

New York City Board of Standards & Appeals

TRANSCRIPTION OF TAPE

Case # 74-07-BZ.

6 through 10 West 70th Street, Borough of Manhattan.

2-12-08.

1 MR. COSTANZA: Item number six. Calendar number
2 74-07-BZ. 6 through 10 West 70th Street in Manhattan. Friedman and Gotbaum.

3 MR. FRIEDMAN: Good afternoon, Madam Chair,
4 Commissioners. Shelly Friedman, Friedman and Gotbaum, for the applicant.

5 CHAIR SRINIVASAN: Good afternoon.

6 MR. FRIEDMAN: We really have opening or
7 supplemental statement other than we are prepared to discuss the issues that came up at
8 yesterday's Executive Session, and we thank the Board for its careful review of the
9 material and stand ready to continue this discussion.

10 CHAIR SRINIVASAN: All right. Why don't you
11 proceed with discussing the issues that were raised yesterday. Well, we can walk you
12 through them but - -

13 MR. FRIEDMAN: Well, as I understand that Mr. Freeman
14 will be with us in just a moment.

15 CHAIR SRINIVASAN: All right.

16 MR. FRIEDMAN: I suppose, then, that in terms of the
17 building, itself, there was a discussion of the lot line window issue and we could discuss
18 that pending his arrival.

19 We understand the Board's concern that it would like us to take a look building
20 configurations that might provide relief to some of the lot line windows.

21 We have tried to undertake the research that was requested by Commissioner
22 Hinkson at the last meeting.

23 In specific, we have been in discussions with the Building Department's counsel's
24 office about what the requirements were for such windows back in the construction of 18
25 West 70th.

26 CHAIR SRINIVASAN: Mr. Friedman, can you just speak
27 up as well. I think some of the people in the back cannot hear you.

28 MR. FRIEDMAN: Oh, I'm sorry. Maybe my cold is
29 getting in the way.

30 We have tried to have discussions with the Building's Department counsel. They
31 have been able to uncover the regulations that were in effect as of the construction in the
32 1920's.

33 Their records go back to the 1950's and they could find nothing, at least as far
34 back as they go.

35 They were able to provide us with a very - - with an interesting document which
36 was the Code as it applied to commercial buildings for windows on a lot line in the
37 1920's.

38 And, those regulations required a certain amount - - required the same amount of
39 protection for lot line windows when within fifty feet of a new roof, as the current
40 requirements which are more or less thirty feet.

41 So, they did not indicate, as far as we could tell, that one could claim an
42 entitlement to a window if that window was providing light and air - - required light and
43 air.

44 One could opt to do that if one wished but one would be at risk; that window - -
45 any window on a lot line, as far as we could tell, remained at risk, whether its purpose

was simply as a supplemental window or whether it was attempting to provide light and air.

There was no entitlement created back then, as far as we could tell, and as far as the Building's Department could confirm for us to light and air for those - - for any window on a lot line.

In fact, the owner of that window accumulated a certain amount of obligation to make sure that there - - back then there were fire shutters or the like on all such windows that were within fifty feet of the roof of a new building.

Ironically, that would cover even the as-of-right building in this situation, since all of those lot line windows would be within fifty feet of even our as-of-right building in the R-8 (b) portion of our zoning lot.

So, we were unable to - - I'm unable to report back on that point with anything conclusive other than the general proposition that there was no right to any window on a lot line that we could uncover.

With regard to the specifics of this building, we have taken a look at an opportunity to create a notch in the back of the building that would run deep enough into a lot that is toward the street so that it would permit the light and air to reach those windows.

Now, they're not legal light and air windows now and this wouldn't make them legal light and air windows. Their status wouldn't be converted to a legal situation, but we believe that there would be a method that we could develop for those three windows.

The issue and Charles Platt, the project architect, is here to discuss that, are that there are some things that we have to look at; the specific one, from a zoning standpoint,

69 being the fact that we would be creating an outer court. And, courts are determined by a
70 length times width formula.

71 And, if we brought the length of the notch deep enough to reach those windows,
72 we would, in fact, require a width that would be, perhaps, half of our site. I mean, it
73 would be a very long width and, therefore, it would be impractical to capture those
74 windows, the light and air for those windows, in an as-of-right manner and there might
75 very well be - - and we are researching this now - - there might very well be the need for
76 a further variance of court regulations to allow us to present this option to the Board.

77 CHAIR SRINIVASAN: Unless you sat the notch thirty
78 feet away from the lot line.

79 MR. FRIEDMAN: Oh, yes, but this is a sixty-five foot
80 building and that's a - - that pretty much eliminates a good part of the back of the
81 building.

82 CHAIR SRINIVASAN: It will be more of an "L" shaped
83 versus a square, isn't that correct?

84 MR. FRIEDMAN: Well, it would be - - I mean, one has to
85 look at where the core of this building has to be and other features with which Mr. Platt
86 can go into but, yes, we would state that while we could achieve a legal court back there,
87 the only way we could achieve a court so as to reach these windows under the formula
88 and the court regulations would be to ask the Board for a further waiver of the regulations
89 and then we believe that we could provide that.

90 I might ask Mr. Platt if he wants to add anything to that if you want.

91 CHAIR SRINIVASAN: All right. And, we may have
92 some questions.

93 MR. PLATT: What I was going to add - -

94 MR. COSTANZA: I'm sorry, just please state your name
95 for the record?

96 MR. PLATT: My name is Charles Platt of Platt Beyer
97 Dovel White, Architects.

98 There is another issue, of course, which relates to Landmarks, the approval of
99 Landmarks and the creation of a court at the back would mean that the project would
100 have to go back to the Landmarks Commission for approval.

101 CHAIR SRINIVASAN: They were reviewing the building
102 from the back as well, is that correct?

103 MR. PLATT: Yes, they were, yes they were.

104 CHAIR SRINIVASAN: Because it's an Historic District?

105 MR. PLATT: Yes.

106 CHAIR SRINIVASAN: Within the Historic District?

107 MR. PLATT: Yes, right. Because, that was all presented
108 to the Landmark's Commission.

109 CHAIR SRINIVASAN: All right. So, in other words,
110 whatever changes are - - should there be changes to this design based on comments from
111 the Board or you would have to go back to Landmarks, regardless? It doesn't matter if
112 the - -

113 MR. PLATT: Yes, that's my understanding, yes.

114 Since I was on the Commission, it has changed and the backs of buildings are
115 governed more strictly than they were in my time.

116 CHAIR SRINIVASAN: All right. Commissioner Ottley-
117 Brown.

118 COMM. OTTLEY-BROWN: I was just wondering if you
119 have a side view of the building where you could just show us what that cutout would
120 look like and how far it's going to - -

121 MR. PLATT: I'm not sure how exactly what you would
122 like.

123 CHAIR SRINIVASAN: Okay. Yes.

124 MR. PLATT: This is the as-of-right scheme and it shows
125 the windows but the design in question is this one. I will show you a plan in a minute
126 which would show you the cutout but you can see these are not affected. These are
127 within the outline of the proposed building as are the ones in the front.

128 This is oriented towards the north. This is the existing building adjoining this
129 existing building and it shows - - these dimensions have not been verified in the field,
130 obviously, but it shows to the best of our knowledge the location of these windows on
131 their eastern façade.

132 To create some light and air for this window back here would require that we do
133 something back here, to this here. To create anything for the front would create a similar
134 situation in the front here and that's for several floors.

135 As you could see from the elevation diagram, the windows extend down a number
136 of floors.

137 Thirty feet back would be - - this is about 64 feet here so it would be - -

138 CHAIR SRINIVASAN: It's about somewhere there?

139 MR. PLATT: Somewhere right in the middle here.

140 So, that would be creating something like that. It, indeed, would create an "L"
141 shaped building and it would alter the, at least to the upper floors, an "L" shaped building
142 and would alter the Landmarks approval drastically.

