

**New York City Board of Standards & Appeals**

**TRANSCRIPTION OF TAPE**

*Case# 74-07-BZ.*

*6-10 West 70<sup>th</sup> Street, Borough of Manhattan.*

*11-27-07.*

1 MR. COSTANZA: Item number eleven. Calendar  
2 number 74-07-BZ. 6-10 West 70<sup>th</sup> Street, Borough of Manhattan.

3 CHAIR SRINIVASAN: All right. Before we discuss the  
4 application, I'd like to address the request made by a community resident that the Vice-  
5 Chair and myself recuse ourselves based on a meeting we had with the synagogue prior  
6 to the application being filed.

7 Just for the record, the Board routinely holds meetings with potential applicants  
8 and the rationale and procedures of these meetings are described on our web site.

9 Since the meeting occurred outside a hearing context and any proceedings,  
10 indeed, it was six months before the application was filed. That meeting is not  
11 considered an *ex parte* communication under Section 10-46 of the City's Administrative  
12 Procedure Act and, therefore, is not the basis for a recusal by the Board members who  
13 attended it.

14 Furthermore, we did offer a similar meeting to the community resident but he  
15 declined to take advantage of that offer.

16 I'd like to make a few points as to how the hearing will be conducted.

17 There are many speakers on this item and in fairness to all parties, I respect - -  
18 with respect to the Board, I urge all of you to follow the instructions.

19 The applicants and their representatives will speak first. We will then take  
20 testimony from elected officials; the Community Board; the attorney representing  
21 adjacent buildings and civic group and then members of the public.

22 The applicant will be allowed to answer questions at the end of the testimony;  
23 questions raised by the Board members.



46 In lieu of that, we are submitting for the record the proceeds of the Landmarks  
47 Preservation Commission. The Landmark Preservation Commission record has  
48 testimony of dozens of supporters of Shearith Israel who came down to speak on the  
49 application and the Chairman referenced speakers of postcards received. We will simply  
50 enter that into the record as an indication of the broad base of support that this application  
51 is capable of. If the Commission would rather hear from them in person, we can certainly  
52 arrange for that at the next hearing.

53 CHAIR SRINIVASAN: Or, they can submit to us in  
54 writing directly to this Board - -

55 MR. FRIEDMAN: Thank you very much.

56 CHAIR SRINIVASAN: - - as opposed to incorporating the  
57 record from Landmarks.

58 MR. FRIEDMAN: Well, we're going to do that, in any  
59 event, because it's an important thing to do but thank you for that and we will see that  
60 that happens.

61 The one point that I want to speak to before turning to the few speakers that we do  
62 have involves - - and this will end on a topic, I know, that the Commissioners spoke  
63 about yesterday regarding the residential portion of this application and the so-called  
64 issue of monetization.

65 I do want to start out by stating that while the application does focus on site-  
66 specific conditions giving rise to hardship, this particular matter that I'm going to speak  
67 to augments each specific hardship as an additional form of hardship and it's really borne  
68 of the congregation's growth from pre-colonial times to the position it now finds itself in.

69           It shares as an equal in American history with other faiths with roots in Colonial  
70 America; the Episcopal Dutch reform and Catholic churches.

71           Each has its origin in 17<sup>th</sup> or 18<sup>th</sup> Century New York City in a small structure  
72 south of Canal Street.

73           As both the City and faithful grew, these religions grew as well, outgrowing their  
74 existing facilities and moving north as the City expanded.

75           Integral to each move was a parlay of its real estate to serve as an economic  
76 engine for its next generation's building.

77           Whether it's a sale of a log house or the disposition of Trinity Church's real estate  
78 in lower Manhattan, the disposition of real estate and the reutilization of real estate has  
79 been part of each one of these church's history and monetization has been part of each of  
80 these cycles.

81           Shearith Israel was the only Jewish congregation in New York until 1825  
82 epitomized this historical pattern; build, grow in number and services beyond the means  
83 of its facilities, secure land for future growth, build again, move north, sell its property.

84           The current synagogue is Shearith's fourth such cycle of this build, grow and  
85 move pattern when it moved from West 19<sup>th</sup> synagogue, literally carrying the structure of  
86 that building in - - over 130 years ago.

87           Now, it finds itself, once again - - it has all the old symptoms of this cycle;  
88 overtaxed facilities and a congregation many times the size of the one that planned its  
89 synagogue generations earlier.

90           Yet, the old solution, find a new site and build again, is no longer available.

91 For one, its population has not drifted off to the emerging frontiers of Manhattan  
92 because there aren't any frontiers left.

93 Its community has matured, multiplied and settled in the Westside.

94 This is a very significant issue for orthodox Jews whose faith require that they be  
95 within walking distance of their synagogue on the Sabbath and major holidays.

96 Second, just as in all three preceding cycles, its programmatic needs cannot be  
97 met by the building designed and built decades earlier.

98 The complexity of modern life bring new challenges and demands on the  
99 institution and many of these demands can only be met by the application proposed in  
100 this application.

101 Third, unlike the three previous instances, its right to monetize its primary asset  
102 has been diminished through a Landmarks designation that makes selling this site and  
103 picking up and moving on a much more complicated issue.

104 This generation of congregants is fiercely proud of its magnificent synagogue but  
105 the fact remains that its previous buildings were equally eloquent and this is the first  
106 generation in the 350 year history of this synagogue to face the dilemma that is arrived at  
107 at this cyclical point where its facilities are falling apart, yet, relocation is not an option  
108 and its only viable alternative lies in organizing and optimizing the best use of its site it  
109 owns.

110 It cannot move and it cannot stay and it cannot do either without some form of  
111 monetization.

112 The need to monetize is nothing new for non-profits. A stone's throw away from  
113 this site, St. Paul's Church and St. Luke's Hospital, have sold their assets, their real estate

114 assets to developers; Lincoln Center, the Rose building, which helped the new Julliard  
115 School be built is a residential building.

116 Fordham is now seeking similar approvals to build residential buildings on its  
117 campus.

118 Long ago, Trinity School actually built the Mitchell-Lama on its site in the Upper  
119 West Side. All of these required major land use actions but, of course, none of them  
120 required variances, yet, Mr. Freeman, who will testify later and be prepared to answer  
121 your question, has presented such mixed use applications to the Board and can provide  
122 you with the details of those cases.

123 Shearith's zoning lot holds 101,000 square feet of unused development rights.

124 The residential portion of this application calls for using 22,000 square feet, a  
125 mere 16 percent of what is available on the entire zoning lot for residential purposes.

126 Tens of thousands of square feet of zoning floor area will be left on the table even  
127 if this application is approved.

128 We cannot use more and what we can use is limited to 37 percent of our zoning  
129 lot.

130 And, even with that footprint, the first 49 feet in height is taken up with the  
131 community facility that needs to replace the current building.

132 So, as you can see, there's a very limited use of residential floor area, both in  
133 quantity and in location. We are forced to use it in the space that this application  
134 provides you, and we believe that that is certainly as much a hardship as any other  
135 hardship that a non-profit has faced.

136 And, certainly with regard to the overall history of Shearith Israel with these  
137 cycles, it now finds itself locked in a position where it cannot grow and cannot move  
138 without the approval of this application.

139 I would like to now turn to - - ask Ray Dovell to come forward.

140 Mr. Dovell is the project architect and he has a few boards that will illustrate the  
141 programmatic difficulties that three succeeding speakers will address and that will be the  
142 end of our presentation for you this morning - - this afternoon - - excuse me. Any  
143 questions for me?

144 CHAIR SRINIVASAN: We'll hold off on the questions  
145 while you continue presentation and then we can ask questions.

146 MR. FRIEDMAN: Thank you.

147 MR. DOVELL: The boards that I will show you - -

148 MS. MATIAS: Identify yourself for the record?

149 MR. DOVELL: Ray Dovell. D O V E L L. The boards  
150 that I'm going to show you here are all of the existing conditions of the community  
151 house, which is adjacent to the synagogue.

152 These are photographs showing the synagogue on Central Park West and then  
153 turning down 70<sup>th</sup> Street. This is the community house in question. It was, in fact, a  
154 converted row house with a party wall through it. The party wall still exists. It creates its  
155 own problems for layout with very narrow rooms permitted.

156 These are some of the conditions in the classrooms, notably the corridors of the  
157 widths that are so pressed for width of space within the building that the corridors are not  
158 to current standards. They are not the sixty inches that are required.

159 The structure, itself, is a combustible material. It's wood framing into bearing  
160 wall masonry and some of the egress runs through classrooms, which you see there. It is a  
161 compressed and not a particular happy situation.

162 This is a longitudinal section through the synagogue, through the sanctuary space  
163 and through the existing community house now showing the auditorium space below, the  
164 two levels of classrooms and the caretaker's residence.

165 There is, in fact, an elevator in the building which attempts to serve a couple of  
166 the floors at the synagogue. However, it's grossly undersized for handicap accessibility.

167 This is the first floor plan of the synagogue and the community house. 70<sup>th</sup> Street  
168 is up here. Central Park West is down here.

169 This diagram attempts to show what happens to get into the synagogue if you're  
170 handicapped.

171 The main entrance to the synagogue is to the side. It is not in the front of the  
172 building at Central Park West. It is inside, where it has been historically.

173 The first "X" that you see there represents two steps that you cannot negotiate in a  
174 wheelchair, obviously, followed by another series of seven steps that gets you to the main  
175 level of the sanctuary.

176 So, if you come in a wheelchair, you're carried up these two flights of stairs  
177 currently. That's to get to the main level.

178 To get to the upper level to the lady's balcony, you come in the community house  
179 to this elevator, which is not handicapped compliant, and then up to the floor above  
180 coming out here onto the balcony where you can finally seat yourself.

181           So, what is lacking here, our classroom sizes are small. They're not enough of  
182 them. They're eight. We need twelve; that combined with the physical constraints of the  
183 existing building.

184                           CHAIR SRINIVASAN: Can you just clarify. You said  
185 you need eight to twelve. Is that based on the tenant's school or is that based on Shearith  
186 Israel's own program?

187                           MR. DOVELL: We are going - - there are eight  
188 classrooms existing. The proposed shows twelve classrooms.

189                           CHAIR SRINIVASAN: I understand that but - - Mr.  
190 Friedman can you answer that question?

191                           MR. FRIEDMAN: I will address that. The school, the  
192 Hebrew School of the synagogue has existed for a very long time.

193           Recently, it has taken on a tenant, the Bakerbaun (Phonetic) School that uses the  
194 classrooms during the typical school day; Hebrew School - - most religious schools are  
195 afternoons and weekends. That space lays fallow and the synagogue has signed a lease  
196 with Bakerbaun (Phonetic) to use its facilities.

197           The application is based on the synagogue's needs and synagogue's needs solely.

198           Ray referred to them as classrooms and they certainly are but on top of that,  
199 they're also adult education rooms. They are conference rooms. They are rooms for  
200 volunteers to do typical social services.

201           They go well beyond simply the classrooms.

202           When one deals with the classrooms, one cannot simply provide a generic room  
203 because all age groups from pre-school on up utilize these classrooms so some of these

204 classrooms for the Hebrew School are furnished and built specifically for younger kids  
205 and some of them more generally furnished for older kids and those are the rooms that  
206 can also be used by the adults and for other functions but the application is predicated on  
207 the need solely of the synagogue.

208 COMM. OTTLEY-BROWN: Could you perhaps, in  
209 writing, go into more detail about the current program in terms of the Hebrew School and  
210 the adult education program? The amount of people who attend that; whether or not they  
211 are occupying space simultaneously or if they operate on different days?

212 MR. FRIEDMAN: I'd be happy to do that. Two of our  
213 three speakers will address those points specifically but we will provide you all those  
214 answers in writing.

215 CHAIR SRINIVASAN: Okay. Please continue.

216 MR. FRIEDMAN: Rabbi. Rabbi Hayamm Angel  
217 (Phonetic) will be the next speaker.

218 RABBI ANGEL: Hi. Good afternoon. Do I need to spell  
219 my name?

220 MR. COSTANZA: No, just speak into the microphone.  
221 Just state your name.

222 RABBI ANGEL: Great. My name is Hayamm Angel. I  
223 just became the full Rabbi of Congregation Shearith Israel. I've been working there for  
224 thirteen years but I actually grew up there.

225 I came to the congregation eight months inside of my mother, and when I grew up  
226 in the synagogue it was really an awful place for kids, frankly. There were very few

227 children. It was a very cold, austere place and the facility was perfect for all of our  
228 programs combined because there were so few kids and there was very little adult  
229 education going on.

230 Thank God, my father, who was my predecessor, really built up the programming  
231 and the kids have simply proliferated in the last twenty, twenty-five years which is why I  
232 chose to make my career and my life around Congregation Shearith Israel.

233 We have a growing Hebrew School program as well as a toddler program that  
234 meets twice a week.

235 Shelly Friedman said we'll provide all the specifics in numbers but we wanted to  
236 open up a full-time nursery school which we certainly cannot do at the current present  
237 time because there's no room for that.

238 Our toddler program meets in a large auditorium which is certainly not geared for  
239 toddlers.

240 We want to have a vibrant adult education program but, at the moment, we meet  
241 either in gigantic auditoriums for a ten person class or not at all and we certainly cannot  
242 have the four or five concurrent class structure that we want.

243 When I was a kid, the place was really geared for the building that we had. Our  
244 community house was perfect for the occasion but it has long outgrown its needs and  
245 really, thank God, our problem now is not too much space with too few people to do it  
246 but very much the opposite.

247 I've actually participated in two twin baby namings just in the last two months, let  
248 alone the normal one baby at a time baby naming, both for boys and for girls. It's really  
249 a growing population, particularly with the youth.



271 RABBI ANGEL: I'm not going to be able to stay for the  
272 entire proceeding so if there are any particular questions you need, I'll be happy to  
273 answer them now.

274 CHAIR SRINIVASAN: Are there any questions for the  
275 Rabbi? All right. Thank you.

276 RABBI ANGEL: Thank you very much.

277 MS. KAY: Hello. Hi. I'm Lynne Kay. I'm the Director  
278 of Jewish Life and Learning at the synagogue. That's the post that has educational and  
279 pastoral responsibilities. I serve just under Rabbi Angel.

280 I also am not able to stay to the end of the proceedings. I have to teach, so when I  
281 finish speaking, if you'd like to ask me any questions, I'd be happy to answer them.

