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COMMUNITY BOARD 7 LAND USE
COMMITTEE PUBLIC MEETING

TIME: 8:14 P.M.

LOCATION: St. Luke's Roosevelt Hospital
1000 10th Avenue
New York, New York 10024

DATE: December 4, 2007

RICHARD ASCHE: Co-Chairperson

PAGE COWLEY: Co-Chairperson

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2

MR. GOTTFRIED: I guess I

3

should apologize for talking about an

4

agenda item about this block of time,

5

but I hope it will work out for

6

everyone.

7

I want to talk quickly about

8

Shearith Israel and the variances they

9

are seeking to enable them to build

10

several luxury priced housing units on

11

top of the community house they want to

12

build.

13

That housing would damage their

14

immediate neighbors. It would cover up

15

lot line windows. It would reduce light

16

and air for adjoining buildings. At

17

least as important, maybe more so, it

18

would damage the entire surrounding

19

community by violating the reasonable

20

zoning standards for the historical

21

district side streets, and there is no

22

necessity that justifies giving them a

1 variance.

2 It is not necessary for the
3 building of the community house. It is
4 being done solely because Shearith
5 Israel would rather finance their
6 building by the proceeds of the luxury
7 priced housing, rather than financing
8 their building the way a congregation
9 normally would, mainly by turning to its
10 members to raise money. That is not
11 what zoning variances are supposed to be
12 about.

13 Effectively, what Shearith Israel
14 is doing is taking value from its
15 immediate neighbors and from the whole
16 community and then taking that value and
17 selling it off to enrich itself,
18 essentially making the community make an
19 involuntary contribution to Shearith
20 Israel.

21 Again, I don't think that's what
22 zoning variances is really about. I

1 think there there's really a dangerous
2 trend about not-for-profit owners and I
3 think we will see soon for profit
4 property owners trying to use this kind
5 of argument for getting permission to
6 violate this community's reasonable
7 building standards, and others as well.

8 And I think it is very important
9 that this board follow what the
10 committee did which is recommend against
11 these variances.

12 Two other things I want to
13 mention, tomorrow morning at 11:00
14 o'clock, I'm holding a press conference
15 announcing a proposal for universal
16 health coverage.

17 (Whereupon, at this time, other
18 agenda items were discussed.)

19 MS. ROSENTHAL: If I can turn
20 it over to the Land Use Committee. Page
21 Cowley and Richard Asche, co-chairs.
22 Thank you.

1 MR. ASCHE: All right. This
2 was the application for various
3 variances by Shearith Israel.

4 In your board packet, there is a
5 recitation of committee votes by
6 finding. As you know, we're required to
7 make four findings with respect to each
8 variance.

9 The committee really didn't vote
10 by finding. The committee voted by
11 variance and that is not listed in your
12 board packets, but fortunately Hope kept
13 a tally and had it typed up, and I'm
14 going to ask Hope before we start public
15 comments, to simply recite what the --
16 what each variance was and what the
17 votes, committee votes and board votes
18 were for each variance.

19 MS. COHEN: Okay. So as I'm
20 sure we're going to actually hear from,
21 perhaps, the applicant in a moment,
22 there are six variances proposed in the

1 Shearith Israel application.

2 And I'll tell you each, the votes
3 on each of the six variances, but I
4 think the simplest way to understand it
5 is that there are a couple of variances
6 that have to do with how the facility
7 would be horizontally, and those
8 variances were approved.

9 And then there are four variances
10 that have to do with how the facility
11 would be vertically, and those variances
12 were disapproved.

13 A VOICE: Hope, on Page 2 or
14 3, there are votes.

15 MS. COHEN: Forget the votes,
16 the votes are correct, the numbers are
17 correct, but they don't map to actually
18 what we voted on.

19 What Richard was explaining, for
20 some reason the minutes show the votes
21 done by finding. When we vote on a
22 variance, we have to make four findings

1 in the case of a non profit, we have to
2 make four findings. We have to make all
3 four of them to approve the variance.
4 Okay.

5 So if we approve a variance, that
6 means we found that all four findings
7 were met. If we don't approve the
8 variance, it indicates that we were not
9 satisfied that one or more of those
10 findings were met.

11 And, in general, I will tell you
12 that when we disapproved variances in
13 this case, and we disapproved four out
14 of the six, that when we disapprove
15 those variances, it was basically on the
16 basis of the -- to some -- basically, on
17 the basis of the C -- I'm sorry, the D
18 and E findings, and particularly the E
19 finding, which has to do with is this
20 variance the least, the minimum
21 necessary to do what needs to be done
22 for the applicant.

1 So, in four cases, I'm going to go
2 through what we approved and what we
3 didn't approve and by how many. We
4 found that it was more than -- that it
5 was more than the minimum. We also in
6 those cases pretty much found that, that
7 the C finding was not met that it would
8 have a bad impact on the community.

9 When we approved the variances,
10 which we did in two cases, that meant
11 that we were satisfied that all the
12 findings were met. That it would have
13 no bad impact on the community, that it
14 was the minimum necessary and so forth.
15 Okay.

16 So here are the votes. There was
17 a variance -- I'm going to do the
18 horizontal ones first. There's a
19 variance for lot coverage for how much
20 of the lot overall is coverage.

21 The Land Use Committee approved
22 that seven zip, zip, zip and the non

1 land use board members who were there,
2 voted two to two to zip to zip on that
3 particular variance.

4 Then there were two variances
5 having to do with rear yard
6 encroachments. Now, one of the
7 complexities of this particular
8 application, of this particular site,
9 it's what's called a split zone site.

10 The site is partially an R10
11 zoning district and partially in an R8B
12 zoning district. So there were separate
13 variances for the rear yard incursion
14 for each of those kinds of districts.

15 In the case of the rear yard
16 incursion, in the R10A portion, the Land
17 Use Committee approved that variance
18 seven zip, zip, zip and the non land use
19 board members who were there voted,
20 disapproved it, voted one to three to
21 zip to zip on that particular one.

22 On the analogous one for the R8B

1 portion of the site, the rear yard
2 incursion same issue, but on the R8B
3 portion Land Use Committee approved that
4 variance six to one to zero to zero, and
5 then the non land use board members
6 again voted that down one to three to
7 zero to zero.

8 Then there were the what I'm
9 calling the vertical variances. And I
10 haven't completely divided these up
11 right because two of them get paired
12 together.

13 So there's one on the -- let me
14 say, first, again, anything that has to
15 do with vertical was disapproved, okay,
16 and I'll give you the votes.

17 This's a variance for the total
18 height of the building. And for the
19 base height, that is, the height of the
20 building until the first setback, and
21 for a setback, a change in the amount of
22 the setback in the rear portion.

1 In all of those cases the Land Use
2 Committee disapproved, was -- all
3 members who were there voted against
4 those variances. So the land use vote
5 was zero to seven to zero to zero, and
6 non land use board members was zero to
7 four to zero to zero.

8 And there was one other little
9 oddity, a separate vote for the front,
10 for the amount of the front setbacks
11 matter of a couple of feet, again, the
12 Land Use Committee voted that down 21 to
13 six to 0 to 0, and the non land use
14 board members voted that down to zero to
15 four to zero to zero.

16 I'm going to turn it back to
17 Richard, but if you keep in mind,
18 overall we approved the things that went
19 out this way and we disapproved the
20 thing that, you know, went up that way.

21 MR. ASCHE: I'm presuming
22 everybody, the board is familiar with

1 the resolution and has some idea what
2 the building is like.

3 We have a representative of the
4 Congregation here tonight,
5 unfortunately, he doesn't have any
6 visual aides, and, also, we have either
7 he or Page can describe the project, if
8 proposed, if anybody needs to have that
9 done.

10 Okay. Let's go to the public
11 session, then we'll take comments from
12 the board. Jan Levy, followed by Faith
13 Steinberg.

14 MS. STEINBERG: I'm giving
15 mine through Jan Levy.

16 MR. ASCHE: She doesn't
17 accept.

18 MS. LEVY: I'm not allowed.
19 There are two people who want to follow
20 me. One is this woman Faith Steinberg
21 and Bacha, so if you'll call them next.

22 MR. ASCHE: Okay. And if I do

1 anything else that you don't --

2 MS. LEVY: We'll work
3 something out.

4 I guess I'm always the lead
5 witness here. Some of you have already
6 heard me on this subject. I find it
7 very difficult to understand the
8 reasoning behind the congregation's need
9 for all these variances. It may be and
10 I don't want to be irreverent and as you
11 discussed the Tora and the possibilities
12 of its meaning, perhaps, that's the way
13 you approach the zoning resolutions and
14 the interpretation of their meanings.

15 I don't, I don't -- I can't
16 understand why a congregation that has
17 been so long in this city and so well
18 respected and so esteemed by its
19 neighbors would want to disfigure its
20 own building and its block and Central
21 Park West historical district with a
22 building that is absolutely

1 inappropriate.

2 The design flies in the face of
3 any kind of mid block zoning
4 possibility. It has nothing whatsoever
5 to do with the Shearith Israel building
6 itself or the neighbors on the block.

7 So I thought about this and I
8 thought about how hard we worked to get
9 the historical district, and the fact
10 that Shearith Israel cleaned the outside
11 of the building. It keeps the building
12 in pristine condition and it really is a
13 very important institution, not only in
14 the upper west side, but in the city.