143 CHAIR SRINIVASAN: All right. I just want to keep the
144 Landmarks issue aside.

145 In terms of functioning, this unit - - there's one unit per floor, isn't that correct
146 and - - is that correct?

147 MR. PLATT: That's right, for these upper floors.

148 CHAIR SRINIVASAN: All right.

149 MR. PLATT: The floors affected are all one unit per floor.

150 CHAIR SRINIVASAN: And, they range between - - it's
151 about four thousand square feet, is that right?

152 MR. PLATT: Yes.

153 CHAIR SRINIVASAN: All right. So, you'll have thirty-
154 five hundred square feet versus four thousand for your unit.

155 So, leaving aside the Landmarks and we'll talk about the issue of minimum
156 variance and how much relief do you need.

157 It seems to me that there's some options on how to reduce the bulk of the
158 building.

159 I think one of the comments the Board made yesterday was, in fact, based on
160 analysis that you provided to us, there are ways, perhaps, where this building can become
161 smaller and then the issue is that really if you going to shape the building and reduce the
162 size, there are different ways of doing it in a way that can meet both Landmarks
163 requirements about symmetry and street wall and, at the same time, provide as much or at
164 least reduce the effects it will have on the lot line windows.

165 So, it seems that there are several options here but you need to look at this in the
166 context both from a financial standpoint as well as from a design standpoint and a
167 landmark standpoint.

168 MR. FRIEDMAN: Well, Mr. Freeman is here - -

169 CHAIR SRINIVASAN: I know. We'll bring him up here
170 but in terms of the next steps, I think you should look at different alternatives on the site,
171 both in terms of - - there could be ways to either reduce the height. There could be ways
172 in providing courts at the back, which are actually complying, not necessarily non-
173 complying and both may or one or the other or a combination of them, may actually be
174 able to protect some of these windows.

175 MR. FRIEDMAN: Well, we can provide - -

176 CHAIR SRINIVASAN: Yes.

177 MR. FRIEDMAN: - - a complying court.

178 CHAIR SRINIVASAN: Yes.

179 MR. FRIEDMAN: The difficulty would be in finding a
180 complying court that achieves the additional purpose of not affecting those lot line
181 windows,

182 Even if we were to - - and, by the way, leaving those lot line windows open does
183 not relieve the owners of those windows of some burdens of their own.

184 I mean, those will be windows which are clearly so close to the development, that
185 they're going have to be protected, considered protected windows, either through some
186 form of sprinkling or the old fashioned chicken wire in the windows or, you know,
187 certainly some review in that building which, at this point, has not occurred as to whether
188 any of these windows are legally there or whether their utility is based on illegal
189 partitioning within those buildings.

190 We can provide a complying court if the purpose of the Board is to reduce the
191 bulk.

192 It may not reach those windows, though, and whether that's not - -

193 CHAIR SRINIVASAN: May not reach all the windows
194 or - -

195 MR. FRIEDMAN: It may not reach those three windows
196 but we can certainly - - if the Board were to say to us the bulk of this building must come
197 down and we did it with a court, we can provide a length times width complying court
198 that is sufficient for the Board's concerns financially.

199 That width may not be deep enough. It's the issue of trying to do something to
200 reach the lot line windows that creates the depth - - I'm sorry - - the length of the court.

201 If we were to provide - - we could reduce the floor area with a totally complying
202 court. I don't see that as a significant issue, if necessary, but it probably would not reach
203 the windows.

204 If it was intended, also, to have to reach the windows as a dual function, then, I
205 believe, we would be wanting to come to the Board and say, you know, these are lot line
206 windows after all. In fact, there's no saying that after we go through this significant
207 change - - those windows are there at the discretion of the current owners. They could
208 decide to block them up and all of this would have been for nothing at some future date.

209 So, from that standpoint, we might want to come to the Board - - we would like to
210 explore with the Board the opportunity of a further variance that would allow us to
211 choose a different geometry that would permit us to come deeper than the zoning permits
212 and then also bring in the width so that the area worked out, if not the "L" times "W"
213 calculation in a complying manner.

214 So, it's a complicated issue, one that we will hopefully be able to meet with the
215 Board, meet with the staff, show them the various options and we're willing to undertake
216 that study.

217 But, you're asking us to do two different things. We have a solution on the
218 finances that is major enough to be independent of the lot line window situation but, if
219 asked to do both, we think, in fairness, we should be able to come to the Board and say,
220 well, we're doing double-duty here, you know. We're stretching this court beyond what
221 the zoning requires of us because the Board is asking us to, for a specific purpose, and,
222 therefore, in consideration of that, we believe that a court variance here would be a
223 satisfactory and totally equitable request to make to the Board.

224 CHAIR SRINIVASAN: All right. If you provide that to us
225 and we will deliberate on that.

226 Are there any other questions regarding this particular issue?

227 MR. FRIEDMAN: Well, then, I think the other issues
228 were primarily financial in nature and I'd like to call up Mr. Freeman, no stranger to this
229 Board today, so that you can ask him your questions.

230 CHAIR SRINIVASAN: All right. I just want to go over a
231 couple of things before we get to the financials - -

232 MR. FRIEDMAN: Okay.

233 CHAIR SRINIVASAN: - - that we touched upon
234 yesterday and some of it comes from the issue was also raised by the opposition. I know
235 they will be here to speak on these issues.

236 But, just in terms of the (a) finding, I think the Board appreciated that you
237 separated out those two issues.

238 On the issue of the program, we understand that it's just ten feet.

239 I think what would be really helpful for the record is just to explain to us, because
240 what happens is with the ten foot relief, you get bigger classrooms.

241 And, I think what's not clear is just how that affects the occupancy.

242 I think if you can just show us under the as-of-right, you had so many classrooms
243 and this is the occupancy that you have and your program needs to accommodate so
244 many students.

245 I think that would really clarify the need for the ten foot relief.

246 I feel it would complete the record in establishing that - -

247 MR. FRIEDMAN: We will be happy to (Unintelligible).

248 CHAIR SRINIVASAN: And, in terms of the (a) finding
249 regarding the residential piece, which is now based on actual hardship on the site.

250 In terms of the threshold of uniqueness, I know you've given us a map which
251 shows all the lots between, I think, 62nd Street and 96th Street.

252 The issue really over here is an issue of the split lot and the split zoning and how
253 it affects the ability to use development potential on the site.

254 I think what you given us is just not a full analysis.

255 I think it would be helpful if you went site-by-site and really identified some of
256 the underbuilt sites that are affected by this lot, this zoning lot line division.

257 And, I think it will reinforce whether this is a common condition versus
258 something that is few and far between.

259 I know that a lot of the sites are, in fact, overdeveloped and so where the lot line
260 cuts through, it doesn't really have an effect on those buildings. Those are large Central
261 Park West buildings but there are several buildings that are actually in the mid block that
262 may be affected and I think we just need to see what that analysis shows us.

263 MR. FRIEDMAN: Well, we did do - - I mean, I'm just
264 concerned that - - I understand what the Board is looking for in the body of my letter to
265 the Board in December.

266 CHAIR SRINIVASAN: I know you've identified four
267 sites, I believe.

268 MR. FRIEDMAN: There was - - that, too, at the Board's
269 request. Those were the other not-for-profit so-called community facility sites that were
270 being raised.

271 But, we did also include an analysis of the text about how many buildings along
272 the lot line were, you know, underdeveloped, overdeveloped; too tall. I mean, that is in

273 the body of the letter, and I'm having some difficulty differentiating what we supplied
274 from what you're now requesting if that wasn't it.

275 CHAIR SRINIVASAN: All right. Perhaps, I didn't read
276 it. I didn't see it there so maybe it's better if you give us a map that's more clear since it
277 was out-of-scale that one could not really determine.

278 My understanding is that you went through some analysis but you basically
279 identified four or five sites which are adjacent to an institution.