282 We need new classrooms to answer both existing educational needs that are just  
283 not done as well as they should be and also to accommodate expanded adult and youth  
284 programming that we're looking to build.

285 Our Hebrew School has nine teachers and myself. We meet Thursday afternoons  
286 and Sunday mornings.

287 On Sundays - - and, in general, we don't have enough classrooms to  
288 accommodate the school on one floor together. Two classes actually meet in one  
289 classroom with a divider in between them and two others are on another floor and there's  
290 another tutoring, a remedial program that happens in the other part of the building which  
291 is detrimental to that students' smooth transition into the mainstream class which, you  
292 must do every week, and a sense of belonging to the larger school as a whole.

293           It's very valuable to have classes near each other so there's a sense of camaraderie  
294 within the school and a sense of shared purpose and a chance for the younger students to  
295 learn from the older ones and for the older students to be role models to the younger  
296 children.

297           We're also trying to expand the ages served in our Hebrew School. We're  
298 looking to build a pre-k, a four to five year old group, and that would also need a space  
299 for that.

300           Currently, there's the children who study for a bar or bat mitzvah ceremonies,  
301 which are twelve and thirteen years old, study in a three hundred person auditorium,  
302 which is not conducive to their focus because it doesn't provide a bright, intimate space  
303 for directed study and this happens both on weekdays and on Sundays.

304           We need rooms for different purposes. An early childhood room is not good for  
305 an adolescent class. They'll feel patronized, not to mention the tiny furniture and the  
306 bathrooms are not appropriate.

307           Adult education needs its own venues where books and resources and an AV  
308 setup is there.

309           Currently, we do not have enough rooms for adult education programs, which we  
310 will continue to add to it.

311           We just added a new class this fall.

312           Classes can only meet in a room that we call the Elias room. It's sort of like a  
313 board room and that's frequently taken by board meetings and sisterhood meetings and so  
314 on.

315           Neither the auditorium nor the Elias room have elderly classrooms. They're not  
316 set up for power point illustration of our classes. They don't even have white boards and  
317 adult education and also teen programs can happen throughout the week and on the  
318 weekends and do.

319           And, Rabbi Angel, I just wanted to echo, he was talking about concurrent adult  
320 education where we're putting together a program which we'll hopefully have several  
321 offerings at once which would need space together so that there can be milling between  
322 and after and the good sense of continuity in that program.

323           The early childhood program that was mentioned currently meets in the  
324 auditorium, which can lead to disruption because the adults, other adults need to access  
325 that room or the kitchen and it's detrimental to the class when the teacher has to leave  
326 like circle time, for example, to attend to an adult who is not part of the class and  
327 dedicated classrooms for the early childhood program would allow the continued growth  
328 of the program.

329           Right now, it's two mornings and we're looking to expand it to five mornings.  
330 The program has been growing. It started with two - - no, I'm sorry, four children and  
331 it's now just under twenty children.

332           Finally, I just wanted to mention, as I said, I have pastoral responsibilities at the  
333 synagogue and I would like to echo what Rabbi Angel said about the importance about  
334 the Kiddush downstairs following services from a pastoral prospective.

335           In addition its being a component of the observance of a Sabbath or a festival,  
336 especially for our older members, but really for any member, but I want to speak to the  
337 needs of the older members of the congregation.

338           It's a really important time to see friends, be connected and have a familiar and  
339 supportive atmosphere which prevents - - sort of combats a sense of isolation that can  
340 happen as time goes on so, thank you, and I'm happy to answer questions,

341                           CHAIR SRINIVASAN: Thank you. Any questions?

342 Thank you.

343                           MS. KAY: Okay. Thank you.

344                           CHAIR SRINIVASAN: Although, I would say that it  
345 would be very helpful in - - and just going back to what Commissioner Ottley-Brown had  
346 said, which is somehow tabulate to us how the program is currently being used in which  
347 areas and then why you need the expansion? And, explain to us both the space needs as  
348 well as its location and relate that to the waiver.

349           I think one of the issues that has come up is that in an as-of-right situation, you  
350 can expand this program to meet all these needs except for maybe the rear yard waiver.

351           So, I think it's really important to clarify that to us why you need - - yes,  
352 Commissioner Hinkson.

353                           COMM. HINKSON: And, also, if you can add - - just it  
354 would be good for me to sort of get a better idea of the programming is to break down, if  
355 you could, the ages and amounts of people that would be using the facility at any given  
356 time; how many pre-schoolers? How many teenagers? That kind of thing, so that we  
357 can sort of get a better fleshed out idea of how the building is anticipated to be used and  
358 who is going to be using it.

359 MR. FRIEDMAN: Well, fine, but so that we can be  
360 responsive, I'm assuming, again, that this would be limited to the synagogue's use and  
361 not including the tenant.

362 If you believe the tenant serves any useful purpose, I'll be happy to add those  
363 numbers as well.

364 CHAIR SRINIVASAN: All right.

365 MR. FRIEDMAN: But, we're predicating this application  
366 on the synagogue's use.

367 CHAIR SRINIVASAN: Right. And, I think that's what  
368 may have been confusing in the papers, because you do talk about the tenant's school and  
369 it's one thing you can have the tenant's school and then you would have to explain to us  
370 what the program need is for that but if, in fact, this volume of community facility space  
371 is fundamentally needed for Shearith Israel Congregation, then I think we need to see an  
372 explanation of that.

373 MR. FRIEDMAN: Fine.

374 CHAIR SRINIVASAN: So, then, the tenant's school issue  
375 can just actually be a separate - - it may not really be a part of the equation anymore  
376 unless it's about the usage of space.

377 MR. FRIEDMAN: We don't consider it part of the  
378 equation but if the Board wants us to, I guess that's my question, we'd be happy to do it.

379 CHAIR SRINIVASAN: But, I think it relates partially to  
380 whether you can have simultaneous use and, in fact, when the day school is functioning,  
381 does it take away from the congregation in using the spaces for its own needs?

382 So, if you actually chart it out, we may have a better understanding.

383 MR. FRIEDMAN: Fine.

384 CHAIR SRINIVASAN: And, if you actually intend or a  
385 part of your program mission is to expand the types of uses that you have on the site,  
386 which may not be accommodated, including a nursery school, then we should understand  
387 that as well.

388 MR. FRIEDMAN: Fine. Thank you.

389 I'd like to introduce Edgar Nathan.

390 CHAIR SRINIVASAN: All right.

391 MR. NATHAN: My name is Edgar Nathan. I'm a past  
392 president of the synagogue. Our present president is here.

393 I wanted to talk about one of the problems we face, which has been alluded to  
394 already, both by the architects and the previous speakers.

395 We've always been concerned about disability access to the synagogue building.

396 This is a problem which we face even if there were only one person involved,  
397 obviously, or more and at the present time, I've been seeing more and more friends who  
398 have problems of the disability nature, either infirmed for whatever reason; elderly  
399 people who wish to come to the synagogue and participate in its various programs and  
400 find it a struggle to do so.

401 You heard how it's not easy to even get into the building. It's a 110 year old  
402 building and it was not built with this in mind.

403 We've been trying to remedy that situation but can't within the present structure.

404           There are not only older people. There are younger people who have disabilities  
405 and they also have to be cared for. They are a smaller number.

406           It would happily - - our problem is exacerbated by the fact that people are living  
407 much longer now which is - - and they desire their older - - we have a 100 year old  
408 congregant who just celebrated a birthday. He comes. Hopefully, he will be able to  
409 continue.

410           People younger than him are having the problems of getting into the building, of  
411 moving within the building, going down to the Kiddush, which is on the floor, the lower  
412 level that is not served by the elevator.

413           The new plans, which you have seen, will remedy this situation, where access to  
414 the building will be straight-forward. There will be elevators at every level so even  
415 intermediate stairways, which were described earlier of the few steps, will not be a  
416 problem.

417           Access to the basement will be - - to the lower levels return where the Kiddush  
418 and luncheons, dinners, events are held, will be accessible by elevator.

419           Some people have difficulty walking or are in wheelchairs will have no problem.

420           This is important to us, not only selfishly - - I'm fortunate to not have any  
421 problem but knowing that there are people who are in that situation and it's our desire to  
422 see that they are comfortable; that they do not stay home because they don't want to face  
423 the problem but they come and enjoy the camaraderie of being with their old friends and  
424 participating in a synagogue which they have been with for all their portions of their  
425 lives, most of them even all their lives.

426 We are anxious to build and to proceed to have this structure to give us this - - to  
427 take care of this problem and obviate it so in the future it will not be something we have  
428 to even discuss. Thank you. If there any questions?

429 CHAIR SRINIVASAN: Any questions? Thank you.

430 MR. NATHAN: Thank you.

431 MR. FRIEDMAN: Thank you, Madam Chair.

432 That really completes the pre-arranged part of our presentation, as we understood  
433 the Board was seeking.

434 I'm not sure if you want to begin the questions now or wait until you've heard  
435 from others, but we are at your service.

436 CHAIR SRINIVASAN: Well, I think there are some  
437 questions we want to discuss right now are issues.

438 I know you went into your presentation with this concept of monetizing air rights.

439 I think the Board is aware that there are institutions that sell their air rights and it  
440 provides a revenue stream.

441 The issue before the Board is whether that constitutes a hardship for a variance.

442 And, I think that we've seen other cases, which include, as you noted, in fact,  
443 where you have a religious institution, an educational institution and then you have a for-  
444 profit aspect to it and we've asked for a financial and we've asked them to be separated  
445 out.

446 So, one of the things that was discussed yesterday in terms of your application,  
447 that you need to make a different case for the residential portion in terms of the height

448 and setback and it's not enough to tell this Board that you need to provide as much  
449 residential as possible because that's going to help fund the congregation.

450 MR. FRIEDMAN: I understand. We can reformat, as you  
451 wish.

452 I think it might be useful to hear and to involve Mr. Freeman in this discussion  
453 since we are talking about financial information.

454 But, I do want to say that the point is not that we believe that needing to sell - -  
455 needing to create residential space in and of itself constitutes a hardship.

456 It's when all other options are foreclosed by unique site conditions and the result  
457 is such that there is only one place that such air rights can be used for residential. I mean,  
458 residential is an as-of-right use. There's no issue of the use involved here.

459 It's really, simply, a matter of being given a small box in which to build.

460 If we fill that space up with community facility space, we probably wouldn't be  
461 having this discussion.

462 But, the fact of the matter is that we hope to persuade the Board that the provision  
463 of a certain amount of income producing space is as integral to the synagogue's program;  
464 as integral to its site conditions and as integral to its ability to move through its problems  
465 with its site as any other aspect of this application.

466 One of the variances - - in addition to that, let me add that two of these variances  
467 had to do not so much with the layout of the residential but with the fact that the  
468 Landmark's Commission was seeking to have the mass centered over the apex of the  
469 synagogue when viewed from 5<sup>th</sup> Avenue.

470 And that massing could not be done in an as-of-right manner.

471 Now, I am not saying that being on the site with a landmark constitutes a  
472 hardship. I know that that's an insufficient ground to qualify for a hardship.

473 But, when one goes through an application at the Landmark's Commission and is  
474 given a resulting kind of parameter massing limitations and those limitations both cut into  
475 the amount of floor area that can be produced hereto a small percentage of its as-of-right  
476 potential and require to be built in the areas which the zoning doesn't permit and that,  
477 specifically, is the rear sky exposure plane, then I think we have something that we can  
478 talk about as one site, one zoning lot and one application.

479 We would be happy to present the residential in whatever format you wish, but it  
480 is not, with all due respect, as you say, simply a matter of, you know, wanting to go for  
481 what we can get residentially.

482 This building started out as a fourteen story building at the Landmarks  
483 Commission.

484 It was predicated on a 74-711 basis. There's something we can talk about, that,  
485 too during the course of the day.

486 But, the fact of the matter is that when we were cut down and told that we were  
487 going to not be able to exceed the height of the non-complying building to our east, 18  
488 West 70<sup>th</sup>, you know, at that point, we came back with a building that provided nearly  
489 enough - - it would have been nice to have the fourteen stories. It could have gone to  
490 endowment. It could have gone to all kinds of good causes.

491 But, the fact of the matter is what we now have with the five units is principally  
492 directed and Mr. Freeman can take you through that exercise at overcoming - - at being  
493 allowed to replace the community house and provide the accessibility and nothing less.

494 We're not taking any floor area from the synagogue. We're simply using the  
495 floor area that the zoning permits us on our footprint but we're using it as a mixed use  
496 building.

497 And, I don't see that that locks us out of making the required findings. I simply  
498 need to know how you best want to analyze the situation.

499 CHAIR SRINIVASAN: I think what we've heard today  
500 from the speakers, so far, has to do with the program of the synagogue.

501 Those can be accommodated on that site with maybe as-of-right but, at the most,  
502 there's waivers that relate to lot coverage and to the rear yard for the first - - second to  
503 fourth floor.

504 So, when you've made this presentation just as the program needs for the  
505 synagogue, well, then we see a proposal which includes another piece of it where you're  
506 asking for waivers which don't really relate directly to the program of the synagogue  
507 except that it gives you - - you're able to monetize your air rights and use it in a way,  
508 which I understand, may fund the congregation but those are not the typical cases that we  
509 see before the Board.

510 So, we're put in this hard place.

511 Typically, when you have a situation that goes through Landmarks where you're  
512 asking for height and setback waivers and they're not driven by hardship, there's another  
513 venue and I know that you just mentioned 74-711. It - - maybe it was foreclosed to you.  
514 That's unfortunate, but we're here looking at this case and it's just - - it's been very hard  
515 for us to get our hands around this.

516 And, if you think that there's case law that speaks to the issue of a religious  
517 institution needing to fund itself by a revenue generating stream on their property, then  
518 you can brief us on that.

519 But, it seems to me, that we have haven't come across that case law.

520 And, in the absence of that case law that supports the market rate funding the  
521 institution, you have to look at something else to make the findings.

522 MR. FRIEDMAN: Well, I think we're trying to bring to  
523 the Board the historical pattern here and the historical pattern of this congregation and  
524 other congregations simply is the cycle that I alluded to earlier.

525 You know, in my mind, it kind of presents itself as the hermit scrap. You know,  
526 it has to leave its shell and it has to go find a bigger shell and if it stays in the shell, it  
527 dies.