15 It's been here 350 years and it's
16 very, very much adhered to the original,
17 some of the original ways of observing
18 and commitments to community and civic
19 service that have been the hallmark of
20 this congregation since its inception.

21 And so I am really distressed that
22 there is a need, there is a need to have

1 public support and financing when I'm
2 sure this congregation can afford to do
3 this if it really wants to. All right.

4 So I will just conclude by saying,
5 in sum, I think what is being proposed
6 here is sacrilegious.

7 MR. ASCHE: Faith Steinberg
8 and Bacha Lune. Faith?

9 MS. LUNE: I absolutely
10 support what Jan said.

11 MS. STEINBERG: Faith
12 Steinberg. Ditto.

13 MR. ASCHE: Okay. Kate Wood.
14 Followed by Jay Greer.

15 MS. WOOD: Before my time
16 starts, I want to try to get an
17 understanding, is the applicant going to
18 speak tonight, because if so, there are
19 three of us that would like to speak
20 after the applicant, so we can respond
21 to what he has to say --

22 MR. ASCHE: You can only speak

1 once. If you want to wait until the
2 end, you can.

3 MS. WOOD: Will the applicant
4 be speaking this evening?

5 MS. ROSENTHAL: Probably at
6 the end. Richard, can we have a short
7 chat for one second.

8 MR. ASCHE: Why don't we
9 continue, let them talk while we talk.

10 MS. ROSENTHAL: Okay. You can
11 talk.

12 MR. ASCHE: Let me put it very
13 plainly. We're not going to have
14 posturing to see who goes last speak or
15 don't speak, but it's your turn now.
16 All right.

17 MS. WOOD: I would just like
18 to have the opportunity to --

19 MR. ASCHE: Everybody wants to
20 speak last, but it's impossible.

21 MS. WOOD: My purpose in being
22 here tonight is to make sure the

1 committee and the board have the facts
2 and so --

3 A VOICE: Go to the next
4 speaking.

5 MS. WOOD: I'm going to
6 postpone my speaking until after the
7 next speaker.

8 MR. ASCHE: That's fine. Jay
9 Greer followed by Ann Farley.

10 MR. GREER: Members of the
11 board, various chairs and committees of
12 the board. I'm Jay Greer, a long time
13 neighbor of Shearith Israel.

14 I appeared before you on the 17th
15 of October. I submitted something in
16 writing in opposition to all the
17 variances. I did the same thing before
18 the Land Use Committee on the 19th of
19 November. I'll stand by those.

20 I only want to add one thing.
21 Aside from supporting what Richard
22 Gottfried and Senator Duane's offices

1 said, CSI has left out some very
2 important stuff, but one thing they have
3 totally omitted is a reference to the
4 6400 square foot banquet hall mixed use
5 facility for religious life cycle events
6 that they want to put in their sub
7 basement.

8 For some, this will add
9 two-and-a-half times the amount of set
10 space to their facility. I submit that
11 that will do a significant amount of
12 damage to the neighborhood in terms of
13 increased traffic, increased garbage and
14 increased noise.

15 And for that reason alone, I
16 submit that whether they can do it as of
17 right or not, that should weigh heavily
18 against them getting any of these
19 variances.

20 Thank you very much.

21 (Appause.)

22 MR. ASCHE: Ann Farley

1 followed by Ron Prince.

2 MS. FARLEY: I'm Ann Farley,
3 the immediate past president of 101
4 Central Park West, and I want to join
5 with the others who oppose the
6 application of the Congregation,
7 including the horizontal variances that
8 you described.

9 I want to note, in addition to
10 what Jay said that the application fails
11 to quantify the financial gain that's
12 likely to come with this new banquet
13 hall.

14 Certainly users of the facility
15 will pay for the use in a reasonably
16 short time. Congregation may well
17 recoup the cost of its construction.
18 Thereafter, they will likely realize
19 substantial increase in revenues from
20 the source and their failure to disclose
21 expected revenue understates the value
22 of its proposed new community house.

1 The same thing is true of its
2 failure to disclose the amount of
3 revenue it receives from renting its
4 parsonage.

5 Second, there is creeping growth,
6 it may be generated by the school housed
7 in their proposed new building. The
8 school is not affiliated with the
9 Congregation and has grown from nothing
10 to 124 students in 13 years.

11 This is problematic because the
12 school buses routinely block the street
13 and students obstruct the sidewalk in
14 front of the Congregation during school
15 hours.

16 And lastly, the application
17 doesn't reveal what the Congregation
18 plans to do about emergency egress from
19 this banquet hall we've just heard
20 about.

21 The plans reveal only two narrow
22 interior staircases that do not directly

1 exit outside, but connect to the cellar
2 above and the result is the sub basement
3 could well be a fire hazard or a death
4 trap in the event of a fire.

5 The problem is especially acute in
6 the new building, which drastically
7 reduces the size of the rear yard and,
8 indeed, appears to preclude any escape
9 from what's left in the property.

10 So I encourage you to disapprove
11 the horizontal variances as well as the
12 vertical ones. Thank you.

13 (Applause.)

14 MR. ASCHE: Ron Prince
15 followed by Jeff Retton.

16 MR. PRINCE: Sir, we'd like to
17 present this together. It's a
18 presentation we developed together, if
19 we may. We have handouts for the board
20 members, please. Thank you.

21 I'm going to go first followed
22 by Jeff Retton. My name is Ron Prince

1 and I represent a group of property
2 owners at 18 West 70th Street.

3 The draft resolution describes how
4 the proposed building would directly
5 brick over lot line windows and cut off
6 the light and air of apartments who face
7 our eastern courtyard at 18 West 70th.

8 It characterizes such an outcome
9 as an abuse of the variance process.
10 Quote, a taking of property in a way
11 which the zoning resolution was designed
12 to prevent. We applaud the strength of
13 this conviction and feel it essential
14 and bring to you the full board the hard
15 facts behind what they've written.

16 And if you could refer to the
17 handout for this illustration one there,
18 you'll see the unavoidable starting
19 point of any discussion about the impact
20 on its adjacent property is that an as
21 of right building would brick over
22 absolutely zero windows at 18 West 70th.

1 And you can see this by the
2 contour of an as of right building
3 against the eastern portion of 18, which
4 is shown in blue.

5 Illustration two shows in contrast
6 the proposed building which is shown in
7 red. It weighs in at 105 instead of
8 75 feet, and with it you can see seven
9 lot line windows are directly bricked
10 over. Illustration three shows that
11 which is the photograph that lot line
12 windows are only part of this story.

13 Windows on the eastern courtyard
14 would also be sealed off. Here a
15 building of this proposed height would
16 transform the courtyard into an air
17 shaft.

18 As you can see, illustration four
19 on the second page shows even in an as
20 of right scenario, we acknowledge there
21 would be impact on our eastern
22 courtyard, but a building as tall the

1 Congregation is proposing would have an
2 intolerable effect.

3 Fifteen windows in the courtyard
4 are high enough to look at a blue sky if
5 an as of right building went up, and for
6 the others further down, the darker
7 would be even deeper --

8 MR. ASCHE: Try to wrap up.

9 MR. PRINCE: From here, I'll
10 move to illustration six and Jeff Retton
11 will take over.

12 MR. RETTON: To sum up and
13 conclude I would like to say the zoning
14 regulations expressly prohibit this type
15 of harm from occurring.

16 For a variance to be granted, it
17 must not substantially impair the
18 appropriate use or development of
19 adjacent property and must not be
20 detrimental to the public welfare.

21 As experts would attest, light and
22 air are keys to public welfare. Imagine

1 the effect of our neighbor, who we'll
2 call Patricia I., a resident owner with
3 a small studio on the 9th floor.

4 She has only one window of any
5 size. The reality is, it is on the lot
6 line and would be directly bricked over
7 if these variances are granted.

8 We urge the board to prevent these
9 bleak outcomes from becoming reality.

10 Thank you.

11 (Applause.)

12 MR. ASCHE: Howard Lippman.

13 MS. SIMON: He left.

14 MR. ASCHE: Kate, you want to
15 speak now or do you want to wait?

16 MS. WOOD: I will go ahead and
17 speak now. I have to say I've never
18 been to a proceeding where the applicant
19 didn't speak until comments.

20 What I plan to present in
21 partnership with other neighbors is a
22 very concise summary of the facts as to

1 why the community and people beyond the
2 upper west side community are adamantly
3 opposed to the requested zoning
4 variance.

5 To be clear, no one is against the
6 new as of right community house on this
7 site. An as of right building on this
8 site, but the applicant has the basic
9 burden of proof that it has come no
10 closer to meeting today than it had nine
11 months ago.

12 The applicant would like to
13 convince you that it needs the proposed
14 tower to cure circulation and
15 accessibility problems, but the
16 applicant's own drawings show that these
17 issues could be equally addressed by a
18 new as of right building.

19 The applicant has informed this
20 board that one of the five required
21 findings for zoning variances, finding B
22 regarding reasonable return on

1 investment is not necessary since
2 Shearith Israel is a non profit
3 institution.