280 The analysis really requires you to look at, I think, some things somewhat
281 different because it's not necessarily related to the institution.

282 It's also related to the financial, which is based on this particular development
283 portion of the site.

284 MR. FRIEDMAN: May I draw your attention to, if you
285 have the material in front of you, page 15 of my letter of December 28th.

286 The final paragraph there begins, "We were also asked to research surrounding
287 building heights to the true and precedential value of any of the Board's approval of the
288 height and setback objections on the future development along the R-10 (a) R-8 (b)
289 district boundary along Central Park West."

290 Is that not what you're requesting of us now? If so, I simply don't understand.

291 We then by - - counted the number of buildings on each side of the lot, on each
292 side of the district boundary - -

293 CHAIR SRINIVASAN: All right. So, how many
294 buildings did you get that are overbuilt? Maybe I missed it.

295 MR. FRIEDMAN: The buildings are approximately
296 twenty buildings ranging from nine to thirty stories are located directly east of, west of or
297 divided by the district boundary.

298 Of these twenty buildings, six rise between eighteen and thirty stories. Seven rise
299 to fifteen stories and etc.

300 In addition, of these twenty hi-rise buildings, thirteen are located on zoning lots
301 with footprints divided by the R-10 (a) R-8 (b) boundary line.

302 CHAIR SRINIVASAN: Well, maybe you can answer the
303 question more - - maybe if I framed the question, you can just give me the answer to it - -

304 MR. FRIEDMAN: Okay.

305 CHAIR SRINIVASAN: - - which is how many lots are
306 what you would consider soft sites or underdeveloped that are affected by the zoning
307 district boundary?

308 MR. FRIEDMAN: We will provide that in writing.

309 CHAIR SRINIVASAN: That's what I'm trying to find
310 out. Over the number of lots, that particular number.

311 MR. FRIEDMAN: Right.

312 CHAIR SRINIVASAN: And then, maybe, provide some
313 analysis to those - -

314 MR. FRIEDMAN: But, those would be lots that are on the
315 split lot.

316 For instance, the Historical Society comes to mind as one example and, that is, its
317 vacant lot, its soft site is not governed by the split lot even though the entire zoning lot,
318 including the Historical Society, does have the split lot.

319 So, I'm curious whether that would fall inside or outside of the request.

320 If you have a soft site that is clearly within the R-8 (b) portion of the - - the R-8
321 (b) line, that is part of a larger - - could be part of a larger zoning lot that would then be
322 considered a split lot condition. I think if that's what you're looking for, that's just a
323 (Unintelligible) actually.

324 CHAIR SRINIVASAN: Well, let's start off with keeping
325 aside a potential zoning lot merger.

326 So, if we're talking about zoning lots, as they exist today, the ones that are
327 affected by the district boundary in terms of a hardship. I think that's what we're trying
328 to figure out, whether there's many sites that, in fact, are split because of the zoning that
329 took place in 1984 and that in any of these situations, you will always find sites that
330 cannot use their development potential in a way which is reasonable because that's the
331 thrust of this argument; that you had the split district. You actually have a portion which
332 is in the R-10 district and a portion in R-8 and that you're not being able to use that
333 development potential in a way that will give you a reasonable return.

334 MR. FRIEDMAN: And, the zoning lot predated that
335 effective amendment.

336 CHAIR SRINIVASAN: Right.

337 MR. FRIEDMAN: So, the view of what you're looking for
338 are only those which would be eligible for the average - -

339 CHAIR SRINIVASAN: That's fine. But, it will predate
340 the 84 zoning.

341 MR. FRIEDMAN: Yes.

342 CHAIR SRINIVASAN: That would be a reasonable
343 analysis.

344 MR. FRIEDMAN: Okay.

345 CHAIR SRINIVASAN: Okay.

346 MR. FRIEDMAN: We can provide that. Thank you for
347 the clarification.

348 CHAIR SRINIVASAN: All right. Why don't we have Mr.
349 Freeman come up and speak.

350 MR. FREEMAN: Good afternoon, again, Commissioners.

351 CHAIR SRINIVASAN: All right. We had some
352 questions, I think.

353 The thrust of our questions had to do with the site value. Commissioner Ottley-
354 Brown, I know you had some - -

355 COMM. OTTLEY-BROWN: Yes. I was wondering if
356 you could explain for me your three methodologies, I believe, that you introduced in
357 order to reconcile your land value average per square foot?

358 MR. FREEMAN: Sure.

359 COMM. OTTLEY-BROWN: You talk about the sales and
360 then you talk about the assessed value, the relative assessed value.

361 MR. FREEMAN: Well, we're dealing with a premise
362 because we want to both extract out the community facility use, as was requested, and
363 then look at what an as-of-right development on the site would be.

364 So, in order to do that, we come to the conclusion that, as we said, since the
365 community facility is below, a developer purchasing this would be essentially purchasing
366 the theoretically most valuable upper floors because that generally has more value for
367 residential use, plus given the configuration and zoning, a good portion of it would be up
368 above the synagogue building and have direct views of Central Park similar to what
369 would be in a Central Park West building.

370 So, the first approach we used, Commissioner, was to look at sales of buildings in
371 R-10 districts which is pretty straight forward.

372 We looked at vacant land sales. We adjusted them for comparability and we
373 found them to average \$823 and change, and we used \$825. That's a fairly direct - -

374 COMM. OTTLEY-BROWN: Right.

375 CHAIR SRINIVASAN: All right. Mr. Freeman, can you
376 just make one comment on that?

377 MR. FREEMAN: Sure.

378 CHAIR SRINIVASAN: And, you can just clarify to us
379 that the development potential you're talking about, which is approximately 19,000
380 square feet, I believe, is that all located in or is that all derived from the R-10 portion of
381 the site?

382 MR. FREEMAN: We looked at a specific building
383 configuration which the architect created which is essentially a full build-out of the

384 potential on the R-10 portion and a full build-out permitted on the R-8 (b), most of which
385 on the R-8 (b) is taken up by the community facility space - -

386 CHAIR SRINIVASAN: But, not all?

387 MR. FREEMAN: Not all.

388 CHAIR SRINIVASAN: All right.

389 MR. FREEMAN: So, this is - - I think that we have to look
390 and I don't have it in front of me but you have to look at the configuration that the
391 architect provided but I think this may be one floor of residence in the R-8 (b) once you
392 get above the community facility space.

393 CHAIR SRINIVASAN: Also, I think, fifty feet to seventy-
394 five feet.

395 MR. FREEMAN: Again, it relates to - -

396 CHAIR SRINIVASAN: All right. But, I think the point
397 I'm making is that I just question whether all the air rights or development potential
398 should be based on the R-10 value high up in the air?

399 And, I think the second thing is that you've looked at comps which are not R-10
400 (a) comps but they're zoning districts that have no height limit, and I'm just wondering if
401 you can give us a better comparable?

402 MR. FREEMAN: We'll take a look at it.

403 CHAIR SRINIVASAN: All right. I think this relates to
404 the fact that we feel that the price is somewhat - - it's high and I think we just want to
405 make sure that is a reasonable assumption.

406 MR. FREEMAN: Well, what we looked at,
407 Commissioner, was what the architect said could be built.

408 In other words, this takes into account the height limits of the site, the build-out
409 into the zoning envelope, there's a particular configuration and that's what we're valuing.

410 So, there are buildings that don't have height limits that may or may not be able to
411 build out their zoning envelopes. We don't do a zoning calculation of every piece of
412 vacant land in an R-10 equivalent district.

413 So, we'd have to go back and take a look and see what and how above the height
414 of this building the value would change significantly.

415 So, I'd like to just continue on.

416 CHAIR SRINIVASAN: Yes, please.

417 MR. FREEMAN: So, that was one of the three approaches
418 that we took.

419 The second approach we took was one more based on logic which is to say that
420 we don't know the relationship between the Finance Department's assessed value and the
421 actual value of the property.