528 And, if it goes out looking shell and it doesn't find a new shell, it dies.

529 And, certainly, that's been - - that's analogist to the cycle that we're speaking to  
530 here.

531 This congregation needs to solve these programmatic difficulties.

532 Historically, religious institutions, over the long haul, have done that by  
533 relocating. That's not an option here.

534 And, so we turn to, again, the residential solely to provide the economic engine.  
535 I've referred to it before. People don't like it but I think it's a viable concept, the  
536 economic engine to assist in providing the means necessary for the new community  
537 house and to solve the accessibility problems and nothing else.

538 I mean the money, as you'll see, is totally eaten up in the replacement of the  
539 community house and in overcoming the accessibility issue.

540 There is no other programmatic purpose for these funds other than to replace the  
541 aging facilities that we have now.

542 And so, from that standpoint, I'm not sure there is any case directly on point that  
543 we could bring to you because there have been other cases where you may have had to  
544 consider grand schemes.

545 But this one is relatively simple. Because of the Landmarks status of this building,  
546 we can't change this building. We don't want to change this building.

547 If it wasn't landmarked, the stewardship of this synagogue is such they wouldn't  
548 change the building.

549 But, the fact of the matter is that for all of the floor area on this zoning lot, we are  
550 sequestered from using all but a very small percentage of the footprint and even that has  
551 to give rise to the fact that the community house has to cover the lower portions of that  
552 footprint.

553 That boxes into, we believe, a justifiable recognized hardship and we need to  
554 present that to you financially and we're prepared to do that today or hear your comments  
555 on that and come back and prove it to you and convince you in further submissions.

556 But, we can't say that - - we're not here to say that the Commission, the Board  
557 should be granting us a hardship simply because we want to make a profit.

558 We're saying that we can't overcome the specific hardships being requested here  
559 without a mixed use building which is as-of-right, which does not use floor area from any  
560 site.

561 It's indigenous to the footprint of this site but simply runs afoul of the fact that  
562 while we get the floor area through 77-22 as an averaging, we don't get the height and  
563 setback that comes along with that additional floor area.

564 This site is zoned, as you know, split lot but the great percentage of it is R-8 (b),  
565 yet, its as-of-right allowable floor area is not 4 FAR. It's 8.38 FAR under 77-22. And,  
566 yet, we do not get the height and setback allowances that are concomitant with the zoning  
567 providing us as-of-right twice as much floor area as the R-8 (b) height and setback would  
568 ordinarily provide. That, also, can be considered, I think, by the Board a fair grounds - -  
569 fair grounds for a hardship.

570 CHAIR SRINIVASAN: Any questions or comments?

571 COMM. OTTLEY-BROWN: Just a comment back that  
572 it's my opinion that residential use to raise capital funds to correct programmatic  
573 deficiencies is not in and of itself a programmatic need. It may be a resolution to a  
574 problem or a way of financing a resolution to a programmatic need.

575 And, I think if we open the door, here, and allow that argument in, we're going to  
576 have a hard time turning down every other religious institution that wants to place  
577 residential in their backyard in order to finance expansion.

578 I think it's an easier case to make, a clearer case to make, if you draw a distinction  
579 between the issues that you have regarding your community facility and the need for  
580 those waivers and the issues that you have regarding the potential development square  
581 footage that you have for residential and the actual logistical problems of using that space  
582 on that portion of the lot that you're allowed, using the community facility argument only

583 as an incidental to explain the fact that any residential use would have to start 49 feet up  
584 and be contained by your height limitations in that district.

585 MR. FRIEDMAN: We will take a look at how we can re-  
586 present that, re-present that to you.

587 Would it be helpful to hear from Mr. Freeman on this point since I think his  
588 analysis unlocks some of the concerns that you have on these questions?

589 CHAIR SRINIVASAN: Well, I think we've read through  
590 the financials. We may disagree with Mr. Freeman's assumptions, so I don't think Mr.  
591 Freeman needs to explain to us what he's done on his financials. We've seen it. I think  
592 we have some concerns which we raised yesterday and either he can go back and look at  
593 that or we can state them for the record, but I think some of the issues have to do with  
594 how the site is valued and how a good portion of what is anticipated as the developer  
595 paying for that site is not going to be used by the developer because it's being used by the  
596 synagogue.

597 So, it's almost like you should take that out of the equation and then you have this  
598 value on this property without that 20,000 square feet that's being used for the  
599 synagogue.

600 And, then, I think it's about looking at what Commissioner Ottley-Brown said.  
601 It's how do you use that on the site?

602 Because, otherwise, it goes back to the same thing; that \$10 million worth is  
603 really just paying for the synagogue.

604 And I think it - - then it still remains a door opener so we've seen a lot of cases  
605 before the Board which is based on programmatic needs there; enlargements of existing

606 synagogues. There are new synagogues. There are schools. They do not include in their  
607 equation the idea of having some commercial venture or profit-making venture which is  
608 going to pay for that expansion.

609 There's an understanding that, in fact, what's going to pay is fund raising or other  
610 ways of actually receiving funds to build the expansion.

611 MR. FRIEDMAN: Understood. And, we have information  
612 to put in. We will put it in regarding the fund-raising efforts of the congregation.

613 It recently raised \$9 million for the restoration of the synagogue; could not  
614 address these hardships; could not address all these programmatic difficulties with regard  
615 to the community house that was built in the 50's.

616 But, we have your questions and unless you want to hear specific information  
617 from Mr. Freeman on this case, we will not at this time.

618 CHAIR SRINIVASAN: Right. I think we have  
619 comments. I think he knows what they are. He can address them and if there's some  
620 other questions that we have for your team, we can do that at the end. Vice-Chair.

621 VICE-CHAIR COLLINS: I just have question for you,  
622 Mr. Friedman.

623 If you would just take us through the blending of the FAR from the split zoning  
624 lot - - I know you referenced it in your papers and the opposition, I believe, took some  
625 exception to that in papers that were filed with us, also, and I was wondering if you  
626 would comment on that and just, perhaps, take us through how you came up with the 8.3  
627 figure?

628 MR. FRIEDMAN: Well, certainly, we have the  
629 calculations. You have - - actually have the numerical calculations in your material but  
630 77-22, from its FAR to be averaged, if the zoning lot is what's known as preexisting - -  
631 now, the standard definition for preexisting is preexisting the adoption of the Zoning  
632 Resolution on December 31st, 1961.

633 And, in fact, I know from having just seen those papers yesterday, that a question  
634 has been raised regarding whether the site was in common ownership in 1961.

635 We are researching that issue and will address it and we'll address it in writing.

636 However, even if it was not, even if cede the position, the zoning lot would have  
637 been created in 1965 by virtue of the material that, I believe, you saw yesterday.

638 And, if that's the case and you continue reading in 77-22, it says, "As of  
639 December 31<sup>st</sup>, 1961, or any time subsequent - - or the date of any subsequent  
640 amendment thereto."

641 We believe that the relevant subsequent amendment would be the adoption of the  
642 contextual zoning on the West Side which was far after 1965 and that, therefore, the  
643 zoning lot could be deemed a single zoning lot prior to that subsequent amendment, and I  
644 don't think there's any question but that a rezoning constitutes a subsequent amendment.

645 So, we think even ceding the material that you were presented, if it turns out that  
646 there was a portion of Lot 37 that was either deeded over or something was cleaned up in  
647 the record and we do not have the facts to respond to that at this point but if we ceded  
648 1965, there would be no change. The 77-22 would be just as applicable.

649 CHAIR SRINIVASAN: I would just comment that it's  
650 based on the fact that there's the creation of the split lot so, in fact, for 1961, if it was an

651 R-10 and an R-8, then a subsequent amendment may not have created that split so then  
652 I'm not sure whether you still qualify under 77-22.

653 MR. FRIEDMAN: Well, I think that if the lot moved - - if  
654 the zoning district line has moved - -

655 CHAIR SRINIVASAN: Yes, then, maybe. So, if you can  
656 research that to us but I understand that there may be different things and you're right,  
657 it's not always pre-61. It's any subsequent amendment which creates that shift or creates  
658 the subdivision.

659 MR. FRIEDMAN: You're all aware of zoning lots being  
660 created two days before the enactment of a zoning amendment.

661 CHAIR SRINIVASAN: Yes, we are aware of that.

662 MR. FRIEDMAN: And, so that's basically the same  
663 theory here; that there have been subsequent amendments to 65 that would permit 77-22  
664 to be fully applicable.

665 CHAIR SRINIVASAN: All right. I think we'll take  
666 testimony from members of the public and we'll bring you back because we have a whole  
667 series of other questions which we want to make sure that you brief us.

668 All right. Are there any elected officials here to speak on this item? Yes. Please  
669 come forward.

670 MR. EMILE: Good afternoon. My name is Remayo Emile  
671 (Phonetic) from Senator Tom Duane's office.

672 And, the Senator had also asked me to submit his testimony from July 1<sup>st</sup>, 2003,  
673 before the Landmarks Preservation Commission regarding Congregation Shearith Israel's

674 Special Zoning Permit request, and he believes that although there have been changes to  
675 the application, many of the concerns that he raised then are still relevant today.

676 “My name is Thomas K. Duane, and I represent New York State’s 29<sup>th</sup> Senatorial  
677 District, which includes the Upper West Side where Congregation Shearith Israel’s  
678 proposed building at 610 West 70<sup>th</sup> Street is located.

679 Thank you for the opportunity to present testimony before the New York City  
680 Board of Standards and Appeals today, although I had hoped that this hearing could have  
681 delayed until after Community Board #7 had an opportunity to deliberate on this recently  
682 completed application.

683 As you know, CSI, a religious not-for-profit institution, plans to construct a new  
684 community house at 610 West 70<sup>th</sup> Street for its programmatic needs.

685 However, while CSI could construct as-of-right an approximately sized building  
686 for these purposes under the area’s new R-8 (b) contextual zoning within the Upper West  
687 Side Central Park West Historic District, it is, instead, seeking seven variances from the  
688 BSA.

689 Most of these variances will be used to construct five floors of market-rate  
690 residential units for revenue generating purposes.

691 Section 72-21 of the Zoning Resolution states, “That a variance must not alter the  
692 essential character of the neighborhood or district in which the zoning lot is located;  
693 substantially impair appropriate use or development of adjacent property and be  
694 detrimental to the public welfare.”

695 Unfortunately CSI’s proposed plans will be harmful to the quality of life of its  
696 neighbors and the character of the neighborhood.

697 To construct the additional five floors of private residential units, CSI is seeking a  
698 height variance that would allow it to build thirty feet taller than what is currently  
699 allowed under the R-8 (b) Mid Block Contextual Zoning within which it is located.

700 This additional height will block the air, light and view for at least seven east  
701 facing windows and dozens more courtyard windows in the adjacent building at 18 West  
702 70<sup>th</sup> Street as well as cast (Unintelligible) shadows on neighboring low-rise historic  
703 buildings along West 70<sup>th</sup> Street.

704 Current residents of these buildings will not only suffer the lost of open views and  
705 sunlight but also diminish property values as a result.

706 I have heard that CSI wants to build these additional floors of market-rate housing  
707 in order to generate profits to finance their construction of the building, itself, and finance  
708 the program CSI will operate within it.

709 Regardless of the reasons, a religious non-profit institution should not be using  
710 zoning waivers and variances as a method of generating funding.

711 If CSI needs additional funds to complete construction of its building or to run its  
712 programs, they should be more aggressive in taping external base or developing new  
713 donors and, of course, it should factor in the increased revenue it will receive from the  
714 operations of its proposed community house.

715 It should not be raising these funds at the expense of its neighbors and the  
716 surrounding neighborhood.

717 As the State Senator representing much of Manhattan, I continuously work with  
718 community activists and other elected officials to fight many developments that would

719 encroach (Unintelligible) in their neighborhood's character, quality of life and  
720 sustainability.

721 While the negative effects of this application, if approved by BSA, would directly  
722 harm the neighborhood of the Upper West Side, it would also set a city-wide precedent  
723 that would empower property owners, including non-profit organizations to seek  
724 inappropriate variances to develop real estate holdings.

725 This would deal a serious setback to preservation efforts across the City.

726 Our City's zoning and historic preservation laws specifically designed to protect  
727 the character and sustainability of all neighborhoods would be rendered ineffective if  
728 special exemptions are readily given to developers seeking to expand their coiffeurs at  
729 the expense of the community.

730 We cannot let that happen.

731 In light of these matters, I strongly urge that BSA deny CSI's - - these variances.

732 CHAIR SRINIVASAN: Thank you.

733 MR. KAPLAN: Good afternoon. My name is Michael  
734 Kaplan.

735 I'm here on behalf of Assembly Member Richard N. Gottfried, who is the  
736 Assembly Member representing the 75<sup>th</sup> District which includes Congregation Shearith  
737 Israel and the site of the proposed new building.

738 "Congregation Shearith Israel has applied to the Board of Standards and Appeals  
739 for seven zoning variances that would allow it to construct a new community house with  
740 five residential units on the upper floors.

741 If the BSA approves these variances, the new building would harm its neighbors,  
742 the neighborhood and advance a dangerous trend in land use.

743 The harm imposed on the synagogue's neighbors including covering more lot line  
744 windows then would be permitted as-of-right and reducing the light and air for the  
745 neighboring apartments that face the rear yard.

746 For the neighborhood, as a whole, the proposed building is too tall and out-of-  
747 character with the historic district side streets.

748 If the BSA allows these variances, property owners and developers including not-  
749 for-profit organizations across the City would feel empowered to develop the real estate  
750 holdings without regard for the City's - - zoning and historic preservation laws and  
751 policies.

752 The congregation insists that it cannot build the new community house without  
753 the revenues that the proposed residential development would generate.

754 This is not credible.

755 It should raise the funds for its new community house the way that other  
756 congregations do by turning to its members.

757 Also, the community house, itself, will generate income for the congregation.

758 The height variance the congregation is seeking would permit it to build thirty  
759 feet above what is allowed by the Zoning Resolution.

760 The programmatic needs outlined in the application can be contained within the  
761 seventy-five foot height limit allowed in an R-8 (b) zone.

762 The additional floors that the congregation is seeking are not for community use  
763 or even congregational use.

764 They are for revenue generating private residential use.

765 This accounts for most of the variances it seeks.

766 The congregation only plans to use a small part of the proposed floor space for  
767 which it is seeking variances for its religious mission.