4 In fact, the BSA rejected the
5 applicant's argument that the luxury
6 condos have anything to do with the
7 synagogue's programs and instructed
8 Shearith Israel to address finding B.
9 The BSA's reasoning is that other non
10 profit religious institutions raise
11 money for their programs without
12 resorting to special variances.

13 So this applicant does not get a
14 free pass on this issue. The applicant
15 would like you also to believe that this
16 is a modest eight stories plus
17 penthouse, when, in fact, it would rise
18 up to 95 feet on the street wall and
19 105 feet, overall the equivalent of
20 ten-and-a-half stories, roughly double
21 the height of the brownstones that
22 define West 70th Street, and

1 significantly taller than the adjacent
2 landmark synagogue.

3 And you've got some illustrations
4 over there that show you the green is
5 the as of right building the red is the
6 proposed building.

7 One final comment that I would
8 like to make before my time runs out is
9 that this is not just about our skyline
10 Central Park West, this is an issue that
11 effects the entire city. Give me
12 30 seconds to wrap up and say that this
13 is about our mid blocks.

14 Right now only three out of 53
15 buildings on West 70th Street between
16 Central Park West and Columbus are more
17 than six stories tall.

18 If built, the proposed building
19 would raise that number to four, the
20 Catholic High School Association owns
21 the brownstone at 22 West 70 Street.

22 And if you look at the poster,

1 it's the purple building that bulks up
2 on the west side of West 70th Street.
3 Using the synagogue's logic, this non
4 profit could add floors to the top of
5 its building creating five tall
6 buildings on the West 70th Street mid
7 block.

8 Suddenly, the balance starts to
9 tip as tall buildings begin to form a
10 wall overshadowing the small buildings
11 undermining the purpose of mid block
12 contextual zoning, which is to maximize
13 sunlight, air, a narrow side street's
14 protected brownstone scale and preserve
15 the overall visual character and sense
16 of place.

17 This is what this community board
18 fought for and won back in the early
19 1980s. We hope you will fight for it
20 and win it again today.

21 Thank you very much.

22 (Appause.)

1 MR. ASCHE: Ellen Fleyscher
2 followed by Bruce Simon.

3 MS. FLEYSCHER: Good evening.
4 My name is Ellen Fleyscher, I'm a tenant
5 shareholder at 91 Central Park West. I
6 have lived there 31 years, which is a
7 very long time.

8 Other people have spoken before
9 you and addressed this group before in
10 much more eloquent ways than I possibly
11 can. I simply want to say I stand here,
12 I never appeared before a community
13 board meeting before in my life.

14 I totally oppose all seven
15 variances which have been requested on
16 the grounds that I don't believe any of
17 them are totally necessary. Especially,
18 I would like to address the horizontal
19 ones.

20 Everyone is talking about the
21 vertical, which is quite valid.
22 Horizontally the reason for requesting

1 them as requested by the architect, was
2 to create expansion space for the
3 school.

4 The school is a rental facility,
5 really, I look out my windows and I see
6 the Rent-a-Kids at the rental school
7 every day.

8 I would suggest that perhaps they
9 need to expand the school, that they dig
10 into the 6,000 plus square foot rental
11 hall for receptions that they plan to
12 construct and find adequate housing
13 there for the school or perhaps the
14 parsonage, which is rented out.

15 So that there's plenty of
16 opportunity to seek, to solve the
17 problem elsewhere without affecting
18 one's air and light rights. Ultimately,
19 what lies before us is this question,
20 it's one of benefit versus burden.

21 If there's a project presented
22 before you which benefits the entire

1 community and the burden is borne by the
2 entire community, that sounds equitable
3 to me and reasonable and just. But when
4 the project benefits only one, and the
5 burden is felt by everyone else, there's
6 something wrong there.

7 And so I urge you to vote against
8 all seven variances of this project.
9 Thank you.

10 (Applause.)

11 MR. ASCHE: Bruce Simon
12 followed by Alan Sugarman.

13 MR. B. SIMON: Bruce Simon.
14 I've been a west sider since 1960. My
15 air, my light, my views are not affected
16 by this building. I guess I'm 500 feet
17 away instead of the 400 feet that come
18 within the BSA standards.

19 I speak in opposition to all of
20 the variances and I simply ask the board
21 to concentrate on what it is it's being
22 asked to do.

1 The zoning resolution is adopted
2 by the people of the City of New York to
3 govern themselves. It is a public good.
4 The public in effect is protecting
5 itself against what profit maximization
6 by any one of the public could do if
7 they were not restricted by the zoning
8 resolution in the public good.

9 Non profits are as bound by the
10 zoning resolution as are profit making
11 institutions. So are religious
12 institutions. There is a certain
13 deference given to religious
14 institutions to give them some
15 flexibility with regard to the zoning
16 resolution when their religious mission
17 is directly at stake. Not when they are
18 acting as a private developer building
19 luxury residential co-op apartments.
20 That is not their religious mission.

21 There is no excuse whatsoever for
22 them converting the wealth of the

1 community, the value of the community,
2 the not Jewish, the folks whose lot line
3 windows are protected, but the rest of
4 West 70th Street, indeed, the rest of
5 the west side and converting that
6 community value into value for the
7 synagogue.

8 They should be able to perform
9 their religious institution and we
10 should do every -- religious mission, we
11 should do everything to permit them to
12 do so, but we should not relax the rule
13 that every one of the rest of us are
14 protected by to allow them to escape the
15 burden of financing their religious
16 mission.

17 We are not expected to subsidize
18 Jack Retton or the board of the central
19 synagogue. They are perfectly capable
20 of subsidizing themselves.

21 (Applause.)

22 MR. ASCHE: Alan Sugarman

1 followed by Marlin.

2 MR. SUGARMAN: I'm Alan
3 Sugarman. I live directly across the
4 street from the synagogue. I have a
5 handout, which all of you should have,
6 that was discussed before. I would like
7 to point out the as of right building is
8 the green building on the left, the
9 upper two photos and on the right is the
10 proposed building, in red.

11 In general, the synagogue does not
12 show the comparison between the as of
13 right and the proposed building simply
14 because all of the congregation's
15 programatic needs are satisfied by the
16 as of right building, the green
17 building. They just don't need the red
18 building.

19 If we look at the findings we have
20 to make, finding east states basically
21 that any variance granted should be the
22 minimum variance, so if the green as of

1 right building satisfies the plan needs
2 of the Congregation then there can be no
3 variance.

4 Mandatory finding A states there
5 must be some unique physical condition
6 on the site which prevents economic use
7 of the site. Here there are no such
8 physical conditions. Rather the
9 Congregation suggests that the cause is
10 a religious non profit and can satisfy
11 by showing, A, religious programmatic
12 needs, which cannot be met in an as of
13 right building.

14 The programmatic needs they show
15 for the rear lot extensions that were
16 discussed is really what they want in a
17 perfect world.

18 I don't submit they rise to the
19 standard of permitting the avoidance of
20 finding A, which is really about
21 physical condition. So let's focus on
22 the programmatic needs asserted by the

1 Congregation.

2 You will hear the terrible stories
3 about the need to resolve access and
4 circulation problems, due to the
5 sanctuary floors being at different
6 levels for most in the community house.

7 What is needed really is
8 replacement of the 1954 elevator. What
9 is needed is a modern elevator opens the
10 front and back and side so entry and
11 exit is possible at different levels.
12 The as of right building, the green
13 building, does this and more, is able to
14 accommodate all of these access and
15 circulation programmatic needs
16 100 percent.

17 Let me just finish. The top two
18 floors of the as of right building,
19 also, is a luxury condominium and all of
20 these leads for which they somehow
21 persuaded the committee to permit an
22 extension in the rear can easily be

1 resolved in these two floors of luxury
2 condominiums. Quite simply, they don't
3 meet the standards of the law for any of
4 these variances. Thank you.

5 (Applause.)

6 MR. ASCHE: Madeleine Polayes
7 followed by Kent Walgren.

8 MS. POLAYES: I don't know I
9 need this, I have a very loud voice.

10 (Laughter.)

11 MS. POLAYES: Coalition For A
12 Livable West Side opposes Congregation
13 Shearith Israel's application to
14 construct a 105 foot building, mid
15 block, which would break the R8B
16 contextual zoning for the site.

17 It is really a shame this is
18 happening to the west side. As you
19 know, I have fought hard for making sure
20 that we stay within the certain
21 ambiance.

22 Well, that is being broken over

1 and over again, and I really plead with
2 this board not to let it happen in this
3 instance either. Thank you.

4 (Applause.)

5 MR. ASCHE: Kent Walgren
6 followed by Lori Cuisinier or Shelly
7 Friedman.

8 MR. WALGREN: I'm Kent
9 Walgren. I live in 18 West 70th Street.
10 I'm a board member and treasurer of 18
11 West 70th.

12 We, the board, are strongly
13 opposed to the building proposal.
14 Primarily because of this significant
15 negative impact we feel it has in our
16 building. We're concerned about the air
17 and light being cut to many apartments
18 and many residents in our building. And
19 many bedrooms would also be impacted,
20 including some you heard earlier.

21 We also, we're also concerned that
22 it will be a loss of apartment values

1 and, basically, an involuntary transfer
2 of money going from our building to the
3 Congregation next door.