422 However, we could make the assumption that their assessment practice is
423 reasonably consistent and that sites that have prime frontage are valued higher than sites
424 that don't.

425 And, we looked at what the differential is? And, I think we found that in that case
426 there was - - buildings with a view of Central Park had an assessed value that was about
427 48 percent higher than buildings that did not have a view of Central Park.

428 COMM. OTTLEY-BROWN: So, these are developed lots?

429 MR. FREEMAN: These are developed lots.

430 COMM. OTTLEY-BROWN: But, the second one you're
431 in developed lots?

432 MR. FREEMAN: But, we didn't look at the actual values.
433 We looked at the percentage, the differential between those with Central Park frontage
434 and those without Central Park frontage because we made the presumption that Central
435 Park frontage was valuable or more valuable than mid-block frontage.

436 And, the relationship that the Department of Finance has in their assessed values
437 shows that there's basically a 48 percent premium value added to having that Central
438 Park West frontage.

439 And, we didn't look at the dollar value. We said what's the percentage because
440 we want to provide that percentage to the average that we had originally used.

441 And, we said, now, if we're taking the community facility building out of the
442 picture, we're dealing with, essentially, the Central Park West frontage building so the
443 \$450 that we had used as an average square foot in our previous analysis, we bumped up
444 by forty-eight percent to reflect the fact that the residential is there with Central Park
445 frontage. It's the equivalent of Central Park frontage.

446 So, that's the second methodology that we use.

447 COMM. OTTLEY-BROWN: But, yes, just a question.

448 So, your first one is just - - gives us a price for vacant land?

449 MR. FREEMAN: Traditional.

450 COMM. OTTLEY-BROWN: An average price.

451 This one is giving us a price for vacant land plus building?

452 MR. FREEMAN: That's right.

453 COMM. OTTLEY-BROWN: Plans plus building?

454 MR. FREEMAN: Plan plus building but it's not being
455 used to give us a price, per se, but to look at the difference in valuation of a building with
456 frontage on Central Park and without so that we could apply that to what we had arrived
457 at as the average square foot in our previous analysis taking away the community facility
458 building.

459 So, we had an average value for building area from the ground floor to the top of
460 \$450 which was the average and we said now, what would the difference be in the
461 average if we had just the residential portion fronting on Central Park? And, we said that
462 if we multiply this by that 48 percent factor, we would wind up with \$450 a square foot
463 becoming \$666 a square foot. That takes out the community facility.

464 It says that the average value for the whole building is \$450 but the residential
465 portion, because of its location within the building and its relationship to Central Park has
466 a higher value.

467 And, we used, essentially, a differential in valuation that the Department of
468 Finance uses.

469 We didn't use their values per square foot. We just used - -

470 CHAIR SRINIVASAN: You just used the differential?

471 MR. FREEMAN: Differential.

472 The last method that we used is another appraisal method which is known as the
473 residential land value methodology.

474 And, we said if the property at \$450 a foot is worth "x" and in our previous
475 analysis, we had demonstrated that the community facility had no economic value using
476 capitalization of income.

477 Then, therefore - - and, again, it's a step in the direction of logic. All of the value
478 would need to be supported by the residential component.

479 So we then took a look at what the value is. We had the average of \$450 and we
480 said now if we had a residential building of \$19,755 a square foot that had to carry all of
481 the land value at \$450 a foot, what would that require and that was \$863.

482 We then looked at all of these things together and we found that the land
483 comparables were \$825. The adjustment by facto was \$666 and that the residual value of
484 the residential, assuming the community facility had no value, was \$863, we said, well,
485 what would be an appropriate value?

486 We felt that the \$800 plus dollars a square foot was too high and we felt that
487 somewhere in the midpoint would be more appropriate at the lower value of \$666 will
488 then reflect the premium values of the upper floors.

489 So, we used \$750 a foot which was sort of the midpoint between the \$666 and the
490 \$863 to come up with how we would value the residential portion of the site?

491 So, we said if you want to look at it simpler way, if we had an overall average of
492 \$750, what would the residential portion in and of itself be worth? We said \$750 a foot,
493 which was not at the high end and it was not at the lower range of the adjustment range
494 and that's the way we approached it.

495 COMM. OTTLEY-BROWN: Right. So, then that brings
496 my second question which is why would you choose something that's more along the

497 lines of an average when it seems to me that this development, if as-of-right, would be
498 quite inefficient because you have efficiency ratios of sixty percent, which leads me to
499 think that a developer would spend much less on a site of this, not the average, but maybe
500 something towards the low end of your range.

501 MR. FREEMAN: Yes. I heard that question asked
502 yesterday. And, the answer to that puts aside the question of valuation.

503 If this were not this site, if we were able to remove all of the factors of
504 uniqueness, then I would say we can make some adjustments. However, all of the
505 differential that you're talking about, all of the constraint which restricts and makes that
506 inefficient is a result of things that relate to the site's uniqueness.

507 And, as soon as you adjust for uniqueness and this question has come up before,
508 you remove the underpinnings on which a variance is based.

509 So, we will redo the valuation for the Board. I know that you're familiar with
510 this. This comes up often and we can make adjustments for location. We can make
511 adjustments for time. We can make adjustments for size.

512 But, when you start to make adjustments for the unique characteristics of the site,
513 you, essentially, are moving in a direction of not dealing with the issue of uniqueness,
514 which is a principal issue for condoning a variance.

515 So, I would agree with Commissioner Brown. If we had a general and uniform
516 site - - if we had a - -

517 CHAIR SRINIVASAN: All right. So, maybe if you can
518 show us a general, uniform site, it will - - it should show - -

519 MR. FREEMAN: We have more if - - we could do that.

520 CHAIR SRINIVASAN: Right. Because, then it should
521 actually - - it should be able to show you a reasonable rate-of-return versus, I think, what
522 you're getting here.

523 MR. FREEMAN: Well, perhaps. But, again, what - - I
524 don't mind doing that but the question I have is that when we left the last hearing and
525 came back here and then we had follow-up meeting and discussion with staff, it seemed
526 that the question the Board wanted to ask is show us that a building on this site cannot
527 make a feasible return without the waivers being requested.

528 The building that we're looking at in terms of the analysis here is that a very small
529 portion on the R-10 section if the synagogue were not there, the R-10 section extends all
530 the way over to Central Park West.

531 So, all of the factors of uniqueness create a building that requires two cores. In
532 other words, you have a core that has to bring you up on the R-8 (b) side, bring you over
533 to the R-10 (a) side and then come up, so we can get the architect to, perhaps, do that in a
534 (Unintelligible) way.

535 CHAIR SRINIVASAN: I think that's the only way for us
536 to feel comfortable with what you've established as your site value so - -

537 MR. FREEMAN: Again, one of the factors. There's costs
538 involved. There's efficiency involved and as soon as we begin adjust in that position for
539 all of those things well, then, of course if there's no premium cost, if there's no loss of
540 income as a result of inefficiency, then you might have a feasible development.

541 It's hard to, as you know, because we discussed that earlier today, take out the
542 fact of building construction from that. When you go for a variance, you're asking

543 sometimes for a larger or a different building which brings with it added costs, but we'll
544 do the best we can.

545 CHAIR SRINIVASAN: All right.

546 MR. FREEMAN: And, I guess I asked - -

547 CHAIR SRINIVASAN: Any other questions on the
548 financials for now?

549 COMM. OTTLEY-BROWN: You just said that what we
550 asked for was a situation where we did not look at the hardship and we wanted to see - -
551 you said we wanted to see that it would not make it?