768 And none of the variances that the congregation is seeking meet the Zoning  
769 Resolution's (e) finding, which requires the applicant seek a quote un quote "Minimum  
770 variance."

771 The height and setback variances being considered today vastly exceed what can  
772 be reasonable considered minimum variances.

773 Manhattan Community Board 7's Land Use Committee voted against approving  
774 these variance.

775 Even for its programmatic uses, the congregation should not be granted a rear  
776 yard and lot coverage variances unless it's clearly shown that the programmatic purposes  
777 cannot be reasonably accomplished without them.

778 The proposed project will alter and harm the character of the neighborhood.

779 The congregation has pointed to older neighboring buildings in the vicinity that  
780 exceed the heightback, setback and FAR limits set by the neighborhood's contextual  
781 zoning designation.

782 But, the designation was written specifically to draw a line and prevent more of  
783 this kind of overdevelopment.

784 I am very concerned about the seven lot line windows on 18 West 70<sup>th</sup> Street that  
785 will be covered by the community house and residences.

786 This deprives residents of 18 West 70<sup>th</sup> Street of property value, light and air.

787 The project deprives all the residences of the historic district of value.

788 Transferring property value from the neighbors to the congregation effectively  
789 forces them to make a substantial and I involuntary contribution for a facility which the  
790 congregation's members ought to be paying for.

791 The height and setback variances that would permit a new building to cover these  
792 windows violate the Zoning Resolution's (c) finding and should not be allowed.

793 Not-for-profit organizations are increasingly trying to make use of their air rights  
794 and build residential or commercial towers that undermine Landmark Historic District  
795 and zoning regulations.

796 The Landmarks Preservation has been too - - the Landmarks Preservation  
797 Commission has been too receptive to these plans.

798 I hope that the Board of Standards and Appeals will not be.

799 This trend is detrimental to communities and should be resisted by Community  
800 Boards and City Agencies.

801 I urge the Board of Standards and Appeals to reject the application in its entirety.”

802 Thank you.

803 CHAIR SRINIVASAN: Thank you. Are there anymore  
804 elected officials? All right, any speakers from the Community Board? All right. Mr.  
805 Lebow.

806 MR. LEBOW: Members of the Board of Standards and  
807 Appeals. Thank you very much for listening to us.

808 I'm Mark Lebow. I'm the lawyer for the opponents to this particular application  
809 for variances.

810 We are the three adjoining large buildings surrounding the proposed site, 91  
811 Central Park West, 101 Central Park West, 18 West 70<sup>th</sup> Street and a whole lot of tenants  
812 and owners who live up and down West 70<sup>th</sup> Street.

813 I know that this process is very difficult when there is an organized opposition to  
814 any particular project which has lawyers and has its own experts.

815 And, we really appreciate your giving us the time to make this presentation and to  
816 be heard.

817 And I, too, have tried to limit as well as we could the number of speakers because  
818 we certainly don't want to keep you here all night nor do we want to bore you.

819 We have sent you this package which contains all of our arguments and Exhibits  
820 A through J in order to prepare you for most of our technical and legal arguments as well  
821 as we could.

822 We have also tried to divide up in our presentations to you today the different  
823 areas of concern that you have mentioned and that have concerned us so that you don't  
824 hear the same thing, I hope, from each speaker.

825 But, as you can understand, these seven zoning variances sought by the applicant  
826 are almost incendiary on the Upper West Side.

827 The Upper West Side has stood for mid-block contextual zoning of four to six  
828 story buildings.

829 Whenever anybody thinks of adding a ninth floor, an eighth floor or a seventh  
830 floor to that, people really get excited on the West Side, and I think that you can  
831 understand that because this contextual zoning and this structure is so important to West

832 Side residents because they think that this makes them a little bit different from  
833 everybody else in the City.

834 And, this is why the Zoning Resolution was so strong and so emphatic about mid-  
835 block zoning.

836 Now, are there aberrations that it preexisted? Of course they are.

837 There are other buildings this size in mid-block but that does not mean that this  
838 Board should perpetuate anomalies. That is not what you are about.

839 As a matter of fact, it's almost more worser if you perpetuate an anomaly next to  
840 another anomaly because it makes it seem like just about anything can happen to change  
841 this important contextual zoning.

842 Now, I believe that the Community Board, as you know, voted in its Land Use  
843 Committee to deny most of the requested variances.

844 They denied four out of seven and those are all the height ones and most of the  
845 setbacks and they approved the rear yard variances.

846 I think that they only got a four sevens right because you have heard what Senator  
847 Duane and Assemblyman Gottfried have said. We know that being westsiders, what we  
848 live in a congested and busy city and that nobody is entitled to the same view as he  
849 moved in with for the rest of his life.

850 But, to have no view at all, the chocker block and move the lot line all the way  
851 back to the end so that the new building gives you no view at all, we think that that is too  
852 much.

853 Basically, what I am going to do from now on is to introduce different speakers.

854           You are very well aware that this is a building which consists of about half luxury  
855 condominiums.

856           And, as you have also mentioned, there is no case law that permits a charitable  
857 institution to have luxury condominiums as part of its programmic needs so because they  
858 are supposed to finance some of the institution's activities.

859           This Board has had a long and rich history of saying, if you want to get zoning  
860 variances if you're a non-profit, you must use them for your programmic needs, your  
861 direct programmic needs, not any other kind of needs.

862           You have said, yes, you can put in a school; yes, you can put in a library in the  
863 whole premise. No, you cannot put in a catering hall. Remember that case?

864           No time have you ever said you can put in luxury condominiums and those are  
865 part of your programmic needs.

866           We ask that you remain true to these principals.

867           Insofar as Congregation Shearith Israel is concerned, we have no problem with  
868 Shearith Israel providing access and better access to its synagogue, itself.

869           We have no problem with them having more classrooms. However, this has  
870 nothing to do with the upper half of this building which is luxury condominiums.

871           The notion of hardship is something that I would like to finally address.

872           We had not heard that the congregation faced hardship until very recently before  
873 you.

874           When I first heard that the congregation had a financial hardship, I almost thought  
875 that I had wandered in from Mars someplace.

876 As Mr. Shelly Friedman said, the congregation has just raised nine and half, I  
877 actually think, according to its web site. It's \$10 million and they have fixed up this  
878 Landmark into perfect condition and we salute them for that and we salute them for their  
879 past history.

880 But, here, in their community house, as you've also heard, they have tenant-  
881 school in there now and the tenant-school occupies that space all of the time except for  
882 when the synagogue, itself, uses it on Thursday evening and one day on a weekend.

883 The tenant is in there for the other five and three quarter's day of the week.

884 You have also heard that they have a parsonage as part of this property which is a  
885 beautiful townhouse on Central Park West and there aren't too many of those and they  
886 rent this out to a residential tenant for money, for a huge sum of money and they don't  
887 use this for their own programmatic needs either.

888 Now, I don't think that you can really have this both ways because they count the  
889 income in their financial projections, both for the tenant-school and for the parsonage  
890 rental so if they are reporting it that way and they are going to do away with or the other,  
891 it's something that you should know.

892 Shearith Israel has a rich history.

893 It has been a good neighbor wherever it lived.

894 We want to make sure that they are a good neighbor for the rest of the time that  
895 they are there, and we hope that they stay there forever.

896 But, in order to be a good neighbor, you do not violate the standards that have  
897 established this neighborhood and, that is, mid-block zoning.

898 This is just my overall introduction, and I'm going to let each one of the speakers  
899 who succeed me identify themselves, except for Norman Marcus.

900 Norman Marcus needs no introduction so I'm going to introduce him anyway.

901 Norman Marcus, as you probably know, is the world's greatest expert on this  
902 particular zoning, mostly because he wrote it.

903 And, so if you have no question for me, I think our next speaker will be Norman  
904 Marcus.

905 CHAIR SRINIVASAN: I just have one - - I do have a  
906 question.

907 You've put a lot of emphasis on the mid-block zoning. And, are you - - I don't  
908 know if you're trying to say that somehow this mid-block zoning on the Upper West Side  
909 in terms of granting a variance, nothing related to this project is somehow different from  
910 this Board looking at a case in any other contextual zone or, for that matter, any other  
911 zone?

912 MR. LEBOW: No, I think you're exactly right. I think it is  
913 the same as you're looking at it in any other place.

914 CHAIR SRINIVASAN: All right.

915 MR. LEBOW: I agree with you.

916 CHAIR SRINIVASAN: Okay.

917 VICE-CHAIR COLLINS: And, Mr. Lebow, you spoke  
918 before about the - - or alluded to the wealth of the congregation, their ability to raise  
919 millions of dollars in the context of a hardship and you said that you were surprised to  
920 recently learn that there was a hardship argument being made here.

921 MR. LEBOW: That's correct. They could have bought  
922 the whole block if they wanted to.

923 VICE-CHAIR COLLINS: I just want to be clear that the  
924 hardship that is talked about in the context of a variance case is one that would be created  
925 by the strict application of the zoning in a given situation.

926 It has nothing to do with the wealth of an individual property owner.

927 MR. LEBOW: I agree with that, also.

928 VICE-CHAIR COLLINS: So, I just want to make sure  
929 that we're clear on our use of terms of art here?

930 MR. LEBOW: You're absolutely correct there, also.

931 VICE-CHAIR COLLINS: Thank you.

932 CHAIR SRINIVASAN: Mr. Marcus.

933 MR. LEBOW: I'm sorry. Nobody wants to let me go.

934 MR. MARCUS: Good afternoon, Madam Chair, members  
935 of the Board.

936 My name is Norman Marcus. I'm a retired attorney. I was, at one time, General  
937 Counsel, to the Planning Commission from 65 to 85 and now I'm a westsider, and I'd  
938 like to maybe explain Mark's emphasis on mid-block zoning.

939 I don't think he was making a point about variances.

940 I think he was making a point about community values, and I think he was trying  
941 to impress on you all how strongly the neighborhood - - and I do speak now of the  
942 Historic District - - how strongly the neighborhood felt about mid-block zoning.

943 Obviously, you have the power to grant a variance. It's now at issue.

944 I listened carefully to the application this afternoon and I appreciated Shelly  
945 Friedman's explanation of historic synagogue movement and development, and he used  
946 the word monetization which is accurate.

947 This monetization has taken place through often applications for rezoning;  
948 nothing wrong with that.

949 It's often taken place with Special Permits and had the applicant, here, been  
950 fortunate enough to secure Landmark Commission's support for a Special Permit  
951 application for this development, he wouldn't need a variance.

952 And, standards are different. And, standards for variances maybe has stayed the  
953 same pretty much since the beginning of zoning in New York and they were codified in  
954 61, five findings.

955 Everybody knows them by heart but in the application, I didn't hear too much  
956 discussion of the five findings which, after all, is going to have to be the basis for your  
957 decision.

958 You've got to make those findings.

959 What I heard instead was monetization, an historic argument, but not a zoning  
960 argument.

961 I heard discussions of this synagogue. It's a terrific institution.

962 I've been in there as a minion when my leg was broken and they needed a tenth  
963 man. I was dragooned, and I was delighted to do it; served as a minion.

964 It's a beautiful building.

965 I think the issue of monetization, I'm really glad they brought it up because that's  
966 really what's at issue here.

967 I think we're seeing it in Fordham's activities. I think we're seeing it in Mount  
968 Sinai at 102<sup>nd</sup> Street.

969 I think we're seeing it at Rama's (Phonetic) on, I think, 85<sup>th</sup> Street. It's  
970 monetization. It's the real estate market now.

971 I was a real estate lawyer so I understand it and there's nothing immoral about  
972 monetization.

973 The question is does it meet the standards of 72-21?

974 I'm not even going to get into all the findings because one of them is so clearly  
975 inappropriate, the substantial impairment of property at 18 West 70<sup>th</sup> Street.

976 The blocking of lot line windows need not have been blocked in an as-of-right  
977 scheme.

978 The walling in of interior courts which is almost as bad as blocking a lot line  
979 window. It takes value; substantially impairs.

980 I think it's very difficult to make a case that it doesn't.

981 The rest of it, frankly, is to do with the mission of the synagogue.

982 The fact that a non-profit may secure a variance if the zoning stands in the way of  
983 its mission, it's programmatic mission, not its financial mission.

984 Synagogues are community organizations. Communities know how to help  
985 themselves and should.

986 However, that's not a hardship.

987 It may block their ability to do the project but it's not a hardship.

988 I'm not going to speak much longer because I think everybody has made points  
989 here.

990           The issue is a variance, 72-21. The fact that no Special Permit, 74-711, was  
991 applied for here.

992           The fact that Landmarks Commission made an aesthetic judgment about this  
993 building, proposed building, is not binding on the Board, which does not make aesthetic  
994 judgments.

995           This Board makes judgments on hardship.

996           So, unless you have something else to ask me, I'll sit down.

997                           CHAIR SRINIVASAN: Vice-Chair.

998                           VICE-CHAIR COLLINS: I did have one question for  
999 you. It's always a pleasure to hear from you, Mr. Marcus.

1000                           MR. MARCUS: Thank you.

1001                           VICE-CHAIR COLLINS: Based on the facts of this case  
1002 that have seen thus far, do you believe that there would be the basis for a 74-711 Special  
1003 Permit application? Assuming the same building; assuming all the same set of facts  
1004 because I know you saw many of those when you were at the Commission, as I saw a  
1005 number of them when I was at the City Council.

1006                           MR. MARCUS: Let's say I have not looked at it that way  
1007 but, in general, yes.

1008           And, in general, whenever there was a Special Permit available, I used to argue  
1009 before this Board that the Special Permit had to be exhausted before the Board would  
1010 entertain a general variance application.

1011           So, I know not much attention was paid to the fact that 74-711 was not sought  
1012 here but that one was a killer for the synagogue, I think.

1013 VICE-CHAIR COLLINS: Thank you very much.

1014 MR. MARCUS: Sure.

1015 CHAIR SRINIVASAN: Anymore questions for Mr.

1016 Marcus?

1017 MR. MARCUS: Thank you very much.

1018 MR. SUGARMAN: Good afternoon. My name is Alan

1019 Sugarman.

1020 I live across the street from the site, and I'm also here representing the owner of  
1021 the building next to mine, and I'm also part of the coalition with Landmark West.