4 And we see this as the
5 Congregation trying to maneuver around
6 the rules and make money on our behalf.

7 VOICES: On their behalf.

8 MR. WALGREN: So my family is
9 also directly impacted. I have two
10 daughters six and 9 years old that live
11 in a bedroom, they share a bedroom that
12 will be -- that have one window that
13 will be bricked over and they're
14 certainly very worried, they're very
15 concerned about what's going to happen
16 to them and their room and they're
17 concerned about light and fresh air.

18 And they wanted to make sure I
19 came here tonight and make sure I tell
20 you that they don't think this is fair.
21 So we want our neighbor to limit his
22 plans to building no taller or deeper

1 than allowed.

2 So please stop this proposal, and
3 thank you very much.

4 (Applause.)

5 MR. ASCHE: Lori Cuisinier or
6 Shelly Friedman.

7 MR. FRIEDMAN: I'm Shelly
8 Friedman. Basically, our function as
9 the applicant here is to answer any
10 questions the board may have of us.

11 We had a significant amount of
12 work with the Land Use Committee. We
13 spent several nights with the lawyers on
14 this application. I haven't had the
15 benefit of reading the board's
16 resolution, obviously, but it sounded
17 like a correct iteration of what
18 occurred on that night, and I am simply
19 going to say if any of the board members
20 have specific questions on this complex
21 application, we have the architect here
22 and we can go over them to your

1 satisfaction. Thank you.

2 MR. ASCHE: Thank you. Ray
3 Dovell followed by Roberta Vatski.

4 MR. FRIEDMAN: Mr. Dovell is
5 with me. He's the architect, so we'll
6 pass.

7 MR. ASCHE: Roberta Vatski
8 followed by Debbie Fink.

9 MS. VATSKI: Hi, I'm Roberta
10 Vatski. I live at 17 West 70th across
11 from the Congregation. I hate to put
12 myself in the position I'm in for the
13 variances and I think it's very, very
14 important that we know what this
15 Congregation is.

16 I mean, I would love to take a
17 show of hands how many people have been
18 in the building at 2 West 70th Street.
19 Well, good, a lot of us do happen to
20 know what that congregation is. It is,
21 when I first moved into this
22 neighborhood I had natural red hair, so

1 you can see how long I've been here and
2 I was amazed at the enormous benefit I
3 got by just knowing what that building
4 was and what it stood for.

5 I learned American history. I
6 learned New York history, I learned west
7 side history, and this congregation had
8 dealings, I had dealings with Peter
9 Stuyvesant. It was a marvelous
10 experience.

11 I didn't know anything about it
12 when I moved to this part of the city.
13 And I've been here ever since, but it's
14 got a book written about it, too. It's
15 called "The Grandees" and it's an old
16 book, but there were very fine people in
17 this congregation. It's old now and
18 popular. Popular opinion is that it's
19 wealthy.

20 It is not wealthy anymore and it
21 does have to pay rent and it will be
22 fabulous benefit to the community to

1 have this particular institution here,
2 but it must secure its future and it
3 knows very well what it needs.

4 And I think it's important that we
5 do try to support an institution of this
6 magnitude and of this honor.

7 Benjamin Cordozo, our Supreme
8 Court Justice, was a member of this
9 congregation. Very recently Abraham
10 Cordozo died. He was a member of this
11 congregation. He was a direct link from
12 the Amsterdam community and honored by
13 Queen Beatrice and it's a Cordozo, it
14 shows how long this community has been
15 here.

16 So I'm for anything that the
17 synagogue thinks it needs to maintain
18 itself for the future. Thank you. And
19 I'm going to run now before I get run
20 out of the neighborhood.

21 MR. ASCHE: We have one more
22 speaker.

1 A VOICE: I have a question
2 something she said.

3 A VOICE: About the color of
4 your hair.

5 A VOICE: My question was she
6 made a statement that the Congregation
7 pays rent, and I just want to know to
8 whom they pay rent.

9 MS. VATSKI: An expression of
10 saying it has to support itself and real
11 estate is a time honored way of
12 supporting itself.

13 A VOICE: Say that, don't say
14 they pay rent. It's misleading.

15 MS. VATSKI: The point is many
16 institutions get money from different
17 things, but it has to support itself.

18 MR. ASCHE: Debbie Fink is the
19 last speaker.

20 MS. FINK: I know it's a late
21 night. I'm exhausted. I'm sure you
22 guys are, as well. So I promise to be

1 brief.

2 I've never been to one of these
3 meetings. I'm a resident of 18 West
4 70th Street. I've lived there since
5 last year, I've been a resident of
6 Manhattan for 12 years, and decided I
7 wanted to buy an apartment.

8 So last year I wiped out my entire
9 401K, my life's savings, borrowed money
10 from my parents and bought an apartment
11 at 18 West 70th.

12 I'm one of the few apartments that
13 faces east, and solely east. I have two
14 windows, one in my living room, one in
15 the bedroom. If the variances are
16 approved, not only will I lose all my
17 light, I will lose all my air quality,
18 the value of my apartment will go down.

19 This was a new investment for me.
20 I've been working hard in the city, I
21 love New York and I have every intention
22 of staying on the upper west side, but I

1 don't think it's fair that the value of
2 my apartment gets lower because of
3 something not that it's my choice, but
4 something that a non profit gets to
5 profit from.

6 So I hope you vote against these
7 variances. Thank you.

8 (Applause.)

9 MR. ASCHE: Board members,
10 questions, comments?

11 MS. STARKEY: On our voting
12 sheet it says vote A, B, C, D, E, is
13 that the way we're voting.

14 MR. ASCHE: No, we're going to
15 vote by variance.

16 MS. NEUWELT: Richard, this is
17 for discussion, right?

18 MR. ASCHE: Yes.

19 MS. NEUWELT: I'm going to try
20 to slice and dice this in a way that I
21 think is clear. Hope described this as
22 horizontal and vertical. That's one

1 way.

2 I would think it's easier to think
3 of it as the height of the front, the
4 height of the back and the depth of the
5 back. The height of the front and the
6 height of the back, both of which are
7 the issues that impinge on the light
8 line windows and the light and air of
9 the adjacent building, the resolution
10 opposes what the applicant wants to do
11 on those and with a very high degree of
12 favorable vote on that.

13 I'm in agreement with that, so the
14 resolution sides with the neighbors on
15 that issue. The one that I want to talk
16 about where the -- where I was in the
17 minority is what I would call -- Hope
18 called horizontal and I would call the
19 rear of the bottom of the building.

20 Basically, what the variance asks
21 for is instead of having a 30-foot rear
22 yard, which is what the zoning

1 resolution requires for all building,
2 unless they get a variance, they can
3 build their building for the first
4 several stories 20 feet instead of 30.
5 And I, the premises for that, that I
6 think apparently persuaded -- let me
7 just say one more thing quickly.

8 I have a lot of respect and I
9 think we all do for what our committees
10 do, if we're not there, and the
11 committee comes and tells us what they
12 thought about and what they've done.

13 If I'm not sure about it, I'll
14 either abstain or vote in favor of what
15 the committee did for me. This is a
16 situation where I attended the two
17 lengthy hearings that the committee had,
18 one was the committee meeting, one was a
19 prior informational hearing.

20 I have all the same information
21 the committee had. I heard all the same
22 debate, participated in the same debate

1 on this particular issue. I don't feel
2 the same deference to the committee that
3 one might, otherwise might and I want to
4 tell you why.

5 The rationale that the applicant
6 gave for why they should not, why they
7 should at the base of the building be,
8 instead of having a standard 30-foot
9 rear yard, which effects the light and
10 air and all that kind of thing of people
11 behind them on 69th Street, as well as
12 their neighbors, to some extent 18 West
13 70th Street.

14 The rationale they gave is that
15 they want their school, the rented
16 school, and they also use it for their
17 own religious school on Sundays and
18 Saturdays.

19 Gee, it would really be
20 inconvenient to have the school use the
21 elevator. We want bigger offices and we
22 want bigger classrooms and that's why we

1 want to take all that space from the
2 public and we were, we are putting five
3 condominiums on the top five floors so
4 we're going to use this extra space in
5 the back for these uses. That does not
6 persuade me their programmatic needs
7 demand that they build back at 20 feet
8 instead of 30 feet in the rear yard
9 because their programmatic needs would
10 allow them to build four condominiums
11 and take the elevator to a whole, to
12 bigger, classrooms and a whole lot more
13 offices on one of those floors of
14 condominiums.

15 So I am unpersuaded that the
16 programmatic needs support the rear yard
17 setback. I see absolutely nothing in
18 this that requires them to have five
19 condominiums on top of four floors of
20 programmatic needs, as opposed to five
21 floors of programmatic needs and fewer
22 condominiums, therefore, I am not

1 persuaded that the finding that they
2 didn't cause them themselves is a proper
3 finding.

4 And for that reason I, I am not
5 speaking for the other several people on
6 the board who voted against this
7 particular part of the resolution, but I
8 think that what I'm saying very likely
9 reflects the thinking of the rest of my
10 colleagues on the board who vetoed
11 against the favorable findings with
12 regard to the proposed variances at the
13 rear yard, so I urge the board instead
14 of voting yes on the rear yard variances
15 and no on the top rear and front and
16 rear variances to vote no on all of them
17 for some of the reasons that also Bruce
18 Simon gave and Richard Gottfried said
19 and the lady who said she wasn't
20 articulate, but she was extremely
21 articulate on that exact issue.