552 MR. FREEMAN: No.

553 COMM. OTTLEY-BROWN: Because it seems to me that
554 we want to see that an unencumbered building will make it.

555 MR. FREEMAN: You wanted us to demonstrate - - now,
556 you want to see that unencumbered building could make it.

557 We'll do our best to make that.

558 At the last hearing, the focus was on show us that the (Unintelligible) of the
559 site - -

560 CHAIR SRINIVASAN: You mean the envelop of a
561 sixteen story - -

562 MR. FREEMAN: And, the envelope, etc., if you don't
563 have the community facility, would not be a feasible building so I'm assuming we've
564 done that and now we'll go back and take a look and try to outline each of the

565 uniquenesses, take them out of the picture and see what we can do to answer that
566 question.

567 CHAIR SRINIVASAN: Okay. Any other questions for
568 Mr. Freeman?

569 All right, any questions for Mr. Friedman right now?

570 MR. FREEMAN: No? Thank you.

571 CHAIR SRINIVASAN: All right. So, why don't we take
572 testimony from Mr. Lebow and his team.

573 MR. LEBOW: Thank you.

574 Members of the Board, I'm Mark Lebow, and I represent, as you know, what we
575 have been called as the objectants, and we are, as you remember, the three surrounding
576 cooperative buildings, 101 Central Park West, 90 Central Park West, 18 West 70th Street
577 as well as the various people along West 70th Street between Central Park West and
578 Columbus Avenue.

579 And, if I gave you all 120 names, I wouldn't have any time left, so I'm not going
580 to do that, again.

581 What we have done here is we have, obviously, not seen this notch building, this
582 "L" building.

583 We have not seen any of these drawings. We would like to see them because
584 maybe we can help you with the count.

585 Some of the count may make us happy. Some of it may make us very unhappy.

586 But, if it comes back again, we would like some opportunity so that we can study
587 it and then present you with our findings if we can, also.

588 What we are going to respond to today, and I know that this is a moving target, is
589 the applicant's submission that it had made on December 28th, to which we responded on
590 January 28th and the applicant furnished its reply on February 4th.

591 So, we're sort of stuck within that box and to the extent that any of it is going to
592 be changed, I don't think that there is too much that we can do about it.

593 I've tried to organize the speakers to address individual issues so that we do not
594 repeat ourselves.

595 So, after I just give you an overview, we're going to hear from Norman Marcus,
596 who I say needs no introduction and then proceed to introduce him anyway but I'm not
597 going to do that because you know who he is; followed by Alan Sugerman; then Marty
598 Levine, who is the appraiser; Craig Morrison, who is the architect who will talk about
599 some of the things that you just heard before along with Charles Disanto and Ron Prince
600 will talk about the lot line windows, as will David Rosenberg.

601 Page Cowley is here from Community Board #7, because we have their report,
602 also, and if you want to take that out-of-turn, we can let you do that at any time you want
603 and then members of the public, including Kate Wood.

604 What I'm just going to really do is summarize what our position is very briefly
605 because I know you've spent a lot of time on this and that you did have your Executive
606 Session.

607 But, based upon what happened with these last submissions, I think that some
608 points are now becoming perfectly clear.

609 It's absolutely clear that all the programmatic needs of the applicant can fit into an
610 as-of-right building. I don't think there is any doubt about that anymore. And, it's no

611 surprise, anyway, because their dream building was, as you know, half luxury
612 condominiums and half their programmatic needs.

613 So, an as-of-right building, I think it's perfectly clear, can hold all their
614 programmatic needs.

615 The second thing that is clear is that Community Board #7 has now weighed in
616 and you will hear that they have rejected all the variances and, you know, I'm a former
617 Community Board Chairman like Mr. Platt is a former member of the Landmarks
618 Commission and I know that the Board of Standards and Appeals doesn't always listen to
619 the advisory opinions of Community Boards.

620 However, when it comes to a (c) or you're supposed to take into consideration the
621 essential character of the neighborhood and whether or not a proposed variance is
622 detrimental to the welfare of the community. This is really the one time when I urge you
623 to listen to the local community.

624 We, of course, are the microcosm, the immediate neighbors, but Community
625 Board #7 is the entire West Side representative.

626 So, I think when you have a conclusion both from the people right in the vicinity,
627 as well as Community Board #7 rejecting the variances, you should really give it great,
628 great deference if conclusary results.

629 Now - -

630 CHAIR SRINIVASAN: Mr. Lebow, didn't the
631 Community Board actually support the variances for the synagogue? The program?

632 MR. LEBOW: Well, they did it with respect to
633 Landmarks to say that insofar as Landmarks determined whether it was suitable. They
634 supported some of them.

635 Now, this gets into Mr. Friedman's argument a little bit later that Landmarks has
636 approved this building.

637 The Landmarks Commission and the Community Board, who passed upon it,
638 decided only that this proposed building should be entitled to a Certificate of Suitability.
639 That means, in effect, it's not going to mess up the landmark.

640 But, when it came to zoning, these are separate issues. Whether it's too big and
641 too fat for the neighborhood, that's for you to decide. And, they decided that separately,
642 as they should have done.

643 Now, Community Board #7, I was not the Chairman of Community Board #7. I
644 was the Chairman of Community Board #5, and I thought that we were the most
645 sophisticated when it comes to weighing zoning variances with our expertise and our
646 careful dispassionate and elaborate rituals that we went through, but I was really
647 impressed with Community Board #7. They really have quite a good system of
648 committees.

649 There was elaborate testimony from people all across the neighborhood and
650 experts of all sorts, both at the committee level and at the Board and I have to take my hat
651 off to them. They were dispassionate. They were thorough, and they were very complete
652 when it came to the zoning issues and they were smart enough to distinguish the zoning
653 issues from the landmark issues.

654 I think, also, that what is off the table is the access issue, which was raised by
655 some of the speakers at the last hearing.

656 There was some issue as to whether or not you could get access to the landmark
657 and I think that everybody now has come to the conclusion that with the possible
658 exception of an ADA complying elevator, that access is now no problem, not only in an
659 as-of-right building but, for that matter, in the existing building, because if you can fix
660 with minor structural changes the elevator, for which you need no variances, access is
661 now off the table.

662 Now, frankly, I think that you will hear from the speakers that this issue of
663 economic hardship or rate-of-return is pretty well off the table.

664 You know, if, as-of-right, you put three or four brownstones on this site of four
665 stories, don't you think you could get between \$25 and \$40 million just from those alone.

666 I'm fond of saying that Central Park West now has become more valuable than 5th
667 Avenue.

668 This is - - the only thing that's unique about this site is it's a perfectly normally
669 sized site with perfectly normal boundaries. It just happens to be in one of the most
670 expensive and valuable places on the planet, which is off between Central Park West and
671 Columbus Avenue and closer to Central Park West.

672 And, as a (Unintelligible) simple brownstone compliant fully with the zoning
673 laws, I think, shows very simply that economics and economic hardship and whatever
674 variances should be the most minimal is really off the table.

675 Now, what we are not going to discuss is three things here and that is, as I said
676 before, that Landmark approved this building. They found, of course, that it was suitable
677 in that it didn't mess up the synagogue, itself.

678 As you know, I don't think it does too much for it one way or the other. It
679 probably doesn't help it but that's my opinion just as other people had their opinion.

680 Commissioner Gratz (Phonetic) at Landmark, when she filed her written dissent,
681 didn't think that it helped very much but that's her opinion, also.

682 But, they specifically left at Landmarks for you to decide, okay, so it doesn't mess
683 up the landmark but it has to go before you to determine whether it is too big, too tall and
684 too fat to fit in with the zoning. They specifically said that is for you to decide. We were
685 quite right.

686 Mr. Friedman also said in his reply that the community was virulent. I would
687 have preferred well founded or thorough or something like that.

688 I want to assure you that we have nothing against the applicant or any of its
689 directors that Mr. Friedman mentioned.

690 We just think that it's more important to preserve essential mid-block zoning on
691 the upper west side. This is important to all of us who live there.