1022 Today, I'm going to go through some slides. I believe all of you have been  
1023 provided copies of this.

1024 We just wanted to give you an overview of the scale of the project, the potential  
1025 impact of shadows and also to give you a little information about the windows.

1026 The first screen - - and I do apologize to the people here for not having something  
1027 for them.

1028 They'll find full copies of this from my web site which, I assume, people know  
1029 about.

1030 The first slide is just really an introduction, historic photos of 8 to 10 West 70<sup>th</sup>  
1031 Street but because the applicant has referred to history a little bit here, you can see the  
1032 three townhouses that have been - - two modified and one torn down.

1033 Oddly enough, those three buildings were on land owned by the synagogue back  
1034 in 1896, and they elected to sell them to a developer; putting restrictions on the developer  
1035 so he cannot put up a building higher than the synagogue in accordance with tradition.

1036 In the next slides, what I've tried to do is show a comparison between the existing  
1037 as-of-right, which is in green, and the proposed projects and this is something important  
1038 is to show the contrast.

1039 I know the economic study shows the proposed building has schedules for that but  
1040 then omits the similar schedule for the as-of-right.

1041 The same is true on page 21(a) of the statement. The same thing happened.

1042 So, here, we see the existing community house, as-of-right green and then in slide  
1043 14, the red.

1044 This is quite a large building, larger than one might suspect from other drawings.

1045 Then we move to 20. Twenty and twenty-one show the proposed and as-of-right  
1046 buildings.

1047 And, here, you can get a sense of not only the size but, again, the impact on the  
1048 adjoining building. Since this is in 3-D, you can see the courtyard and in the green one,  
1049 you can clearly see how the setbacks established by mid-block zoning leaves the  
1050 windows in 18 West free from being bricked up and not really a coincidence because,  
1051 again, mid-block zoning was intended to preserve the scale of the town - - row houses.

1052 The next three slides are really just to show the scale as if you're looking up West  
1053 70<sup>th</sup> Street towards Central Park West.

1054 The first one in red you see the entire building. The next one you see the  
1055 difference between the proposed and as-of-right building.

1056 This is slide 31. You see red on top and green on the bottom.

1057 And, what this demonstrates is that it's not just height. It's setback. The setback  
1058 has a real impact on the street.

1059           So, if we move forward now to 35 and 36, at the Executive Session, yesterday, I  
1060 understood that a request will be made to the applicant to do a shadow study.

1061           I hope when they do it they will do both as-of-right and proposed and they will do  
1062 it at an angle and where you can actually see what's going on.

1063           But, clearly, if you look at 35, you can see plenty of sun hitting these buildings,  
1064 including the building of my client and 36, which is the proposed building blocks out the  
1065 light.

1066           And, I don't really accept the proposition that because 18 West is already over  
1067 height, that it's okay to put something into this site that's also over height. It just  
1068 doesn't - - it makes it worse or worsen as my brother has just said before.

1069           The last two slides show sort of a - - something that occurred as we look through  
1070 the property owners in the 400 foot zone, we discovered that right next to 18 West is a  
1071 building owned by the Catholic High School Association so slide 39 shows what would  
1072 happen if they were to come in and ask for the very same variance that's being asked  
1073 here.

1074           And, they may not even be running a school here.

1075           One thing if you listen to what the congregation says, it talks about raising money  
1076 to run the synagogue and - - in Rhode Island. The cemetery is downtown so they have a  
1077 very expansive need - - definition of programmatic need.

1078           The last point I want to make, which isn't illustrated in the slides is that as I  
1079 looked at these, I realized that when we talk about fitting the programmatic needs into the  
1080 as-of-right building, everybody seems to forget the two upper floors, which are  
1081 residential.

1082 And, there's absolutely nothing to prevent this applicant from using the two floors  
1083 now designated as residential for classrooms and all the other programmatic needs.

1084 And, it is absolutely clear that 100 percent of the synagogue's programmatic  
1085 needs could be met in the as-of-right building.

1086 There's no dispute if you compare the as-of-right buildings and lay them out next  
1087 to the proposed, you'll see there's no problem whatsoever. Thank you very much. Are  
1088 there any questions?

1089 CHAIR SRINIVASAN: Thank you, Mr. Sugarman. Any  
1090 questions? All right. We'll take testimony from others. Three minutes each.

1091 MR. PRINCE: May I pass out this document?

1092 CHAIR SRINIVASAN: Yes.

1093 MR. PRINCE: Good afternoon. My name is Ron Prince  
1094 and I represent a group of cooperative apartment owners 18 West 70<sup>th</sup> Street.

1095 And, my goal today is to go - - I'm going to zip through this deck - - is to go in a  
1096 very straight-forward way to describe the adverse effect that the congregation's proposed  
1097 plan would have on its direct neighbor to the west and that adverse effect would be in the  
1098 form of bricked over windows, obstructed windows, loss of light and air and this really is  
1099 new information on the record and that's in part because the applicant has glossed over it  
1100 and even when asked by the Board to supply additional information has often stated the  
1101 facts incorrectly as we're about to see.

1102 And, on the next page 2, source material, we're going to rely on three key pieces  
1103 of source material. Page 3 is the first of those three pieces which are architectural  
1104 drawings of the east face of 18 West 70<sup>th</sup> Street.

1105           These are recent because at 18, we've recently had to conduct Local Law 11 work  
1106 so these were completed for us in March of this year, so they're current.

1107                           CHAIR SRINIVASAN: This was filed at the Building's  
1108 Department or these are just drawings made for your own purposes?

1109                           MR. PRINCE: I believe these - - (Unintelligible) supplied  
1110 to the Building Department? We believe they were.

1111                           CHAIR SRINIVASAN: Okay. But, it was your own  
1112 survey of the building?

1113                           MR. PRINCE: Yes, it was. The second choice comes from  
1114 the congregation, itself, and it is from its revised application of October 27<sup>th</sup> when the  
1115 Board asked it to supply a contour of the proposed and as-of-right buildings, drawings of  
1116 the contours of those building's own east face of #18 and on #5, you see what happens  
1117 when we synthesize the two drawings. We just apply that contour to the architectural  
1118 drawings and new space of the building.

1119           And, what you can see is we have our street foot wall height. This is obviously  
1120 the as-of-right scenario of 60 feet and a 75 foot height allowed with the 15 foot setback.

1121           Moving on to Page 6, you see what happens when we do the exact same thing  
1122 with the proposed scenario and the height goes up to 105 feet.

1123           And, from here, it's easy to simply count windows, which is really the point of  
1124 this document and what we want to do for you here today.

1125           But, before we get to that census, as I'm calling it here, if I could turn your  
1126 attention to Page 7, because I think it's a helpful photograph.

1127 This is a photograph of the east face of 18 West 70<sup>th</sup> taken from our friends over  
1128 at 91 Central Park West.

1129 And, what this does is it allows us to see that not only are there the lot line  
1130 windows under discussion here but as Norman Marcus put it, there's an entire eastern  
1131 facing courtyard that would effectively be rendered into an air shaft and that is a  
1132 significant part of the impairment that would happen at 18 West 70<sup>th</sup> Street.

1133 So, moving on to page 8 and page 9, we're going to go ahead and we're going to  
1134 count the windows and I could ask you to jump to page 9, where on that same photograph  
1135 we've highlighted in yellow the most obvious examples of the windows that are affected,  
1136 which are the lot line windows.

1137 And, on page 10, we're going to count them and what we can see is that in an as-  
1138 of-right scenario, zero windows are affected because of the contour of what that building  
1139 would be, whereas seven lot line windows would be directly bricked over.

1140 And, this is important, because if we turn your attention to the application, the  
1141 CSI statement in support of certain variances revised October 25<sup>th</sup> on page 31, we see the  
1142 statement, "Eight lot line windows will be blocked." In the as-of-right schemes, three  
1143 windows would be blocked.

1144 And, on page 12, you see we've done the congregation a favor and made a  
1145 correction to their statement.

1146 And, you'll excuse - - there was a little font issue on the number on the number  
1147 seven. Seven lot line windows would be affected in proposed zero in as-of-right.

1148           The point being, this is a very basic bit of information that a member of their  
1149 tenant school could look up, a student of the tenant school could look up and count if  
1150 they're not getting this right, how are we doing in the financial presentation.

1151                           CHAIR SRINIVASAN: Can you conclude your statement,  
1152 please.

1153                           MR. PRINCE: Yes, I will. And, I will go to say to page  
1154 14, we see that there are on courtyard windows, 15 windows that would be obstructed in  
1155 the proposed scenario that would not be obstructed in the as-of-right scenario.

1156           And, one last point is, we know in the Executive Session, yesterday, the question  
1157 came up about what were the nature of the lot line windows in the apartments?

1158           We tried to quickly get that information together and what we found is that most  
1159 of the windows are in bedrooms. A number are in children's bedrooms and a very  
1160 common configuration is with a lot line window that would be bricked over is the lot line  
1161 window would be bricked over and then there would be one immediately in the soon to  
1162 become airshaft directly over to the side.

1163           We have here Patricia Iferesco (Phonetic) on her 9<sup>th</sup> floor, who has a studio  
1164 apartment with one window which is a lot line window and then just a small sliver  
1165 window, which is a courtyard window which would be affectively rendered into an  
1166 airshaft and she would not have any of that effect in an as-of-right scenario. Thank you  
1167 very much.

1168                           CHAIR SRINIVASAN: Thank you. The next speaker.  
1169 All right. Three minutes.

1170 MR. GREER: Madam Chair, members of the Board, my  
1171 name is James Greer. I live at 25 Central Park West but until June 1<sup>st</sup>, I spent the last 39  
1172 years living next door to Shearith Israel.

1173 I am very familiar with it and I am entirely in sympathy with what they want to do  
1174 by renovating their community house.

1175 I have great problems with their notion of adding luxury condos on top for the  
1176 obvious purpose of trying to get somebody else to pay for it.

1177 I have three points I would like to make this afternoon. I will submit all these in  
1178 writing to you in the next day or so with exhibits which we'll illustrate.

1179 First of all, there's vast confusion about the finances. We have had since the end  
1180 of March this year three different so called feasibility studies.

1181 I have been looking at them, trying to make sense, which of these are still  
1182 operative. That's not clear.

1183 Some of them even relate to drawings that apparently have not been the subject of  
1184 DOB objections.

1185 I don't understand how the Board has jurisdiction, but that's not my issue.

1186 CHAIR SRINIVASAN: The Board's staff may ask the  
1187 applicant to do some initial - - I mean, additional analysis and a set of drawings so it  
1188 doesn't have to go to DOB.

1189 MR. GREER: Okay. Well, however it works, I'm not an  
1190 expert.

1191 CHAIR SRINIVASAN: All right.

1192 MR. GREER: But, which one is inoperative, I don't know  
1193 but I can say hand-on-heart is they are all three submissions are different, both in detail  
1194 and in format.

1195 The numbers they provide are different on such major things as project value,  
1196 acquisition cost, profit, what have you, trying to figure out how they got these differences  
1197 and whether they're valid or not is something I had not enough time to even attempt.

1198 Further, I understand from the discussion yesterday and this afternoon, that the  
1199 Board is going to require more financial information. All I would request is adequate  
1200 time to do some further analysis and come back to you.

1201 Secondly, in terms - - I support what has been said about the as-of-right  
1202 comments that others have made.

1203 Everything that can be done to help handicapped access, circulation and all those  
1204 other things can be done in an as-of-right building.

1205 The plans - - and I will submit an exhibit showing this - - the plans that applicant  
1206 has submitted make this abundantly clear.

1207 Thirdly, the banquet hall. There's a lot of talk about the banquet hall. There's no  
1208 financial analysis of its impact. There's no analysis of the impact of any of this stuff on  
1209 traffic and the traffic relates to the residential facilities, the school facilities, the banquet  
1210 facilities and any other programmatic expansion that was testified this afternoon for the  
1211 first time in my experience.

1212 So, there's a lot more. I don't want to trouble you further. You have been very  
1213 patient and I'm grateful for you listening to me and I now conclude. Thank you very  
1214 much. If you have questions, I'll answer.

1215 CHAIR SRINIVASAN: Any questions? All right. Thank  
1216 you. The next speaker. If each speaker after giving testimony, you can just write your  
1217 name into the record.

1218 MR. HANSEN: Good afternoon. My name is Thomas  
1219 Hansen. I live at 11 West 69<sup>th</sup> Street, which is adjacent in the rear diagonally to the  
1220 proposed development.

1221 I have previously submitted a letter, which was more detailed last week on the  
1222 21<sup>st</sup>, which explained several observations I've made while reviewing the applicant's  
1223 feasibility study.

1224 To begin with, I should explain I have bachelor's degree in accounting and  
1225 finance and I'm a CPA and also serve as the chief finance officer of my company and  
1226 before that was a public auditor for several years.

1227 Despite my background, I believe the applicant has presented multiple versions of  
1228 what I find to be an extremely confusing and poorly constructed feasibility study, to the  
1229 extent that it would surely mislead most readers.

1230 In my letter to you, I provided a pro forma study with information that's been  
1231 available in their submissions in an effort to show that one could reach very different  
1232 conclusions than the applicant, depending on some very important assumptions.

1233 First, one of the project's expenses per the applicant is the acquisition of land.

1234 Relative to the project, this cost is massive, critical and subjective and, most  
1235 importantly, I would contend that it's actually irrelevant.

1236 The applicant owns this land and is evidently not selling it to a third party and  
1237 clearly they're not actually purchasing it from themselves once again.

1238 In basic project economics, the land would be termed at some cost and it's a  
1239 widely accepted notion that some costs should be ignored when considering future  
1240 projects.

1241 If one excludes the land acquisition cost on this project, as I suggest, the project  
1242 becomes profitable in all schemes, including as-of-right. Another item. In the most recent  
1243 feasibility study, the applicant excluded the value of community facilities and this was  
1244 included in prior versions, although the applicant hasn't clearly explained or consistently  
1245 used this labeling, one could generally infer that the income losses that they performed in  
1246 a sub-schedule A-2 was regarding the applicant's tenant school.

1247 By the applicant's own analysis, the tenant school, under the proposed scheme,  
1248 appears to have capital value of over fourteen and a half million dollars. I believe this is  
1249 a significant figure and should not be excluded.