22 (Applause.)

1 MS. COWLEY: Can I make a
2 comment? This has been a very difficult
3 one for our committee to review and this
4 process started, I believe, with the
5 applicant who's worked very hard with
6 the architects and us in May and we have
7 had this project come before us in
8 various different forms. As Klari said
9 there were two lengthy meetings.

10 The problem that I have and I
11 wanted to voice my opinion on this
12 because Richard and others have done an
13 admirable job. This is the first
14 meeting minutes I didn't have to take on
15 the community board, so I was relieved
16 to see how thorough all the descriptions
17 have been.

18 The problem when you're looking at
19 an application like this that have to
20 meet five findings of which only four
21 applied to a non profit there is only
22 one building proposal before us tonight.

1 The concern that we've had on
2 other projects when we tried to
3 encourage an applicant to manipulate a
4 piece of the design in favor of another
5 aspect in due favor ends up causing
6 something of a push me, pull you, that
7 is, neither meets necessarily the
8 program requirement of the applicant or
9 fit in the neighborhood.

10 So I think what Klari has
11 mentioned as an observer to our
12 committee and you have to remember we
13 also two years ago heard this on our
14 parks and preservation committee that
15 looked at it completely set of different
16 criteria.

17 The issue before the committee
18 tonight is the programmatic requirement.
19 Are these waivers necessary for them to
20 meet their programmatic requirement?
21 The second thing I wanted to point out
22 this evening is that through scheduling

1 and, again, in trying to help the
2 applicant move this process forward
3 through a different public review
4 process at the board of standards and
5 appeals, we were not able to submit this
6 resolution when the discussions came
7 before the BSA a week ago.

8 So even though we know that the
9 BSA have some questions and the
10 applicant will be going back to address
11 that, the project will continue through
12 review process through, I believe, it's
13 February of '08, the likelihood is that
14 this project is going to have to modify,
15 and I hope the applicant will come back
16 to the community board and inform us
17 what the ramifications of some of the
18 changes that the BSA has requested will
19 be.

20 That said, it's still important
21 for this board to reach a uniform
22 decision about the scheme, so we can

1 submit our comments and have those be
2 part of the decision as the board
3 members of the BSA reach their
4 conclusion.

5 Therefore, as you consider these
6 findings, I happen to side with the non
7 board members who sort of had trouble
8 voting uniformly to accept every aspect
9 of the scheme to remember that it's one
10 building, and the likelihood is that the
11 message that we hope to give back about
12 the height and the bulk of the building
13 will end up producing a better building
14 that doesn't compromise the
15 neighborhood.

16 So, I hope I'm making myself clear
17 here, but if you vote for one finding
18 yes, you need to think it through, how
19 it affects the entire project because
20 just voting down one finding doesn't
21 necessarily stop or change the project.
22 It is one building.

1 MR. ASCHE: Hope?

2 MS. COHEN: Once again, I want
3 to remind people that we are not voting
4 by finding. We are voting by variance.
5 I'm glad that Klari clarified what I'm
6 calling the vertical because we heard a
7 lot of testimony tonight about that, and
8 it's important that everybody on the
9 board understand that the -- there was
10 virtual, if not entire unanimity, among
11 land use and non land use board members
12 in opposition to the variances being
13 sought concerning the height of the
14 building and the various things that
15 grow out of that in terms of setback.

16 In other words, all of those
17 things that would affect the lot line
18 windows that you heard a lot about and,
19 in fact, the fact that they would effect
20 lot line windows was perhaps the premier
21 consideration in our discussion.

22 The other candidate for premier

1 consideration was the very philosophy,
2 the very question of using essentially a
3 for profit real estate deal to finance
4 the non profit work of the entity.

5 And so, there was, as I said,
6 pretty much, if not entire unanimity, on
7 the -- on those questions and we oppose
8 them.

9 Now, it is our usual practice and
10 one that I stand by again tonight that
11 when a non profit comes to us, and
12 states a need for its program, that we
13 give them the benefit of the doubt.

14 It is very difficult, if not
15 impossible, for us to reexamine just how
16 many classrooms a school may need, just
17 exactly how large they might need to be,
18 et cetera.

19 In the case of this applicant,
20 they came to us and said, we need ten
21 feet to make the school work. To make
22 the community facility portion, which

1 all agree the synagogue had a right to
2 build an as of right building and all
3 agree should be built.

4 I think anybody who lives in that
5 neighborhood and see the condition of
6 the current community house and the
7 vacant adjacent lot would agree that a
8 new proper building would be an
9 improvement for that block and a
10 neighborhood, as a whole, as well as the
11 Congregation so the question is what
12 kind of a building, and if the synagogue
13 has examined and its architects have
14 examined its classroom needs, it's
15 difficult for us to say no, you really
16 don't need classrooms that are that big,
17 you can get away with classrooms that
18 are ten feet smaller.

19 And that is our usual practice in
20 considering variances for non profit.
21 Applications for variances for non
22 profits that we do not question the

1 programmatic need they claim, we
2 understand that, but we do go onto what
3 it does, you know, what does the
4 building as proposed do to the rest of
5 the community and what we have concluded
6 here is that the veracity is
7 unacceptable for the reasons that I went
8 through.

9 Both physically for the neighbors
10 and philosophically as a precedential
11 problem, but that the horizontal
12 variances that they seek are quite
13 minimal.

14 And we have no reason to think or
15 to double guess them, second guess them
16 that what they're asking for is not
17 correct.

18 I have to say I think we really I
19 feel strongly here that we really
20 grappled with this and have come out
21 with the right answer in terms of giving
22 an important community participant who's

1 this, as this synagogue is, that not
2 only for our neighborhood and not only
3 for the Jewish community, but for New
4 York as a whole, an extraordinary place
5 of extraordinary history.

6 To do the right thing by them and
7 also do the right thing by the
8 neighborhood and precedential, also.

9 A VOICE: My question is this:
10 I heard what everybody said. What I
11 understand is that the verticality of
12 that project is going to impact on the
13 neighborhood's light and air, am I
14 correct, and therefore you're voting
15 against it.

16 I want to know more clearly in
17 what way is the rear part of this
18 impacting on what all these people said
19 because what they talked about is
20 blocking up their windows and that
21 religious institution shouldn't make a
22 profit.

1 otherwise.

2 A VOICE: But are those
3 neighbors affected anyway?

4 MS. WOOD: That's the purpose
5 of zoning.

6 A VOICE: Light and air, 11
7 West 69th Street.

8 MS. COHEN: They are effected
9 in the sense the adjacent building is
10 ten feet closer to them than it would be
11 otherwise.

12 A VOICE: Which is how close?

13 MR. ASCHE: Probably 50 feet.

14 MS. COHEN: From me to the
15 first? Row.

16 MR. ASCHE: 30-foot setback on
17 the other side and 20-foot setback on
18 the Congregation side.

19 MS. COHEN: Difference of ten
20 feet, they're asking for ten feet.

21 A VOICE: And the committee's
22 opinion is that it's not a big deal.

1 MS. COHEN: The committee's
2 opinion -- no, I agree. The committee's
3 opinion is that it's not a big deal.
4 There's another way in which what you
5 heard about people being impacted and
6 that's, and that's essentially legally
7 or theoretically and that is the zoning
8 ordinance gives us X and any compromise
9 of that is our loss.

10 Or is a bad thing or that it's
11 precedential ly bad that any, that there
12 shouldn't be any compromise of the
13 zoning ordinance.

14 I have to say that I didn't want
15 to go into that, but I think that is a
16 problematic claim.

17 A VOICE: That's the part of
18 what they're saying that you agree with.

19 MS. COHEN: Do I not agree
20 with it? No, because it is perfectly
21 normal. Look, we meet here month after
22 month and have variance after variance

1 that goes before the BSA. The BSA was
2 invented at the same time that the
3 zoning resolution was venting.

4 It was specifically invented at
5 that time because the people who
6 invented the zoning ordinance in 1916
7 understood that there would have to be
8 exceptions to it under certain
9 circumstances and they invented a tool
10 to do that.

11 So it has always been the case
12 that there's been the zoning ordinance,
13 not always -- since 1916 it has been the
14 case that it's a zoning ordinance and
15 there's also a mechanism to have
16 exceptions to the zoning ordinance.

17 MR. ASCHE: Dan?

18 MR. ZWEIG: Question, Hope.
19 You meet as well stay unless somebody
20 else can answer this. My question is
21 that there's a certain amount of bulk
22 that's going to go into that rear yard,

1 the ten feet, et cetera.

2 Were that extension into the rear
3 yard not made, where would that bulk go
4 in an as of right building and would
5 that change anything else in that
6 building that we would be concerned
7 about.

8 MR. ASCHE: Part of the
9 picture here and part of the
10 consideration for any variance is
11 whether the applicant is prevented by
12 some feature of the property from
13 utilizing his as of right vote in a
14 practical way.

15 In this case, because of the
16 height restrictions on, the zoning lot
17 that the space sits on is in two zones.
18 One zone is an R10A, which allows a
19 much, which allows a ten FAR, and the
20 other is R8B, which is a much lower
21 60-foot height limit.