692 And, the only other thing that I'm not going to discuss is that Mr. Friedman, in his
693 submission, said that our architect, Craig Morrison, didn't have any experience with
694 respect to non-profits or places of worship.

695 Actually, we found him because he was the person who saved Congregation Adus
696 Israel (Phonetic) in Washington, D.C. and helped preserve that and he will actually tell
697 you, if he's not too most to say so that he works and has been on retainer for ten separate

698 places of worship so he is fully familiar with this particular field so I feel badly for Mr.
699 Morrison and he probably is too modest to correct that himself.

700 With that, I think I will let you hear the rest of the speakers, because I know time
701 is getting late the snow is probably increasing.

702 So, I'm not going to really introduce anybody unless we get lost, but Mr. Marcus
703 is next, if you don't mind.

704 CHAIR SRINIVASAN: Why don't we take - - is there
705 someone to speak from Community Board today?

706 SPEAKER: Yes.

707 CHAIR SRINIVASAN: All right. Why don't we take the
708 Community Board's presentation or testimony, first.

709 MS. COWLEY: Thank you very much. My name is Page
710 Cowley. I'm Co-Chair of the Land Use Committee for Community Board #7.

711 With all due respect to all of the learned testimony that you've heard, I want to
712 clarify one issue about the - - it would appear that Community Board #7 is attached to
713 one of the respondent's team, and the Community Board may be considered somewhat
714 stubborn but we're a very independent group, and I just want to clarify that we're here to
715 speak about the project.

716 Also, in the interest of time, I've made copies of the statement.

717 I'm here because of the Community Board land use schedule and the full Board
718 don't often coincide with when other meetings are taking place.

719 We felt because this is such an important institution on the West Side - - we love
720 our religious landmarks and places of worship, that we wanted to make sure that you

721 heard our comments, so that is my preamble, as me, as a person representing, because I
722 know that when I get back to Community Board #7, little angles and devils will be
723 talking behind my back over how I represented this:

724 Now, just to clarify, we haven't seen, as you will hear probably from others,
725 today, the current revisions that the architect has been working on, and I have to say, as a
726 Community Board member, we welcome that to keep coming back to the community.

727 And, they have been very responsive to us over time, both in terms of when they
728 were going to Landmarks, which is a completely separate issue, and we're not discussing
729 that forum and also with the land use.

730 So, our statement - - and, if you have this, I will read it in. It's long. It's three
731 pages. I can do the paragraph introduction and then jump to the chase and then I can give
732 you the copies afterwards but I think it's important that you understand that we thought
733 of the different findings in the same way that the applicant had presented them in the way
734 that you had.

735 So, our statement, here, was actually drafted on December 4th, due to various
736 postponements which seem to be appropriate.

737 We're here now to respond to probably a design that is somewhat old, but I think
738 that the issues are still relevant.

739 So, with all due respect, I'd like to continue.

740 "We saw a scheme from the trustees of Congregation Shearith Israel, who have
741 applied for a series of variances pursuant to Section 72-21 of the Zoning Resolution, with
742 respect to the construction of a proposed community facility residential building at 6-10
743 West 70th Street.

744 The proposed building is intended to replace an existing community house; to
745 provide improved circulation for congregants, specifically disabled accessibility; entering
746 and leaving a landmark synagogue building immediately to the east and to provide a
747 catering facility capable of serving some 450 guests; space for the synagogue's activities;
748 archives and five full floor condominium units.

749 The proposed structure would not utilize all of the permitted floor area for the
750 site, but would violate other provisions of the Zoning Resolution.

751 First, instead of the required setback at 60 feet, the first setback from the street
752 wall would be at 95 feet.

753 Number two, the front setbacks would be twelve feet deep, rather than a minimum
754 of 15 feet.

755 The rear setback would be 6.7 feet deep instead of a minimum of 10 feet deep.

756 Four, the rear yard would be 20 feet of unbuilt space instead of a minimum of 30
757 feet.

758 And, five, the height of the building would be 113.7 feet instead of the 75 feet that
759 is the maximum height under the zoning for most of the proposed building.

760 The proposed building has received a Certificate of Appropriateness from
761 Landmarks Commission, which considered non-zoning aesthetic issues associated with
762 the site's proximity to the Landmark synagogue and its inclusion in the Central Park
763 West Historic District.

764 Several community groups, including Landmark West and coalition of residents
765 in nearby buildings have objected to the requested variances on multiple grounds.

766 The Land Use Committee has held a public hearing continued over two sessions.

767 Section 72-21 requires that a variance application on behalf of a non-profit
768 organization may be granted only upon the making of four findings, and I will skip this
769 but, just to say, that we have looked at the required findings, as you have, about the
770 unique conditions of the site, peculiar and inherent in the zoning lot, and we have made a
771 statement about that.

772 We have looked specifically at the lot coverage and rear yard setbacks, the height
773 setbacks.

774 We have looked at finding (c) that the variance, if granted, will not alter the
775 essential character of the neighborhood or district in which the zoning lot is located and
776 will not substantially impair the appropriate uses or development of adjacent property and
777 will not be detrimental to the public welfare.

778 Again, I state these because these are the criteria, at the time, we have been
779 looking at.

780 Finding (d) that the hardship has not been created by the applicant or its
781 predecessor.

782 Frankly, we've heard no persuasive argument that this finding has not been met
783 and we share with you some of your recent questions that we've heard today.

784 Required finding (e), that the variance requested is the minimum variance
785 necessary to afford relief.

786 The applicant contends that the relief requested is the minimum needed to meet its
787 programmatic requirements, as noted above, and, again, you will see our detailed
788 response.

789 This position appears reasonable with respect to lot coverage and rear yard
790 variances but makes little sense with respect to height and setback variance.

791 All of CSI's programmatic needs are proposed to be met on the lower four floors
792 of the building, well within the permitted height and below the first required setback."

793 We go on to discuss the concern that we have of the sale of the residential stories
794 above the community facility space in order to finance the construction and we are
795 equally concerned, and I'm sorry I didn't mention this, this is important - - of the
796 configuration of the building as it affects lot line windows.

797 Jumping ahead, therefore, be it resolved that Community Board #7 disapproved
798 the proposal by Congregation Shearith Israel for variances as follows.

799 Building, height and base setback, 38 in favor 0 against, one abstention, 0 present.

800 Front setback, 37 in favor, 1 against, 1 abstention, 0 present.

801 Rear yard setback, 38 in favor, 0 against, 1 abstention, 0 present.

802 And, rear yard incursion in R-8 (b) and R-10 (a) and lot coverage, 21 in favor, 13
803 against and 2 abstentions, 0 present.

804 It was a very difficult vote and this, I think, reflects the work of a lot committee.

805 So, I'm going leave copies of this with you and if you have questions, I'll be
806 pleased to try to answer some.

807 CHAIR SRINIVASAN: Thank you, Ms. Cowley. Any
808 questions of the Community Board? All right. Thank you.

809 MR. MARCUS: Madam Chair and Commissioners. My
810 name is Norman Marcus. I appreciate the opportunity to speak here this afternoon.

811 I thought I would focus on your findings and a method of analysis that you've
812 asked the applicant for in connection with determining the issue of hardship.

813 In the first instance, with a non-profit, the issue seems artificial because non-
814 profits don't make profits.

815 And, however, the applicant is seeking to build for-profit an aspect of this
816 building.

817 So, you've asked the applicant to do a vertical slice in the lot for this analysis.

818 I was troubled by that. Maybe I shouldn't have been. Maybe it's just a method of
819 analysis.

820 However, I am aware there is a principal in zoning which is that a zoning lot may
821 not be subdivided if this subdivision creates a non-compliance with the zoning.

822 So, just as one may not subdivide a two dimensional lot into a 10 foot portion and
823 a 90 foot portion because the 10 foot portion would be non-compliant.