1250 The applicant only provided a capital value analysis of this school under the  
1251 proposed scheme. However, it appears that the layout of the school is the same in all  
1252 schemes, thus one could assume that the school has the same capital value in the as-of-  
1253 right schemes, also.

1254 It would, actually, in that same schedule that the tenant school's capital value  
1255 more than covers the cost to develop the entire community facility.

1256 Again, if this change were made and the capital value of the tenant school were  
1257 properly included, as I suggest, the project becomes even more profitable.

1258 So, adjusting for these prior comments and also some other income streams which  
1259 other speakers have mentioned, like the parsonage and also the multi-purpose room - -

1260 CHAIR SRINIVASAN: Can you conclude your statements  
1261 very quickly.

1262 MR. HANSEN: - - then it becomes apparent that the  
1263 applicant is seeking excess profit beyond its programmatic needs. Thank you.

1264 CHAIR SRINIVASAN: Thank you. We did receive your  
1265 submission and we've received that. The next speaker.

1266 MR. BANKOFF: Good afternoon, Commissioners. I'm  
1267 Simeon Bankoff, Executive Director of the Historic District's Council.

1268 I am not an expert on 77-21, however, I am a relative expert on the uses of 74-  
1269 711, which is, I think, a very important aspect of this application, which Mr. Marcus had  
1270 mentioned before which is, to wit, that the original application was to ask for a Special  
1271 Permit from the City Planning Commission with the permission of the Landmarks  
1272 Preservations Commission. They chose not to do this.

1273 Therefore, I would think that using the sort of - - the way that land use is laid out  
1274 within the city, that there was a process that they could have used that they could have  
1275 justified variances for but waivers for the case (Unintelligible) and they could not prove  
1276 that.

1277 I feel that this is to be basically - - and they're asking for an end run around basic  
1278 City policy.

1279 There's also - - while, this is completely permitted, I would urge you to deny it.  
1280 There's also an element of a hardship. There is hardship among the Landmarks  
1281 Preservation Commission. It's written into the statute.

1282 Had they felt that this was a hardship, they could have applied under the hardship  
1283 regulations, 25-306 of the City Charter. They have chosen not to do this.

1284 That is largely it.

1285 Again, Mr. Marcus had really addressed most of the issues I was going to talk  
1286 about. I would like to finally just end with the notion that in general practice, I've heard  
1287 the Landmarks Preservation Commission often say there is no such thing as as-of-right  
1288 development within a historic district or to a landmark building. That is how they're  
1289 interpreting it.

1290 So, the very notion of this as-of-right over 100,000 square feet of development  
1291 space being there is thrown into shadow, perhaps, in the sense of their - - all development  
1292 within the historic district is by discretionary act of the LPC. If you have any questions?

1293 VICE-CHAIR COLLINS: Just a comment on your last  
1294 comment, the phrase as-of-right isn't always universal. I mean, you can be as-of-right  
1295 pursuant to zoning, as-of-right pursuant to the Landmarks Law.

1296 So, I think, perhaps, what the folks at Landmarks are saying is that there may be  
1297 nothing as-of-right in a historic district per Landmarks Law. They're clearly is as-of-  
1298 right development - -

1299 MR. BANKOFF: Under the underlying zoning, of course.

1300 VICE-CHAIR COLLINS: Under the underlying zoning,  
1301 so we just want to be clear about that.

1302 MR. BANKOFF: Which this is asking for a waiver from.

1303 VICE-CHAIR COLLINS: Thank you.

1304 CHAIR SRINIVASAN: The next speaker.

1305 MS. ASHBY: Good afternoon, Commissioners. My name  
1306 is Elizabeth Ashby and I'm Co-Chairman of Defenders of the Historic Upper East Side,  
1307 among other things.

1308 And, I'm coming to add our voice to the opposition to this particularly  
1309 unattractive set of variances. I won't repeat what other people have said. They've made  
1310 excellent points.

1311 On the Upper East Side, we take a slightly different position than the West Side.  
1312 They're not unique in working for a contextual zoning. We've worked for years and  
1313 years and years and we want to protect our contextual zones.

1314 We don't want hardship to be an excuse to have a money-making stream.

1315 Hardship has something to do with the unique physical condition peculiar to and  
1316 inherent in the zoning lot - - related to the Zoning Resolution. It doesn't mean I could  
1317 make more money if I did "X", "Y" and "Z".

1318 And, we think that the precedent that would be set by the granting of these  
1319 variances is terrifying, not only for this particular site, but for those of us who don't have  
1320 the good fortune to live on the Upper West Side, we're also scared and we beg you to  
1321 deny these variances. Thank you. The next speaker.

1322 MS. NIAL: Well, good afternoon. My name is Susan  
1323 Nile. I've already submitted a letter and I continue to have the same objections to this  
1324 proposal.

1325 I've been asked to talk on two or three issues that I don't think anyone else has  
1326 covered completely.

1327           One, of course, is the burden of proof here as to whether or not a variance should  
1328 be granted.

1329           Clearly, that burden of proof is on the applicant and from what I've heard and  
1330 what I've seen, they have not established their right under the five findings for any of the  
1331 variances that they have placed before you.

1332           In part, it's clear that the variances requested will alter the characteristics of the  
1333 neighborhood.

1334           Second of all, I think it is also clear why I know that there is great disagreement  
1335 on this as to whether or not the hardships claimed by the applicant are self-made and I do  
1336 believe they are.

1337           The hardships, if any exist, are because the applicant is insisting that it must have  
1338 what it wants and that is it wants luxury condominiums.

1339           It can, in fact, fulfill its programmatic needs within its as-of-right footprint or  
1340 envelope, however you might describe it. It can provide an accessible facility without, in  
1341 fact, getting the variances that it's requested.

1342           The other issue that has been raised at least - - if not full face but rather  
1343 undercover here, is the fact that this is a religious institution and that it feels because it is  
1344 a religious institution, all bets are off and, therefore, that it should be given some kind of  
1345 pass regarding credibility, regarding the level of proof it must provide for its variances.

1346           I would suggest to you that the law does not support any kind of lessening of the  
1347 burden of proof because this is a religious institution and also that the argument that  
1348 religious exercise in this case, the argument that an income (Unintelligible) to support

1349 programmatic needs is enough to support a variance - - this is also not supported by the  
1350 law, and I'll be happy to send you those citations. Thank you.

1351 CHAIR SRINIVASAN: Thank you. The next speaker.

1352 MS. WOOD: Thank you. Good afternoon. I'm Kate  
1353 Wood, speaking on behalf of Landmark West.

1354 I just want to circle back to comments raised about the 1984 zoning and the  
1355 subsequent Historic District Designation.

1356 The crisp delineation between the Central Park West skyline and the low-rise row  
1357 house mid-blocks like West 70<sup>th</sup> Street is a crucial aspect of this neighborhood's essential  
1358 character and it has remained largely intact thanks to those two overlaying regulations.

1359 The explicit purpose of the zoning is to protect public health, safety and welfare  
1360 and any exceedence of the zoning inherently transgresses that public trust.

1361 We understand that the purpose of the Board is not to rewrite the zoning but to  
1362 consider where exceptions may be merited due to special hardship.

1363 To reiterate a point made by Chair Srinivasan at yesterday's review session, the  
1364 burden is on the applicant to show that such hardship exists. The applicant has failed to  
1365 meet this burden of proof.

1366 For example, the applicant claims that the presence of a unique, non-complying  
1367 specialized building of significant cultural and religious importance creates a unique  
1368 physical condition. In fact, this is not a unique situation for Central Park West, which is  
1369 lined with important cultural institutions including the Society for Ethical Culture, the  
1370 New York Historical Society, the First Second Church of Christ Scientist, just to name a  
1371 few. All are landmarked, either individually or as part of the Historic District. All would

1372 like to monetize their real estate assets but as the Board's record shows, landmark  
1373 designation is not an acceptable basis for a hardship and contrary to the applicant's  
1374 statement, Landmarks did not require the applicant to build a nine story building in this  
1375 location. That was the applicant's choice to propose that.

1376         The applicant further argues that the presence of the landmark synagogue compels  
1377 it on a site whose feasible development is hampered by the presence of the zoning district  
1378 boundary.

1379         By this, the applicant means the site of the existing community house plus the  
1380 adjacent vacant lot.

1381         However, there are many sites up and down Central Park West that contend with  
1382 exactly the same issue.

1383         Hardly ever does a zoning boundary precisely coincide with the lot boundaries.

1384         In this case, more than 70 percent of the proposed new building site is located  
1385 squarely in the R-8 (b) zoning.

1386         The proposed new building site is perfectly rectangular with no inherent practical  
1387 difficulties for development either as an as-of-right community house or residential  
1388 building or a modest combination of both.

1389         The difficulty arises because the applicant chooses to concentrate all of its  
1390 program and profit driven ambitions onto this one relatively small piece of its large  
1391 combined site. And, yet, the applicant has offered no explanation as to why its needs can  
1392 only be met in this manner.

1393         Conspicuous surveys, no mention of the parsonage and its potential. I will  
1394 continue just to wrap up.

1395 CHAIR SRINIVASAN: If you can conclude.

1396 MS. WOOD: Okay, absolutely.

1397 Things that you've heard before about the way the - - basically, the applicant  
1398 ignores the possibility of using its real estate assets over the entire lot more efficiently,  
1399 even though it is using the entire lot to factor its allowable FAR.

1400 The applicant also ignores the real physical context here as has been described  
1401 before.

1402 There are three buildings on this block that are more than six stories tall; the  
1403 synagogue, the parsonage, the roadhouses all comply with the R-8 (b) zoning  
1404 (Unintelligible) - -

1405 CHAIR SRINIVASAN: Can you conclude.

1406 MS. WOOD: And, that is the context that the applicant  
1407 should be following. That is the context that the Catholic Association of High Schools  
1408 will be looking at 22 West 70<sup>th</sup> Street - -

1409 CHAIR SRINIVASAN: You can submit it in writing to us.

1410 MS. WOOD: We definitely will and I just want to  
1411 distinguish between what the applicant wants and what the applicant needs are two  
1412 different things and, therefore, we urge you to deny this application. Thank you very  
1413 much.

1414 CHAIR SRINIVASAN: Thank you. I just have a question,  
1415 Ms. Wood, because you talked about other sites that are along Central Park West and in  
1416 this split district.

1417 Do you know whether those sites are built out or whether they are developable or  
1418 is that something that you - -

1419 MS. WOOD: I think it's a very interesting study that  
1420 should be done - -

1421 CHAIR SRINIVASAN: Well, we'll ask the applicant to do  
1422 it.

1423 MS. WOOD: - - as part of this application.

1424 CHAIR SRINIVASAN: Yes. I think we noted it  
1425 yesterday.

1426 MS. WOOD: I think it will be very useful to see. Thank  
1427 you very much.

1428 CHAIR SRINIVASAN: Thank you. All right. The next  
1429 speaker.

1430 MS. SINAIKO: Thank you. I'll be very, very brief.

1431 My name is Eve Sinaiko. I'm a resident of the Upper West Side but I live further  
1432 uptown. I have no personal interest specifically on this block. I live above 96<sup>th</sup> Street  
1433 where we've just achieved contextual zoning. Thank you all very much.

1434 It was an incredibly hard fight and incredibly valuable to us and I'm just here  
1435 today to say that the value of contextual zoning is (Unintelligible) to us on the Upper  
1436 West Side and I think in the whole city and it seems from what I can see that the  
1437 applications for variances increasingly are coming from very worthy non-profits and  
1438 charitable organizations.

1439 They're the ones who, of course, need to find what it is - - where they can and so  
1440 it seems too dangerous to start considering variances on the grounds that a particular  
1441 applicant is worthy and decent and we like them as opposed to some evil developer  
1442 which is what we all like to think is mostly going on.

1443 So, I urge you to respect zoning as it is and not grant any of these variances that  
1444 are being requested. Thank you.

1445 CHAIR SRINIVASAN: Thank you. The next speaker.

1446 MS. RIEBER: Good afternoon and thank you for doing  
1447 your due diligence on this very difficult subject. I am President Dee Rieber, President of  
1448 the West 75<sup>th</sup> Street Block Association; long-time resident on the Upper West Side.

1449 I feel that I am speaking merely to relate many of the concerns of my constituents.

1450 If this proposal is to be successful with all its variances it will have, what I don't  
1451 think too many people have addressed, a deep psychological impact on the residents of  
1452 the Upper West Side.

1453 It comes at the dawn and many would disagree, it's midday of a development  
1454 frenzy that is occurring currently in our neighborhood; a climate that is creating quite a  
1455 bit of unrest and uncertainty for the future of our neighborhoods.

1456 These decisions, in my opinion and those of my constituency, should not be made  
1457 without at least acknowledging that the Upper West Side is a cohesive community.

1458 We stand with our neighbors to the south in respectfully opposing Shearith  
1459 Israel's proposal. Thank you.

1460 CHAIR SRINIVASAN: Thank you. The next speaker.

1461 MS. MOONEY: Good afternoon. My name is Laverne  
1462 Mooney and I'm going to speak to you a little bit on the environmental side of things.  
1463 I have a doctorate in Environmental Science from Columbia University where I  
1464 spent a good many years researching human health effects of environmental pollutants  
1465 and especially indoor air.

1466 And, I guess I wanted to object to this based on my environmental background  
1467 but also because I am a resident and I will be directly affected so I want to be on board.

1468 There are a lot of indoor air pollutants and that are usually - - what we say the  
1469 mantra in environmental health is that the solution to pollution is dilution and that you  
1470 may open windows is one way. I mean, that isn't the sum of my six years of learning.  
1471 That was the encapsulated version.

1472 I think it's important to realize that if you allow this building to be - - I'm not  
1473 against having a building and I understand all the issues with the synagogue, and I am  
1474 very positive about that but I think it is going to impact our building terribly because - -  
1475 and one of the rules is that you're allowed to impact a building and we won't be able to  
1476 open our windows. We won't have that solution, never mind the discussion of light and  
1477 air.

1478 My two children are in one of those rooms and they won't have any light or air.

1479 And, to me, as a scientist and as a mom, I think it's - - I really just don't want it so  
1480 I object and I thank you for your time and I'm going back to work to make some money.

1481 CHAIR SRINIVASAN: The next speaker.

1482 MR. LEPOU: My name is Howard Lepou (Phonetic). I'm  
1483 the President of the Board of 18 West 70<sup>th</sup> Street.

