Hospital prices are the single biggest component of our expensive New York health care costs.

It is time for policymakers to take a stand for New York's patients and enact comprehensive and systemic pricing and planning reforms to re-regulate what is clearly a broken health care marketplace.

*Jones is president and CEO of the Community Service Society of New York. Uttley is a health equity advocate and co-convenor of Community Voices for Health System Accountability.*

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