824 The notion of subdividing the lot vertically something, by the way, which the
825 Zoning Resolution doesn't contemplate at all since the Zoning Resolution is, believe it or
826 not, two dimensional, produces a rather fantastical landscape.

827 If one looks around the city and contemplates other applications which may now
828 be required to analyze, particularly in the case of mixed use, their hardship with a three
829 dimensional construct basis.

830 So, I listened to Jack. I know Jack quite well. He's an able guy, but I found the
831 analysis fanciful and unreal because I do not believe that is the way economic hardship
832 has been ascertained in the past.

833 I think there are traditional methods for doing this but this vertical slice method
834 departs from anything I'm familiar with. Maybe I'm old fashioned. However, I found it
835 unconvincing.

836 CHAIR SRINIVASAN: Mr. Marcus, are you talking about
837 the fact that the separation of the community facility use versus residential piece when
838 you talk about vertical separation?

839 MR. MARCUS: Yes.

840 CHAIR SRINIVASAN: All right that - -

841 MR. MARCUS: The vertical slice - -

842 CHAIR SRINIVASAN: Some portions of the site on the
843 zoning lot is not being considered in the financial analysis?

844 MR. MARCUS: Yes.

845 CHAIR SRINIVASAN: All right. So, there's a certain
846 amount of air rights, which is not on the table, and a certain amount of use that's now on
847 the table and that has been taken out because it's the non-profit portion. You feel that
848 it's fanciful, is the word you use but - - and not appropriate, is that right?

849 MR. MARCUS: Yes.

850 CHAIR SRINIVASAN: Okay.

851 MR. MARCUS: I think there is certainly as-of-right
852 potential in this right. There is as-of-right for a community facility. There is as-of-right
853 for residential. Both of those uses represent economic uses of the site. They each have
854 value and the applicant, indeed, by tendering the as-of-right alternatives for the Board has
855 demonstrated that there is as-of-right potential.

856 The synagogue's mission is achievable, fully achievable; has been fully
857 achievable within the current buildings.

858 The applicant wishes to replace one of the buildings, no problem. The zoning lets
859 them do that.

860 The replacement, presumably, will improve the elevating; does require a
861 variance. It's permitted under zoning.

862 As far as the applicant's choice to build residential, it may do so. However, it's
863 subject to zoning.

864 Now, the zoning allows an FAR but it's illegal, also; allows height and setback
865 and the applicant's December 28th letter, I thought was quite disingenuous in suggesting
866 that when the site was rezoned in 1984, it lost rights that it had.

867 Now, we all that's not so. I mean, we know it because we're on the Board of
868 Standards and we're zoning people and we know that there are no vested rights except
869 rights that are built.

870 In this case, the old air rights from the R-10 depth of whatever it was - - 200 feet
871 are gone with the wind.

872 There is no hardship there. That was police power. That was the City of New
873 York determining what the appropriate zoning was for this area.

874 And, this rezoning was not on this block. It was looked at comprehensively as
875 part of an overall plan which was then ratified by the Landmarks Commission, not in a
876 zoning way but in an aesthetic way and I thought the Community Board was quite clear
877 in distinguishing the roles and distinguishing their votes on this application.

878 The last time I was here, Commissioner Collins, you asked me suppose they had
879 applied for a Special Permit? And, I said to you, gee, that makes all the difference or
880 makes a big difference because they did not apply that way. Why? Because the
881 Landmarks Commission would not join that application for a Special Permit and so the
882 applicant had to come, on its own, here, for a 72-21 variance which is very different
883 findings then a Special Permit.

884 And, those variance findings are not only important to this case. They're
885 important in every case in the city.

886 The variance power is the power to affirm the zoning or to break the zoning.

887 And, there have been times in the past when there was concern that this Board
888 might actually be taking unto itself powers to rezone when, in fact, the rezoning agencies
889 were not exercising them.

890 This application for a variance, in a sense, seeks to reverse the zoning
891 determinations in 1984 and to the extent that the reasoning here is applicable elsewhere,
892 particularly the vertical slice reasoning, represents a danger.

893 Anyway, I don't want to go on about that but those are my thoughts.

894 I did want to bring up one other thing.

895 A lot has been said about the lot line windows in eighteen in relation to the third
896 finding, which is the impairment of substantial value.

897 Whatever the legal duties of the owners of those apartments, those apartments
898 gained value from those windows.

899 There are also court windows in that building which, I believe, would be blocked
900 by the variance requested.

901 And, nothing has been put into the record, however, with respect to the impact of
902 the rear yard variances and setback variances on number ninety-one.

903 I am advised and we'll submit a letter on this effect, that fourteen units in ninety-
904 one will have their light and air diminished by a third by those variances.

905 So, those units, essentially, are going to become darker as a result of the requested
906 variances. I'm talking about the rear yard.

907 I think the issue, someone said here, was basically the variance, this variance is an
908 application to transfer value from existing buildings to the proposed building. That
909 would represent the diminished value in the fourteen units in ninety-one and the
910 diminished value in the units blocked in number eighteen. That's my testimony.

911 CHAIR SRINIVASAN: Thank you, Mr. Marcus. Any
912 questions?

913 I just have a question for ninety-one. You said about the fourteen units?

914 MR. MARCUS: Yes.

915 CHAIR SRINIVASAN: So, they're on the lower floors?

916 MR. MARCUS: Yes.

917 CHAIR SRINIVASAN: All right.

918 MR. MARCUS: Well, some are and then there are those
919 that are affected by the setback at the upper floors of the proposed building.

920 CHAIR SRINIVASAN: All right. So, there's some that
921 are affected by the setback but just going back to the rear yard and lot coverage that is
922 related to the foregoing space - -

923 MR. MARCUS: Yes.

924 CHAIR SRINIVASAN: - - I just want to clarify. So,
925 there's some units that get directly affected by those waivers, is that correct?
926 MR. MARCUS: That's correct.
927 CHAIR SRINIVASAN: And, I think it would be helpful,
928 because you said you're going submit something into the record?
929 MR. MARCUS: Yes, yes.
930 CHAIR SRINIVASAN: Can you just also let us know
931 whether these units - - do these buildings have a rear yard? Do they have non-complying
932 rear yards?
933 MR. MARCUS: These buildings have a rear yard.
934 CHAIR SRINIVASAN: All right. And, they have the full
935 thirty feet?
936 MR. MARCUS: No, and I really can't answer that.
937 CHAIR SRINIVASAN: All right, it's just a question.
938 MR. MARCUS: But, we have had an architect look at it
939 and we have a letter which we'll submit. Okay. We'll give you that.
940 CHAIR SRINIVASAN: Okay.
941 MR. MARCUS: We will want to give you that
942 information.
943 CHAIR SRINIVASAN: All right. Thank you, Mr.
944 Marcus.
945 Mr. Sugerman.
946 MR. SUGERMAN: Thank you, Norman. I have a letter.

947 MR. COSTANZA: I'm sorry. Please state your name.

948 MR. SUGERMAN: My name is Alan Sugerman. I'm an
949 attorney representing myself and a neighbor who owns a brownstone directly across the
950 street.

951 I have a written statement that I submitted but, just to be sure - -

952 CHAIR SRINIVASAN: Is this the one that came recently?

953 MR. SUGERMAN: Yes, yes. I wasn't sure I would get
954 back from my trip to Seattle.

955 And, in that regard, I was in Seattle for a family event presided over by a
956 Sephardic rabbi.

957 I am Jewish. I am troubled by the statement about virulence.

958 I just want to assure the Board that many, many of the opponents are Jewish, like
959 myself, and the rabbi in Seattle that happened to have married me and will be in New
960 York in a few weeks to show his tenth grade students from Seattle the beautiful landmark
961 building across the street, and I'm really delighted and honored to live close to this
962 institution.

963 Of course, the congregation, the applicant, here, is implying that it has some
964 financial need.

965 Why else would so much attention be given and contortions being made to
966 provide some economic benefit through the contortions that Mr. Marcus just described?