1484           That building has been or was in my family since 1943. Then it was co-opted in  
1485 1986, which I did, so I'm intimately aware of the building and I'm also very aware of the  
1486 synagogue's presence.

1487           I was around when the synagogue took its townhouse down in the 1970's.

1488           I think the thing that bothers me the most that I feel the most appalled is that  
1489 really over the last twenty years - - and I was talking to David Spector, today, who is an  
1490 architect who worked for Shearith Israel for many years.

1491           The impetus of the synagogue has been a profit situation. The synagogue, to my  
1492 way of thinking, is really there for the benefit of the community.

1493           By building, whether it's four more stories or ten stories or fifty stories, I mean, it  
1494 does not benefit the community.

1495           It will, also, I think, as it has here, polarized the community with the synagogue.

1496           And, the synagogue really has to make a decision about whether it's in the real  
1497 estate business or it is a religious institution.

1498           There was a point made that the synagogue is a beautiful building. It is. It's  
1499 simply unique in New York.

1500           If you take a look at the model, you will see how those additional three or four  
1501 floors are going to impact the magnificence of that pediment that is the most beautiful  
1502 part of the synagogue because all of those floors are going to abut the building directly  
1503 and will be seen from any part of Central Park West or 5<sup>th</sup> Avenue or Central Park.

1504           The damage to 18 West 70<sup>th</sup> Street, not to rehash, but a lot of windows will be  
1505 bricked up.

1506 In one apartment, as you heard before, which is a studio apartment, which I know  
1507 well, the only window that has light and air will be bricked up.

1508 The other building - - the other window, the sliver window is really a bathroom  
1509 window, so that's not legal light and air for that unit.

1510 The effect, of course, on the courtyard is also going to be quite devastating  
1511 because light and air will be shut out.

1512 But more the point, if we speak about the financial aspect of this insofar as the  
1513 synagogue needing funds, I don't quite understand something. I'm also a real estate  
1514 developer, so I've gone through a number of these hearings before on my own projects.

1515 But, what I don't understand is the synagogue has a parsonage house, which is a  
1516 twenty-five footer that goes, I mean, as far as my calculations show, at least, I would say,  
1517 70 to 80 feet deep.

1518 If you do it on a square footage basis, you know, five floors plus a basement, if  
1519 you take the five floors, it's about 2,000 square foot per floor.

1520 If you take the entity as a whole - -

1521 CHAIR SRINIVASAN: Will you please conclude.

1522 MR. LEPOU: Okay. If you take the entity as a whole, it's  
1523 about ten thousand square feet. If the synagogue needs additional space, certainly, it  
1524 could be provided there. If it needs cash, that building is worth \$15 to \$20 million on the  
1525 open market.

1526 CHAIR SRINIVASAN: Thank you.

1527 MR. LEPOU: Thank you very much.

1528 CHAIR SRINIVASAN: The next speaker.

1529 MR. VANDER VALK: My name is Lo Vander Valk. I'm  
1530 President of Carnegie Hill Neighbors on the East Side, and I'm here because we are  
1531 concerned about contextual zoning in our neighborhood, and we're also concerned about  
1532 the plans for the Remaz (Phonetic) School, which is similar to this application.

1533 CHAIR SRINIVASAN: Please speak to this application  
1534 and not to the Remaz School.

1535 MR. VANDER VALK: I understand that. I'm only telling  
1536 you my motivation for being here.

1537 CHAIR SRINIVASAN: All right.

1538 MR. VANDER VALK: The issue that we are concerned  
1539 with in this application is the issue of using ostensibly programmatic needs to build  
1540 residential condominiums to fund the real program but not using any of the space that  
1541 exceeds the zoning envelop for their true programmatic needs.

1542 And, that is our only issue in being here. We think that the zoning law was  
1543 written so that that aspect would be respected and that there would be ways to get  
1544 variances for programmatic needs but not to finance and fund or help fund a huge project,  
1545 which could be funded by other means. Thank you.

1546 CHAIR SRINIVASAN: Thank you. The next speaker.

1547 MS. BLUMKIN: My name is Linda Blumkin. I'm a  
1548 retired attorney. I live on East 85<sup>th</sup> Street but I won't discuss the Remaz (Phonetic)  
1549 situation.

1550 The reason - - I'd like to put a question to the Board if I may?

1551 CHAIR SRINIVASAN: We won't be answering the  
1552 question, so if you have any questions for the Board, you can speak to our staff so either  
1553 testify on this application or perhaps speak with someone from staff.

1554 MS. BLUMKIN: Yes. I'd like to comment that for those  
1555 of us who don't work in this area on a daily basis, something was said by Mr. Friedman  
1556 to a land use committee of Community Board #7 that I found disturbing and if I can't ask  
1557 a question, I'll just put it out there for the consideration of the Board.

1558 Mr. Friedman, multiple times, represented to the Land Use Committee of  
1559 Community Board #7 that the Shearith Israel proposal had the support of the Bloomberg  
1560 Administration which, obviously, gave rise to grave concern and those of us who were  
1561 there wondering whether - - is anything that we're going to say matter from this point on?  
1562 Or does Mr. Friedman's representation to the Community Board that his proposal has the  
1563 support of the Bloomberg Administration mean that these applications are a *fait*  
1564 *accompli*.

1565 I just thought that I would - -

1566 CHAIR SRINIVASAN: All right. We'll ask the applicant  
1567 to clarify it.

1568 MS. BLUMKIN: Thank you.

1569 CHAIR SRINIVASAN: All right. Next speaker.

1570 MR. SHANE: Good afternoon. My name is Hal Shane.

1571 I'm a resident of 18 West 70<sup>th</sup> Street.

1572 I can't repeat everything that's been told to this Board but I can speak to you  
1573 emotionally.

1574 I'm just a regular guy who lives in the building. One of my windows is affected  
1575 but this new proposal is wrong because of the monetary monies that the synagogue is  
1576 trying to raise.

1577 Two, it's your job as elected officials to recognize all these land use laws that all  
1578 these experts have expounded to you in the last few hours.

1579 But, I want to turn to the temple. I will be done very shortly and tell you how  
1580 much hate will be created in the community by the condominium passing.

1581 I don't mean annoyance. I mean hate because I've been on the street and no one  
1582 wants this to happen.

1583 I heard some people from Brooklyn before speak about a one-way street that was  
1584 going to have congestion. This is a one-way street.

1585 Every morning people are picked up on the street by limousines. Forget it. There  
1586 will be cranes, traffic. Buses already for the synagogue hold up traffic at 3:00, 4:00 in the  
1587 afternoon for twenty, thirty minutes. I see it, the constant traffic jams.

1588 So, I want you all to know that there is a psychological hate, hate being developed  
1589 towards the synagogue who were once our friends because they're going to take my  
1590 apartment and devalue it. They don't care. They're going to take the street and make it a  
1591 problem. They don't care.

1592 Only the developers and the temple want to make money. That's what they care  
1593 about but I care that you do your job which is to obey the laws that are already there and  
1594 this is not a special situation. It's only a situation for them to make money and create a  
1595 lot of hate on the street. Thank you.

1596 CHAIR SRINIVASAN: Thank you. The next speaker.

1597 Are there anymore speakers on this item? Mr. Lebow, you can come forward.

1598 MR. LEBOW: That concludes the presentation by - -

1599 MR. COSTANZA: Can you state your name, again, sir.

1600 MR. LEBOW: Mark Lebow. That concludes the  
1601 presentation.

1602 We thank you for your patience. I would like to thank the speakers who spoke. I  
1603 know it was hard for some of them to get here and I would also like to thank the people  
1604 who came here but did not speak because they were aware that other people had said  
1605 what they wanted to say, and we thank you for your patience.

1606 CHAIR SRINIVASAN: Thank you, Mr. Lebow.

1607 All right. Mr. Friedman.

1608 MR. FRIEDMAN: Yes, Madam Chair, I would like to  
1609 respond to a few things that we heard just to correct the record - -

1610 CHAIR SRINIVASAN: All right.

1611 MR. FRIEDMAN: - - and then we can get down to the  
1612 business of your concerns.

1613 Probably the most fundamental one is the discussion and the perception regarding  
1614 74-711. I'd like to place that in the proper context.

1615 We did - - when we applied to Landmarks - - apply for 74-711. I'm not sure of the  
1616 statements previously made that there was no consideration given and no application  
1617 filed. Indeed, there was. And, in the Landmark's proceedings that I'll be making part of  
1618 this record, you'll be able to see that. That was a 74-711 for a fourteen story building.

1619           When it became apparent that the Commission did not feel the requisite  
1620 preservation purpose was there, in part, due to the advocacy of Mr. Marcus, because, in  
1621 fact, Commissioner Gratz actually read a letter from him into the Landmark's record  
1622 about the unsuitability of the application for 74-711.

1623           We came back to discuss with the Commission the five-story building, the  
1624 building you see here with the five condominiums instead of, I guess it was at that point,  
1625 ten; ten condominiums.

1626           And, at that point, we abandoned the notion that the building would be a 74-711  
1627 and that there would be proceeds from that building that could support a preservation  
1628 purpose and the like.

1629           The smaller building was, indeed, with a view toward coming to the Board of  
1630 Standards and Appeals for this application and was based on that fact that, again, we will  
1631 submit this in whatever format you wish; that not a dime goes to any aspect of this  
1632 applicant but for the construction of the facilities necessary to overcome the  
1633 programmatic hardships.

1634           So, the issue of whether 74-711 was, indeed, raised, argued - - our opportunities  
1635 to pursue it exhausted, I believe, is all in the record of the Landmarks Commission.

1636           And, by the way, in that record, you will also see, for whatever it's worth, the  
1637 support of the Landmark's Conservancy, which came down to speak on behalf of it and  
1638 former Borough President C. Virginia Fields who came down to speak on behalf of the  
1639 application.

1640 With regard to the reference to shadow studies, the material in front of you  
1641 includes the environmental assessment statement prepared by AKRF. There are shadow  
1642 studies involved there.

1643 The shadow studies follow the CEQR manual. The analysis in accordance with  
1644 the CEQR manual indicate that where there are new shadows as a result of this project,  
1645 they fall on the treetops and no new shadows beyond what fall on treetops and those are,  
1646 indeed, a limited (Unintelligible) are created by this project and that is also part of your  
1647 application.

1648 CHAIR SRINIVASAN: I just want to make sure that what  
1649 we have in our record is, in fact - - covers whatever the methodology that's required  
1650 under the environmental review in terms of the number of times a year, the hours.

1651 I know that typically what is allowed under a no-build condition - - I think, your  
1652 environmental review, actually, identifies the no-build condition as being what there is  
1653 right now, isn't that correct?

1654 MR. FRIEDMAN: That is correct.

1655 CHAIR SRINIVASAN: As opposed to an as-of-right  
1656 condition?

1657 MR. FRIEDMAN: I would not ask - - it would not ask for  
1658 an as-of-right condition.

1659 The as-of-right condition is a - - at least in the R-10 (a) portion of the site, a very  
1660 tall sliver that would cast shadows half way across Central Park if my estimates are  
1661 concerned with.

1662           The as-of-right is a very tall sliver in the R-10 (a) portion of the site and a typical  
1663 R-8 (b) profile in the R-8 (b) portion of the site. If the issue is simply shadow, my guess  
1664 is that's a pretty severe situation in terms of shadow analysis.

1665           I will conclude. We have a representative from AKRF here but we will confirm  
1666 in writing. I know that the shadow studies are in compliance with the CEQR manual.

1667           Let me just make sure that everyone that is supposed to be submitted is there;  
1668 where there are no impacts created whatsoever, thus may not have been part of the  
1669 package but - -

1670   CHAIR SRINIVASAN: All right. Why don't we have the  
1671 first set of drawings, then, and I think it's worthwhile to establish what are considered  
1672 impacts?

1673           I think that there may be different points of view on this and from an  
1674 environmental review point, if you have incremental shadows on, I believe, slight  
1675 sensitive types of buildings, whether they have some architectural significance or they're  
1676 open space, then it may or may not be considered an impact.

1677           Just the fact that you greater shadows on some buildings may not be necessarily  
1678 considered an impact, but I think it's worthwhile to establish, again, what that analysis  
1679 shows - -

1680   MR. FRIEDMAN: Fine.

1681   CHAIR SRINIVASAN: - - and how you've managed to  
1682 screen off any adverse impacts?

1683 MR. FRIEDMAN: Fine. If - - we have the context model  
1684 here, my guess is you would find that of value in this discussion because the buildings on  
1685 all sides of us are non-complying with regard to height and setback as well.

1686 In fact, 101 directly across the street, travels farther into the mid-block as a major  
1687 apartment building then the distance from our site.

1688 And, 91, immediately to our south, is also non-complying with regard to the mid-  
1689 block and its height. Those are legal non-compliances but nonetheless, this building is in  
1690 a bit of a valley surrounded by buildings which are all built to ten in excess in violation of  
1691 the prevailing height and setback.

1692 With regard to the reference to the banquet facility, we've heard that before. I'm  
1693 assuming that that's a reference to the social hall downstairs.

1694 We have indicated - - you've heard the Rabbi refer to that room, the orthodox  
1695 Jewish tradition is to basically continue the Sabbath services and commemorative  
1696 services over certain aspects of the meal, over the bread, over the wine. All of that takes  
1697 place during the Kiddush downstairs.

1698 There is no reference in our application to providing any catering facilities.

1699 I urge anybody that wants to simply put this one away, as it's said, by making a  
1700 cold call to the synagogue and saying you'd like to hire it for a wedding or what have  
1701 you.

1702 There are provisions for the use of the facilities by people outside the synagogue  
1703 for certain life-cycle events but they must use the sanctuary. They must use the Rabbi.  
1704 They must use the literature of the synagogue.

1705 In fact, they must join - - in all respects, they must join the synagogue in order to  
1706 use its facilities so, from that standpoint, there's no objective evidence that there is any  
1707 type of catering business now and that we're telling you up front there would certainly be  
1708 no catering going forward. That's not what the space is about.

1709 CHAIR SRINIVASAN: All right. Maybe you can clarify  
1710 in the record, then, by creating the space, which doesn't exist right now, whether that is  
1711 going to generate more people to the site and access the impacts if it does?

1712 MR. FRIEDMAN: Fine. But, by impacts, obviously, the  
1713 Rabbi would be thrilled to tell you the congregation is going to double in the next ten  
1714 years. That's why it's there. What kind of impacts would you want to see in our  
1715 analysis?