22 And because there is a landmark on

1 the site, they're allowed to average so
2 that their permissible FAR under, as of
3 right permissible FAR is more than
4 double what they're proposing to build,
5 even with all their variances.

6 And it's considerably more than
7 double what we would be approving. So
8 the answer to your question is that it's
9 not clear that they could put that bulk
10 anyplace else. I mean, without a
11 variance.

12 So they could get, they could take
13 that bulk and put it on top with a
14 variance or they could put it, well,
15 either top or back are the only two
16 places.

17 MR. ZWEIG: So do I understand
18 the hardship is, basically, the
19 difference in the zone and the height
20 restriction in the -- can I finish.

21 MR. ASCHE: It's not entirely
22 that. It's also the fact there is a

1 landmark on the site that can't be
2 touched.

3 MR. ZWEIG: Right.

4 MR. ASCHE: Practically, as a
5 practical matter, it can't be touched
6 and it is also the fact that they have
7 come to us and shown us plans with floor
8 plates for a school, and have shown us
9 that if the classrooms in the back of
10 the building were ten feet narrower,
11 they would, in the judgment of the
12 synagogue, be too narrow, too small.

13 Now, by the way, as I understand
14 it, as of right, Shelly, tell me if I'm
15 wrong or right about this, can the
16 synagogue build in the backyard up to
17 the height of the first floor in as of
18 right?

19 MR. FRIEDMAN: The zoning
20 permits for a community facility, the
21 rear yard be completely covered up to
22 23 feet in height or one floor,

1 whichever is less.

2 MR. ASCHE: And are you
3 covering the entire rear yard up to
4 20 feet?

5 MR. FRIEDMAN: We are, that's
6 as of right.

7 MR. ASCHE: So the variance is
8 above the 23 feet.

9 MR. FRIEDMAN: The variance is
10 above the 23 feet and instead of the
11 30-foot rear yard, we're asking for a
12 20-foot rear yard above the first floor.

13 MR. ASCHE: So we're talking
14 about ten feet above the first floor.

15 MR. FRIEDMAN: For three
16 floors.

17 MR. ASCHE: For three floors.
18 And that's all classroom space.

19 MR. FRIEDMAN: Classrooms and
20 other activities, essentially. Bobbie
21 Katzander.

22 MS. KATZANDER: As I

1 understand it, when Hope was speaking,
2 Hope, it sounds like horizontal, a
3 50 percent encroachment in the specs.

4 MS. COHEN: Well, 33 percent
5 encroachment into the space. Well,
6 33 percent encroachment on the synagogue
7 side because on the 69th Street neighbor
8 side, they also have 30 feet.

9 So it's, yeah, it's a 33 percent
10 encroachment from the synagogue side
11 into the rear yard.

12 A VOICE: So there's 60 feet
13 between the two buildings, now there's
14 50 feet.

15 MS. WOOD: That's not right
16 because --

17 MR. ASCHE: No.

18 Bobbie, the rear yard --

19 MR. B. SIMON: Half of 20 is
20 ten, 20 plus ten equals 30, it's a
21 50 percent encroachment, it's math.

22 MR. ASCHE: At the back of the

1 69th Street building. There is a rear
2 yard at the back of the, of this site.
3 Together those two rear yards can be
4 60 feet.

5 What is being proposed for the
6 three floors above the first floor is
7 that the rear yard be shrunk to 50 feet
8 by taking ten feet off the rear yard for
9 as of right.

10 MS. NORMAN: I think we
11 glossed over -- I think we glossed over
12 very quickly.

13 The impact this is going to have
14 and the precedent it's setting. I know
15 precedent is not supposed to be an
16 important issue. How can it not be?
17 How many other facilities we have in
18 this community where there's a split
19 lot, where there's a landmark, whatever
20 makes this important to do.

21 We have it all over and we're
22 going to see this, again and again and

1 again. And I think we have to take a
2 firm stand that this is not acceptable.

3 (Applause.)

4 MR. ASCHE: Elizabeth Stark.

5 MS. LAWTON: I have a question
6 for the gentleman that asked the
7 question.

8 A VOICE: Elizabeth has the
9 floor.

10 MS. STARKEY: I want to say I
11 attend most of the committee meetings
12 myself and at the last one, I saw this
13 as between the horizontal and the
14 vertical and I saw the horizontal as
15 impacting the synagogue's programmatic
16 needs.

17 And at that time I really was of
18 the same mind that Hope was and that is
19 that I didn't want to get into micro
20 managing the size of their classrooms
21 and so forth, and I was willing to grant
22 the variances that granted the

1 horizontal setback and so forth that
2 they needed. But not the vertical.

3 Tonight with some of the visuals
4 and some of the testimony, I'm going to
5 change my vote because I am going to now
6 look at it as two other things. I'm
7 going to look at it as an as of right
8 building and I'm going to look at it as
9 the proposed building with the
10 variances.

11 And I'm going to change my vote
12 and I'm going to, you know, with much of
13 the same reasoning that Klari and Lenore
14 put I'm going to say that there is no
15 proven need, as far as I can see for
16 anything more that be the as of right
17 building.

18 The as of right will already
19 impact on the neighborhood somewhat, but
20 I think that it is something that they
21 do have the right to do and I think that
22 it will fulfill their programmatic needs

1 so I'm going to vote against the
2 variances.

3 (Applause.)

4 MS. LAWTON: I have a question
5 for the representative.

6 You submitted a series of
7 variances and my question basically is
8 can your program and your project move
9 forward with some, but not all, or is it
10 an all or nothing approach to your
11 project. He needs the mike.

12 MR. FRIEDMAN: The application
13 we submitted provides what we believe is
14 the minimum necessary for the project to
15 proceed. We have a different viewpoint
16 than some members of the opposition here
17 regarding the ability to billed
18 residential. We don't believe it will
19 set any precedent. In fact, if the
20 issue is non profit selling profit --

21 MR. ASCHE: Shelly, please,
22 she asked a question, you answered it.

1 Now you're going on to a different topic
2 you answered her question. It's all or
3 nothing. According to him, it's not.

4 A VOICE: How far is the brick
5 wall from the windows. The bricked over
6 windows. How far is the bricked wall
7 from the windows from the next building?

8 A VOICE: About 400 yards.

9 MR. B. SIMON: Inches.

10 MR. ASCHE: If the vertical
11 variances are granted, it will be almost
12 flush with the windows on the building
13 next to it.

14 MR. FRIEDMAN: Some of them,
15 not all of them.

16 MR. ASCHE: In addition to the
17 seven lot line windows that will be
18 affected, there is a courtyard which
19 would not be flush with the building but
20 would be effected in terms of its light
21 and air if the vertical variances were
22 granted.

1 A VOICE: Rich.

2 MS. RADLEY: If I understand
3 what you were saying, let me try to work
4 it another way. They have a tremendous
5 as of right possibility given the FAR.
6 The hardship seems to occur because they
7 don't have a place to put it without the
8 variances and they are actually building
9 less than the FAR because of it.

10 MR. ASCHE: No, they have a
11 place to put it, but would result is a
12 building A that wouldn't pass landmarks,
13 and B, that would be more or less
14 useless.

15 So they could theoretically stack
16 the 10-A portion, build a skyscraper or
17 something and have a 60-foot high
18 building behind it, but Landmarks
19 wouldn't approve it, we wouldn't approve
20 it and they couldn't use it.

21 MS. RADLEY: So the fact that
22 there's no place to logically put this

1 has created the need for variances.

2 MS. WOOD: Not for BSA.

3 MR. ASCHE: Not that sole --
4 if that were the only issue, no, but the
5 combination of that and the fact that
6 the synagogue is basically untouchable
7 and, you know, there's a certain amount
8 of common sense that you know people can
9 disagree about, but whether an
10 additional ten feet for three stories in
11 the rear yard is a significant
12 impediment to public welfare. So you
13 know the feeling of the committee was
14 they presented a plausible programmatic
15 need, that is, they needed a floor plate
16 that could support classrooms of a
17 certain size.

18 MS. COWLEY: Richard, can I add
19 something to help her understand this?
20 We did not and it is not our purpose to
21 look at the mission of the church or
22 synagogue or whatever non profit comes

1 before us.

2 They have to prove that they need
3 these variances for programmatic need
4 and the question we wrestled with are
5 were the condominiums going on top of
6 that, that caused the height increase
7 certainly necessary, was that a
8 hardship. Were they creating that and
9 we found, Richard, I think I'm
10 representing this correctly, we found
11 that was not necessary, correct, the
12 height.

13 MR. ASCHE: We found -- I
14 mean, the basic finding was that a
15 variance to allow a private residential
16 development was A, not necessary to the
17 programmatic needs, and B, injurious of
18 the public welfare because it blocked
19 the lot line windows and, also, created
20 a very large building on an otherwise,
21 for the most part, a typical west side
22 side street.

1 As to the rear yard and lot
2 coverage, we did not feel that that
3 seriously impinged on the nature and
4 character of the block or on the public
5 welfare.

6 David?

7 MR. HARRIS: I thought the
8 applicant asked if the initial ten feet
9 was used to the classroom. I wasn't
10 clear on the issue I heard classrooms
11 and other uses.

12 MR. FRIEDMAN: We were asked
13 of the BSA whether this had anything,
14 whether the application was predicated
15 on the tenant school and we stated in
16 front of the BSA as we stated in front
17 of this committee, it does not.