1716 CHAIR SRINIVASAN: Well, my understanding is right  
1717 now you have a congregation of, I think, 550, is that correct?

1718 MR. FRIEDMAN: Yes.

1719 CHAIR SRINIVASAN: And, you may have these life-  
1720 cycle events and right now, they're accommodated on-site, is that correct? Or, they just  
1721 don't happen? They may have the ceremony but they don't have the meeting space?

1722 MR. FRIEDMAN: Well, yes. If they wanted to have - -  
1723 well, first of all, you can't be outside the community and simply have your wedding there  
1724 or Bar Mitzvah there.

1725 There were - - the expected attendance exceeds, even within the congregation,  
1726 they currently have to leave and find some other place for that. Most of the families

1727 simply restrict the number of invitees so that they can have it in the synagogue, which is  
1728 where they really want it.

1729 CHAIR SRINIVASAN: All right.

1730 MR. FRIEDMAN: There's no outside traffic, no  
1731 commercial traffic associated with that use.

1732 CHAIR SRINIVASAN: So, if I understand correctly that  
1733 you may have these functions held but people if they have to go to have there for  
1734 gathering afterwards, they may have to seek a place outside this location or they would  
1735 restrict the number of people who can come because, in fact, they can't accommodate  
1736 them, is that correct?

1737 MR. FRIEDMAN: And, that's taking place now. Members  
1738 in the community - - everybody from outside of the community is being turned away and  
1739 everybody inside the community finds the facilities only occasionally suitable, given  
1740 their present situation.

1741 CHAIR SRINIVASAN: All right. So, in other words,  
1742 does that mean that with this expansion, that the number of people - - even if it's a  
1743 modest amount, I just think we need to understand, is this going to have an effect or  
1744 impact that increase - -

1745 MR. FRIEDMAN: From a (Unintelligible) - -

1746 CHAIR SRINIVASAN: Right; increase the number of  
1747 people who may now be able to come for life cycle events. I understand that they have

1748 to - - they find that the people who come to the site and use the synagogue space and the  
1749 Rabbi will move towards his other space. It may not generate more people but if there's  
1750 an increased amount, I think we just need to know that.

1751 MR. FRIEDMAN: Fine. But, in any event the reference  
1752 to banquet hall is clearly, in our view, an inappropriate appellation to the function of that  
1753 room.

1754 CHAIR SRINIVASAN: All right.

1755 MR. FRIEDMAN: With regard going back to the  
1756 Landmarks issue, again, and Mr. Bankoff's testimony, an applicant doesn't have an  
1757 option to apply hardship if you're denied a Certificate of Appropriateness. It's available  
1758 to you as an alternative but the fact of the matter is, the Landmark's Commission  
1759 unanimously gave this project a Certificate of Appropriateness so it was not the  
1760 applicant's choice whether to pursue the hardship or not.

1761 If we wanted to pursue the hardship, we would have pursued it for a building  
1762 other than the one the Landmark's Commission approved but the building you have in  
1763 front of you is the building the Landmark's Commission approved, so to the extent that  
1764 there was - - why didn't we go get a hardship? That's simply not the way the world  
1765 works.

1766 We're coming into you with a building that has the unanimous approval of the  
1767 Landmark's Commission. So, they're going for a hardship because of some concern  
1768 about profit is actually irrelevant and immaterial to the Landmark's process.

1769 And, I thought that that we should point that out.

1770 CHAIR SRINIVASAN: And only the hardship aspect is  
1771 relevant because the findings that are made to this Board have to be based on hardship.

1772 MR. FRIEDMAN: Well, the hardship provision is a part  
1773 of the Landmark's law.

1774 If we were, hypothetically - - if we were denied a Certificate of Appropriateness  
1775 of if we insisted on building the fourteen story building or denied the Certificate of  
1776 Appropriateness for that, we could then apply to the Landmark's Commission for its own  
1777 process - -

1778 CHAIR SRINIVASAN: Oh, I see, all right.

1779 MR. FRIEDMAN: - - in other words, a hardship  
1780 procedure. But, that's not necessarily a winner because the underlying theory that the  
1781 congregation is prepared to abandon the building. That's what happened with the  
1782 celebrated case of Mount Nebow (Phonetic) on West 79<sup>th</sup>.

1783 Efforts were made to drive the applicant through hardship and, as a result, the  
1784 synagogue was demolished. This was before the Historic District.

1785 But, you know, our hardship does not necessarily result in the best of all  
1786 outcomes. It's a release from the Landmark's provisions so that you can do anything,  
1787 including redevelop the property to its zoning.

1788 The hardship application would be a permission, really, to demolish the building.

1789 So, I just wanted to put those into their proper prospective from the applicant's  
1790 point of view.

1791 Really those are the specifics that I heard during the testimony, and I would be  
1792 very happy to proceed now to simply tell you we have your questions from Executive

1793 Session and this morning, and we will be submitting written submissions to you on all of  
1794 that.

1795 CHAIR SRINIVASAN: All right. Questions or  
1796 comments of the applicants. Yes. Go ahead.

1797 COMM. HINKSON: Much has been said today about the  
1798 lot line windows and we all know about lot line windows.

1799 However, I would like you to perhaps take a look at the windows affected to make  
1800 sure that although they're lot line and you lose your lot line windows, it's a hardship for,  
1801 you know, you bought the apartment and it's too bad.

1802 However, if those windows are the only source of light and air, it puts it in a  
1803 different category and you might need to take a look at that and be able to deal with the  
1804 light and air in a particular apartment.

1805 So, I'd like you to maybe take a look to make sure that none of the apartments  
1806 that are affected fall into that gray category where it's the only light and air that is  
1807 afforded an apartment and one would have to, in some way, deal with that inside the  
1808 apartment.

1809 MR. FRIEDMAN: Well, we would need, obviously the  
1810 consent of those owners of the apartment to take a look so that we could confirm for you  
1811 what the situation and if they want to give us that consent, we would look at them.

1812 COMM. HINKSON: Or try to get plans from the Building  
1813 Department on those apartments and see if you can take a look at that.

1814 My concern is and we've seen this a great deal in the past year that I've been here,  
1815 you have a situation where a building is built prior to sort of lot line issues and it's the  
1816 only light and air for a particular line of apartments.

1817 And, unfortunately, it falls on the new developer to have to take care of that  
1818 situation for the existing apartments.

1819 But, I just want to make sure that we have a comfort level that we're not okaying  
1820 something that could potentially have a detriment, really a detrimental affect, a legal  
1821 detrimental affect on an apartment as opposed to, you know, merely sort of an aesthetic  
1822 or a physical one that isn't a legal one.

1823 MR. FRIEDMAN: We will follow up to the extent that we  
1824 have cooperation to do so, although I would say to you that if the claim is that a room is  
1825 getting all of its legal light and air from a lot line window, the issue is not the  
1826 development next door. It's the fact that that's an illegal room because even under - -

1827 COMM. HINKSON: It may be but I think you'll probably  
1828 have an issue with the Building Department so I think you're going to have to take a look  
1829 at it anyway.

1830 CHAIR SRINIVASAN: On this issue about legal lot line  
1831 windows and whether they're illegal, if you're saying that this building, when developed  
1832 assumed that it should not have any windows on the lot line or if they were put in there  
1833 illegal, then I think you just need to brief us on that because I think that's the point you're  
1834 making; that regardless of whether they bring light and air into a room, that room is  
1835 created outside of that window being a legal window.

1836 MR. FRIEDMAN: Or, the window could have been - - the  
1837 window could have been installed - -

1838 CHAIR SRINIVASAN: Afterwards.

1839 MR. FRIEDMAN: Afterwards. But, the fact of the matter  
1840 is no, as far as I know, legal, complying or not, original or not, no room, no habitable  
1841 room can claim that it's drawing its legally required light and air from a lot line window  
1842 just as a matter of regulation and Building Code.

1843 COMM. HINKSON: Well, actually, yes and no but I think  
1844 that that's a discussion you need to have with the Department of Buildings.

1845 MR. FRIEDMAN: Okay.

1846 CHAIR SRINIVASAN: All right. Any other questions or  
1847 comments?

1848 All right. Mr. Friedman, you're aware of all the list of issues we raised yesterday.  
1849 I don't have to go through them, all right.

1850 But, I just want to reemphasize how it's important in terms of looking at your (a)  
1851 and (b) finding and a finding which resolves this.

1852 I know you're going to - - you may continue to argue that the monetization of the  
1853 air rights is part and parcel to your proposal as well as your program need.

1854 But, I would urge you to look at other applications that this Board has entertained  
1855 where we've had non-for-profit or religious or educational institution on a portion of the  
1856 lot and market-rate housing.

1857           It's not that the Board hasn't seen cases like this. It's just that the analysis and the  
1858 basis for a hardship and uniqueness are different and it does not get the same deference  
1859 under the case law that applies to religious institutions on their own.

1860                               MR. FRIEDMAN: We will take a hard look at that,  
1861 Madam Chair.

1862                               CHAIR SRINIVASAN: And, there's a couple of issues  
1863 that came up here which I just want to reiterate which has to do with both a study of the  
1864 split lot situation along Central Park West in an R-8 (b) and R-10 (a) and also regarding  
1865 the preexisting lot. I think the Vice-Chair had raised that and I think that when you  
1866 provide your revised financial analysis to us, and we have many issues with that  
1867 including the site value, the soft costs.

1868           I think there were concerns regarding how the residential revenue changed over  
1869 time.

1870           I just want to make sure when you come back to us, it's clearer if there are  
1871 changes that are made; explain the reasons why and so we have in some ways a  
1872 (Unintelligible) on the financials, which is the most updated one and we don't have to  
1873 keep referring back to the previous financials.

1874                               MR. FRIEDMAN: We're happy to do that and, obviously,  
1875 we've made changes in regard to the notice of objections and - -

1876                               CHAIR SRINIVASAN: Right. We understand that.

1877                               MR. FRIEDMAN: - - we'll work with the staff and we're  
1878 very appreciative of that. We think it's made it a stronger application but, yes, it does

1879 mean there has been some leaping around in terms of the format of the presentation and  
1880 the like, and we'd be happy to sharpen it and submit it to the staff for their analysis.

1881 CHAIR SRINIVASAN: All right. And, if your - - your  
1882 one argument I think you said about this as-of-right envelop of the R-10 (a) and the R-8  
1883 (b), perhaps you should look at that and explain to us if that forms a hardship or the use  
1884 development potential on the site or the use of the lower floors and how it has to connect  
1885 to the synagogue, but I would say for the financial analysis, you should take every aspect  
1886 of the community facility portion out of the equation and you may find that, in fact, the  
1887 as-of-right, as we've seen under your proposal, which is you have your synagogue space  
1888 on the first four floors and then you have, I believe, the next two and a half floors of  
1889 residential, may actually go a long way towards curing this financial hardship, okay.

1890 MR. FRIEDMAN: We'll take a look at all of that.

1891 CHAIR SRINIVASAN: All right. Mr. Lebow, do you  
1892 want to say anything more on the record today or shall we set a schedule?

1893 MR. COSTANZA: Please state your name into the record.

1894 MR. LEBOW: Mark Lebow. Will you permit us to  
1895 continue to participate in this process that you just outlined?

1896 CHAIR SRINIVASAN: Yes.

1897 MR. LEBOW: Thank you.

1898 CHAIR SRINIVASAN: Yes. What we'll do is we'll set a  
1899 schedule.

1900 I would urge, I think, both parties if they're going to submit papers to us to do it  
1901 in a comprehensive manner and not do it small pieces.

1902           Perhaps if you're representing a group of people who spoke today, you can  
1903 provide that submission to us in one form versus some information coming through fax;  
1904 some coming one day and then three days later, there's some more faxes.

1905           I think it would, in fact, improve the process and I will set a schedule. I think all  
1906 parties should follow that schedule and, in that way, every party will have a chance to  
1907 respond back and give their comments to the Board.

1908                           MR. LEBOW: I've tried very hard to control the responses  
1909 from the opponents but I do have some unruly clients.

1910                           CHAIR SRINIVASAN: Okay. So, what I suggest is, Mr.  
1911 Friedman, you should provide your submission to us first.

1912           I think it would be helpful if you respond back to the papers that have already  
1913 been submitted into the record from the opposition. How much time do you need?

1914                           MR. FRIEDMAN: Why don't we ask for a minimum of  
1915 four weeks.

1916                           CHAIR SRINIVASAN: All right. So, we can get a  
1917 submission date for December 26<sup>th</sup>.

1918                           MR. FRIEDMAN: It's fine for the synagogue.

1919                           CHAIR SRINIVASAN: Mr. Lebow and his group can  
1920 have two weeks to submit after that? You can start collecting information right now  
1921 but - -

1922                           MR. LEBOW: December 26<sup>th</sup> is just as tough time for our  
1923 side so if you can give us - -

1924 CHAIR SRINIVASAN: You have to speak into the  
1925 microphone, but I understand. I can hear - -  
1926 MR. LEBOW: If you can give us the same four weeks, we  
1927 would appreciate it.  
1928 CHAIR SRINIVASAN: All right. So, we'll set the next  
1929 submission date as January 23<sup>rd</sup> and, Mr. Friedman, if you want to rebut that, you can - -  
1930 MR. FRIEDMAN: Just give us a week.  
1931 CHAIR SRINIVASAN: I'm sorry. The 27<sup>th</sup> for you. Mr.  
1932 Lebow, it will be January 22<sup>nd</sup>, all right?  
1933 Mr. Friedman, January 29<sup>th</sup> and we'll continue the hearing on February 5<sup>th</sup> and I'd  
1934 like to thank all the participants for being very patient. Yes.  
1935 MR. LEBOW: I will be out of the country on the 5<sup>th</sup>. I'm  
1936 sorry, I didn't know that you were anticipating that.  
1937 If you could give us one more week, I will be back by then and would appreciate  
1938 it.  
1939 CHAIR SRINIVASAN: All right. We'll set the next  
1940 hearing on February 12<sup>th</sup>.  
1941 MR. LEBOW: Thank you.  
1942 MR. FRIEDMAN: Thank you, Commissioners.  
1943 MR. COSTANZA: This concludes the public hearing for  
1944 November 27<sup>th</sup>, 2007.  
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