18 The offices that are, the rooms
19 that are there for a synagogue as
20 opposed to a school can be multi
21 purpose.

22 They are not simply classrooms.

1 Some of them are classrooms, they will
2 be used for adult education. They will
3 be used for social action group
4 meetings. There are other purposes, so
5 they're not in the context of the
6 synagogue.

7 They're not simply classrooms and
8 they're not there to address any tenants
9 needs. They are there to provide the
10 minimum configuration of space that the
11 synagogue needs to conduct its programs
12 to have its rabbinical offices to have
13 its pastoral offices to have its
14 archive, et cetera, et cetera, et
15 cetera.

16 MR. C. SIMON: I want to make
17 a couple points. One is on this whole
18 as of right question, I think it needs
19 to be crystal clear and I too have been
20 at the various public meetings that have
21 been held on this topic a substantial as
22 of right building can be built.

1 So let there be no confusion about
2 that, the synagogue can billed a
3 substantial as of right building. The
4 question is whether we will vote to
5 support or not support variances to
6 increase the size above and beyond the
7 substantial as of right building that
8 can be built.

9 That's, I think, an important
10 point to be made and if the building is
11 built as of right, that substantial
12 building, we're not going to have
13 anything to say about it and that's the
14 law.

15 Second of all, and I think what
16 Shelly, I think what Shelly helped us
17 understand or helped me understand
18 something. This is a point that's been
19 made by several people on this side of
20 the room. It has no, no way grant, even
21 granting that we give deference in
22 certain situations, it has not even

1 been, the case has not even been made,
2 it's not even a close call for me
3 whether the case has been made or not
4 that programmatic needs demand the
5 shrinking of the rear yard from 30 to
6 20 feet.

7 That case, to my mind, hasn't been
8 made. It's not even a close call and,
9 therefore, I think we shouldn't be
10 voting to support any of these
11 variances.

12 And the last point I would make is
13 on this whole question of precedent,
14 obviously, we need to judge this
15 application on the merits or we can't be
16 looking exclusively at precedent.

17 Our primary job is to look on the
18 merits, but we have to view that
19 judgment on the merits in the context of
20 what could come later, and for me, given
21 the fact that I think it's not even a
22 close call, it's appropriate to also

1 think about precedent and someone said,
2 I think, and I don't remember who it
3 was, at the last committee meeting that
4 BSA doesn't look at precedent.

5 First of all, I don't believe that
6 as a lawyer, but second of all, I think
7 and folks who are at the last BSA
8 meeting can correct me if I'm wrong, I
9 think the synagogue was actually asked
10 to come back to BSA having done research
11 on appropriate precedent.

12 So the whole notion and I don't
13 remember who it was who said it that BSA
14 doesn't look at precedent, it is
15 contradicted by the question that was
16 posed at the -- I don't know what it was
17 a few days ago at the BSA meeting.

18 So we should be mindful of that,
19 given the building that's -- I can't
20 remember what the address is, 22 and
21 mindful of other buildings that are
22 going to be looking at this critical

1 seminal case, and thinking about what
2 the implications are given, of course,
3 that we're doing our job, our primary
4 job, which is to examine this case on
5 the merits.

6 In my mind, it's a no brainer and
7 on the merits, we should be voting no on
8 all the variances.

9 (Applause.)

10 MR. FINE: I'm going to
11 respect Charles' brain, but I don't
12 think he's thinking clearly enough on
13 this about the extent of necessity here.
14 First to deal with the precedent setting
15 issue which is not our, really our
16 concern, but if it is your concern this
17 is a very unique situation given the
18 landmark, given the two zones, given the
19 possibility of FAR twice of what they're
20 doing. This special programmatic needs
21 and so on.

22 So I don't think this is a typical

1 situation that could easily be employed
2 otherwise. Nevertheless, we looked at
3 the situation and this situation was
4 presented tonight was not ignored.

5 In fact, we rejected the variance
6 that would create this type of situation
7 and we've addressed the height issues
8 and other things in a negative way. But
9 the programmatic needs of this
10 institution are not just the
11 programmatic needs of this institution.

12 It's the programmatic providing
13 that it does for a large segment of the
14 community Jewish and non Jewish, local
15 and city wide and it's one of the major
16 institutions that, of sacrilegious and
17 cultural heritage in the city, and is
18 the prime one, probably in the nation
19 along with Toro, No. 1.

20 Number two, they are actively
21 doing most of the programmatic things
22 they're talking about already. But in

1 conditions that are unacceptable.

2 That's why they're thinking of expanding
3 those spaces.

4 I think we've clearly, the
5 committee has clearly made a reasonable
6 and reasoned judgment to have a split
7 decision, decisions on things that would
8 definitely have negative impact on the
9 neighborhood and neighbors versus what
10 is essential for this great institution
11 to go to its next 100 years, and I'm not
12 talking about temporary.

13 This is a growing synagogue and in
14 a growing community. And I urge
15 everyone to support the committee's
16 resolution, which I think is a balanced
17 and sensible one.

18 MR. SIEGEL: I also would like
19 to urge everyone to support the
20 committee resolution. I would just --

21 A VOICE: Now it's on.

22 MR. SIEGEL: I would just like

1 to urge everyone on the board to support
2 this resolution. I believe the
3 committee has given this a great deal of
4 thought. I was at the meetings Charles
5 was at, I attended all the meetings on
6 this issue and I came to the opposite
7 conclusion about the real programmatic
8 needs that this applicant has expressed,
9 and that the Land Use Committee
10 responded to in granting what in my view
11 are clearly minimal variances that will
12 not have a significant impact on the
13 neighbors.

14 And I think we as a board would
15 not be responsible if we did not urge
16 the BSA to grant those variances. And
17 there's been some discussion about split
18 decision on this issue and whether --
19 and the strength of particular argument,
20 and I would like to read it and
21 reiterate some of the numbers that Hope
22 read off about the real vote on this

1 committee.

2 The Land Use Committee approved
3 the variance for lot coverage
4 unanimately. It approved the rear yard
5 encroachment, unanimately. It approved
6 the R10A district, and then it approved
7 the rear yard encroachments an the R8B
8 District six to one.

9 So there was some discussion by
10 some of the non committee members, but
11 even those, the board members rather,
12 the board members voted for variance and
13 lot coverage two to zero. It approved,
14 the board members approved the rear yard
15 encroachments disapproved the rear yard
16 encroachments one to three.

17 And the same thing for the R8.
18 But the rest of the committee voted
19 virtually unanimately or unanimately in
20 favor of these minimal variances, so I
21 would just encourage everybody to
22 approved the resolution as stated before

1 you.

2 MR. ASCHE: Larry?

3 MR. HOROWITZ: Are we going to
4 be voting on each variance separately?

5 MR. ASCHE: Yes.

6 A VOICE: Yes.

7 MR. HOROWITZ: Does it that
8 mean we have to make the four findings
9 each time we vote for it.

10 MR. ASCHE: We're not taking
11 28 votes.

12 MR. HOROWITZ: I understand
13 that.

14 MR. ASCHE: As I understand it
15 for each variance there must be four
16 findings.

17 MR. HOROWITZ: And the
18 committee vote a positive committee vote
19 reflects --

20 MR. ASCHE: The four findings.

21 MR. HOROWITZ: Major four
22 findings.

1 MR. ASCHE: Tom?

2 MR. VITULLO-MARTIN: Speaking
3 as a member of the committee that went
4 to the school, it's there while it was
5 in operation with Helen to look at what
6 was being proposed and why it was being
7 proposed and to look at the banquet
8 room, as well.

9 I have to say that there were very
10 strong reasons for making the changes
11 that they were talking about making.
12 The reasons were programmatic.

13 I don't think it's possible for
14 someone to look into the future at great
15 rigor and say that ten-foot isn't
16 necessary on the third floor or is
17 necessary on the third floor.

18 It's a very difficult exercise but
19 we did hear from the committee level, we
20 did hear from the architect who said
21 that the classroom structure of the
22 floors did not work out with the loss of

1 the ten-foot depth that would have come
2 at the third and, I think, second floor
3 levels.

4 So, in my mind the programmatic
5 argument was made. The second point
6 though is that I went to every meeting,
7 I believe, that involved this
8 application, and I don't recall anyone
9 ever from the community, from the
10 immediate neighborhood saying that they
11 would be impacted by this extension of
12 the rear yard coverage in the same way
13 that we heard with regard to the height
14 issues.

15 Nobody said that there would be a
16 loss of value that they currently
17 enjoyed because of that variance. And
18 one reason for that might be that the
19 neighboring building is already that far
20 back into the interior lot. So what's
21 happening here is that as I understand
22 it, that this school would be put back

1 as far as the preexisting, the building
2 that pre-existed the current zoning.

3 And, therefore, it's not so
4 egregious perhaps as it might be if this
5 were an extension into an open doughnut
6 in the interior yards, so for that
7 reason I think the -- I think the
8 decision of the committee to approve the
9 variances on lot coverage as an
10 exception to the zoning was a sound one.

11 MS. WYMORE: Call the
12 question.

13 MR. ASCHE: Questions have
14 been called. What we're going to do, I
15 think, is to vote on each proposed
16 variance separately and, Hope, you have
17 the sheet.

18 MS. NEUWELT: You want us to
19 cross off A, B, C and D because we're
20 not voting on that.

21 MR. ASCHE: Yes.

22 MS. NEUWELT: At some point

1 soon, you'll tell us how to characterize
2 on our sheet what we're voting on,
3 right?

4 MS. COHEN: There are seven
5 variances.

6 MR. ASCHE: What we can do, we
7 can take some of what may be the easier
8 ones first.

9 MR. HARRIS: Take the easier
10 ones first.

11 A VOICE: Bundle them.

12 A VOICE: Why don't you let
13 the chairman speak.

14 MR. ASCHE: What we're going
15 to be voting on, unless there's an
16 objection, are the following variances.
17 Building height, base height and front
18 setback.

19 All right. Those are the three
20 variances which produce the taller
21 building with less of a setback in
22 front. Base height and front setback.

1 Just so that we understand, the building
2 height would increase the maximum height
3 of the building in the R8 portion from
4 60 to 100 and 5 feet.

5 The base height would increase the
6 height of the first required setback
7 from 60 feet to 95 feet and the setback
8 would increase the size, the depth of
9 the setback would reduce the depth of
10 the setback from 15 feet to 12 feet, is
11 that accurate? Okay.

12 MS. NEUWELT: Just to be
13 clear, we're voting on these together,
14 these three requests together?

15 MR. ASCHE: Unless there's an
16 objection.

17 MS. NEUWELT: But if we vote
18 yes, is that voting for what the
19 committee did or voting for what
20 Shearith Israel wants because it's the
21 opposite.

22 MR. ASCHE: Vote for the

1 committee resolution is to disapprove a
2 vote for the committee resolution is a
3 vote to disapprove.

4 Now, on the others you vote for
5 the committee resolution to approve.

6 MS. ALEXANDER: The one for
7 the horizontal is to approve and the
8 vertical was disapprove.

9 MR. FINE: Front setback
10 separately.

11 A VOICE: Vertical was to
12 approve and if we vote yes --

13 MR. ASCHE: The depth of the
14 setback.

15 MR. FINE: No.

16 MR. ASCHE: There's been an
17 objection to bundling the setback depth.
18 So we are now only going to do base
19 height and building height. All those
20 in favor --

21 MS. ROSENTHAL: Richard,
22 there's real confusion about this. So

1 can I just articulate it the way I think
2 people are thinking about this.

3 So the way I think what you're
4 understanding is if we vote yes, then
5 we're voting to approve what the
6 committee did, which was to deny the
7 height variance.

8 MR. ASCHE: A vote for the
9 resolution is a vote to disapprove the
10 variances.

11 MS. ALEXANDER: Very well
12 done.

13 MR. ZWEIG: It's been
14 suggested we separate out the front
15 setback issue. If the building height
16 and base height were not granted, would,
17 in fact, a difference in the front
18 setback then be at issue or would the
19 building not be high enough for that,
20 not to have any effect.

21 MR. ASCHE: The building, I
22 think a portion of the building could be

1 high enough but what we found out was
2 that the setback the changed from
3 15 feet to 12 feet was based on what the
4 applicant represented was a request of
5 the Landmark Commission and it had to do
6 with the configuration of the roof of
7 the synagogue.

8 But if the height goes down, that
9 consideration no longer applies.

10 MR. ZWEIG: Okay.

11 MR. ASCHE: Okay. Vote for is
12 a vote to disapprove base height and
13 building height. All those in favor?

14 (Pause in the Proceedings.)

15 MR. ASCHE: I get 72 -- 36.
16 Opposed 38. Abstentions. So the first
17 line on the voting sheet will be base
18 height. One abstention. Anyone present
19 and not voting? Resolution carries 38
20 to zero to one to zero.

21 Front setback, this is a vote for
22 the resolution is a vote to disapprove a

1 change in the front setback from 15 feet
2 to 12 feet. All those in favor?

3 A VOICE: Voting to
4 disapprove, right?

5 MR. ASCHE: I get 37. Shelly
6 changed his vote, no one else did. All
7 those opposed? One. Abstain. One.
8 Present? Zero. 37 to one, to one to
9 zero.

10 All right.

11 MS. COHEN: Rear setback.

12 MR. ASCHE: Now we're going to
13 bundle two rear setback. One is for the
14 portion that's R8B and the other is for
15 the portion that's R10A, but they're
16 essentially the same difference.

17 MS. NEUWELT: Those are at the
18 top of the building.

19 MR. ASCHE: No. Those are
20 above the first floor.

21 MS. NEUWELT: That's the thing
22 we disagreed on today.

1 MR. ASCHE: Right.

2 MS. NEUWELT: Then you missed
3 something. Isn't there a fourth one
4 that deals with the top of the building?

5 MR. ASCHE: Yes. There's a
6 rear setback, as well.

7 MS. COHEN: That's what I'm
8 talking about. Get to the rear setback
9 before you get to the rear yard.

10 MR. ASCHE: Before that.

11 MS. COHEN: Yeah, we should do
12 rear setback.

13 MR. ASCHE: Okay. This is a
14 change in the rear setback from ten feet
15 to six-and-a-half, six-and-two-thirds?

16 MS. LAWTON: What variance is
17 this, No. 4? Or did we skip the order?

18 MR. ASCHE: A vote in favor is
19 a vote to approve.

20 VOICES: No. No.

21 MS. COHEN: Richard, this --

22 MR. ASCHE: Oh, I'm sorry.

1 Forgive me.

2 A VOICE: What was the
3 committee's vote on this?

4 MR. ASCHE: Committee's vote
5 was rear yard setback was zero to seven.

6 MS. NEUWELT: It's not rear
7 yard, it's rear roof.

8 MR. ASCHE: The story with
9 this one now that my recollection has
10 been refreshed is the same as with the
11 front setback. The purpose of it was
12 what the applicant said was symmetry
13 with the roof of the synagogue.

14 If we are voting to disapprove an
15 increase in the height of the building,
16 then this no longer is necessary for
17 that purpose. So we voted to disapprove
18 this. So a vote in favor is a vote to
19 disapprove.

20 MS. NEUWELT: Right.

21 MS. LAWTON: What number is
22 this, No. 4?

1 MR. ASCHE: We're calling this
2 rear setback. All those in favor to
3 disapprove?

4 (Pause in the Proceedings.)

5 MR. ASCHE: I get 38. I never
6 forget a hand. All those opposed? I
7 get zero. All those abstaining, I get
8 one present and not voting zero.

9 Now, I think we can bundle the
10 three remaining, the rear yard incursion
11 for R8B. Rear yard incursion for R10A
12 and that is the ten feet above the first
13 floor for three floors, and then there's
14 a lot coverage which is part of the
15 same, which is necessary for the same
16 purpose. You can call them all rear
17 yard, rear yard and lot coverage.

18 MS. LAWTON: This is five
19 through seven.

20 MR. ASCHE: As to these, the
21 committee voted in favor of the
22 variance, so a vote in favor is a vote

1 in favor.

2 MS. NEUWELT: So if you want
3 to oppose these variances you vote no.

4 MR. ASCHE: You vote no. All
5 right.

6 A VOICE: This is everything
7 else?

8 MR. ASCHE: Everything else
9 except to the spirals, we haven't gotten
10 to those.

11 MR. FINE: That's inspiring.

12 MR. ASCHE: Any question about
13 procedure?

14 A VOICE: No, it's very
15 simple.

16 MR. ASCHE: All those in
17 favor?

18 A VOICE: In favor of what?

19 MR. ASCHE: In favor of the
20 rear yard and lot coverage? All those
21 opposed?

22 MR. ASCHE: 21.

1 VOICES: What's the vote?

2 MS. COWLEY: I'm slower, I'm
3 sorry. I get 20.

4 MR. ASCHE: I get 21.

5 A VOICE: Let's do it again.

6 MR. ASCHE: I don't think it
7 matters. All those abstaining? Two.
8 Resolution fails so . . .

9 A VOICE: What's the vote?

10 MR. ASCHE: 13 to 21 to two.

11 (Applause.)

12 MR. HARRIS: Do we need an
13 affirmative resolution to send to BSA
14 for approvals -- as a matter of fact,
15 let me offer a motion to do that.

16 MR. ASCHE: There's a motion
17 to disapprove. Is there anyone who
18 would change their vote? All right.

19 So the motion that will be sent to
20 BSA will be to disapprove all seven
21 variances.

22 (Applause.)

1 MR. ASCHE: Different votes
2 will be recorded for each variance.

3 We are doing it for the last one.
4 The votes will be to disapprove the
5 bundle height, to disapprove the setback
6 in the front, to disapprove the setback
7 in the rear. Those are all in the 38 or
8 37 and the others were 13 to 21.

9 MS. WYMORE: So now you're
10 talking about reversing the 31 and 21.

11 MR. ASCHE: Right. Thank you
12 very much for your patience. Thank you.

13 (Whereupon at 10:05 o'clock
14 p.m., the proceedings were concluded.)

15 C E R T I F I C A T E

16 I do hereby certify that the
17 foregoing is a true and correct
18 transcription of my shorthand notes.

19

20 JOHN PHELPS, CSR, RPR, CRR

21

22