967 Let's really be clear. There's nothing in this record at all, no evidence
968 whatsoever, of any need, financial need that's been presented by this applicant.

969 To the contrary, we have presented some indication that there is no financial need
970 and this congregation should move forward in the same way that other institutions have
971 moved forward such as the 76 and Amsterdam "Y", which is over an \$80 million project
972 funded privately; the Eldridge Street Synagogue, which is a \$20 million project funded
973 privately.

974 And, I just want to make clear that when the Board gets to the finding part of this,
975 it must assume - - it has to be neutral on the financial issue or must assume, we believe
976 assume, they do have the financial resources to meet their programmatic needs without
977 any income whatsoever from these condominiums floors.

978 And, there's a concern, as Norman Marcus brought out, as to the relationship of
979 the (b) finding in this hybrid building.

980 I know that the Chair, here, asked for case law to justify what the congregation
981 wants to do here and the same request was made by the Chair of the Community Board
982 #7 land use committee who's also a lawyer for the case law.

983 I haven't seen it. I don't think you've seen it. I don't think it exists. I don't think
984 there's any basis to devise a non-economic slice and then kind of need for relief.

985 And, the (b) finding, if you are going to have a (b) finding for a non-profit, would
986 be of significance only if an economically feasible building cannot constructed on the
987 site.

988 But, this site is entirely economically feasible, as will be shown later.

989 I want to get to the other point on what can be accommodated in the as-of-right
990 building.

991 I just do not understand how anyone could accept an argument that the caretaker's
992 apartment on the fourth floor of this building cannot be moved to the fifth or sixth floor,
993 right upstairs, in an as-of-right building which would open up an enormous amount of
994 space. There's just no way. I would like to know what kind of finding or factual basis
995 the Board can find in this record to justify this position and, as well, the position of the
996 caretaker's apartment cannot be met in the ample space provided in the other living
997 quarters on this integrated zoning site, the parsonage?

998 And, the last point I'd like to make and which, again, I do not think the applicant
999 was responsive to your request as to shadow studies.

1000 The significant analysis is to compare an as-of-right building to the proposed
1001 building, not the current building to the proposed building. This has not been done.

1002 There's no analysis at street level.

1003 Now, we understand that mid-block zoning was established, in part, to protect sun
1004 and light on narrow streets.

1005 But, the applicant, here, would have us believe that if they violate mid-block
1006 zoning, then there is no impact.

1007 And, I believe that in these mid-block zoning situations on these narrow streets,
1008 that the Board cannot just totally ignore this impact and I would like to see the studies
1009 from the applicant. Thank you. Are there any questions?

1010 CHAIR SRINIVASAN: Any questions for Mr. Sugerman?

1011 MR. SUGERMAN: Thank you.

1012 CHAIR SRINIVASAN: Thank you.

1013 MR. LEVINE: My name is Martin Levin. I'm a real
1014 estate appraiser. I have been a commercial real estate appraiser in New York City for
1015 thirty-three years.

1016 I was asked by Landmark West to review the Freeman/Frazier report dated March
1017 28th, 2007 and December 21st, 2007.

1018 I've reviewed that just from the economics of their findings and find that there are
1019 very serious flaws in the report that require revision.

1020 I have a report that I'll hand out, so I'm going to summarize my findings,
1021 basically, that there are several areas that require reasonable revision, the reasonable
1022 revision of which proves that these, accept for the tower scheme, all these developments,
1023 alternatives are feasible including the as-of-right are all residential, very quite feasible
1024 and the mixed use community facility and two floors of residential. I believe that's an as-
1025 of-right scenario is also economically feasible.

1026 The factors that determine economic feasibility are basically you sell something
1027 and whatever it costs to build, the difference between the cost to build and what's left
1028 over is profit. If there's adequate profit, it's economically feasible.

1029 Let's start off at the acquisition cost very briefly.

1030 There are five vacant land, quote unquote "comparables" presented.

1031 I've reviewed each one of those and there are serious flaws in the data.

1032 One of the sales is misrepresented. There are actually two parcels that were
1033 transferred that day.

1034 The effective price per square foot of buildable area is significantly less.

1035 Another sale was part of an assemblage where a significant number of air rights
1036 were purchased along with the site a year earlier, which effectively reduces the purchase
1037 price of that site dramatically.

1038 Another site is an eight story parking garage under a long-term lease. It's part of
1039 a long-term assemblage play. It is not a vacant land sale.

1040 Another site sold earlier, a year earlier, for over \$150 per buildable square foot
1041 less. There's no explanation of what happened in one year that that price increased
1042 substantially.

1043 And, further, that a very similar site was purchased by Rockrose Development at
1044 a block-front immediately north at a much, much lower price.

1045 It seems that these sales in Chelsea, 34th Street, 1st Avenue, West 57th Street, were
1046 cherry-picked to arrive at a desired result.

1047 I have that conclusion based on the adjustments.

1048 Sales that took place last summer were adjusted by ten percent, as if the market,
1049 in a few months, increased ten percent. Anybody reading the newspapers sees that the
1050 condominium market in New York is not moving in that direction.

1051 Further, they make a twenty percent upward adjustment for Central Park views.

1052 I heard the testimony today and this is described as a Central Park view
1053 development.

1054 The only development alternative that will yield any Central Park views is this
1055 tower development with the hotel size rooms, these 350 square foot rooms that are not
1056 saleable, not economically feasible even according to the Freeman/Frasier report, and not

1057 developable because they're not going to get past the zoning variances required and that's
1058 the only plan that provides Central Park views.

1059 Mr. - - the appraised value relies on making very substantial upward adjustments
1060 as if this site has Central Park views, yet, the only alternative that does have Central Park
1061 views is disqualified.

1062 In the acquisition costs, then, at \$750 a square foot, I believe, is very overstated.

1063 The report states that. My report states that. And, I believe, that it should be more
1064 reasonably about \$500 a square foot for every developable square foot that is actually
1065 delivered.

1066 Now, the feasibility study charges every development alternative, whether they're
1067 developing six thousand square feet or sixteen thousand square feet, fourteen million
1068 eight hundred and sixteen thousand dollars.

1069 In the revised as-of-right community facility residential facility, that mixed use
1070 development, they envision a developer actually paying \$2 million more to buy the site to
1071 build a residential product then will be the total sales revenues from the project that's to
1072 be built. This defies economic logic; that somebody would pay more for the land than
1073 the product they could even build on it and, yet, there is a cost to build.

1074 The next moving piece is the sale price of the units. The sale price of the units, I
1075 don't disagree with the pricing. That's an appropriate per unit price.

1076 The pricing of the tower facility is a folly. That doesn't merit a response.

1077 However, the outdoor space, the floor plan shows sweeping terraces. They were
1078 seriously underpriced. I believe a revision to the pricing of the terraces is appropriate at
1079 \$1,000 a square foot. My report explains why.

1080 Finally, is what is the saleable area? I cannot find where they got fifty, sixty
1081 percent loss factors on the residential area.

1082 Most condominiums in New York have efficiency of an above-grade residential
1083 area, the gross building area, to the saleable area in the mid 80's, 85, 86 percent. I've
1084 documented that in my report.

1085 I've recalculated the above-grade saleable area based on the architect's
1086 measurements and see about 86 percent, 87 percent.

1087 CHAIR SRINIVASAN: And, you've taken out the core
1088 and the second means of egress and - -

1089 MR. LEVINE: That's correct.

1090 CHAIR SRINIVASAN: Okay.

1091 MR. LEVINE: I mean, the plans are problematic. On the
1092 lower as-of-right and with the lesser variance, there's two floors of residential and three
1093 floors of residential, yet, those are either one, two or three apartments. Yet, there's a full
1094 residential lobby provided with a freight elevator, a service elevator, a large reception
1095 closet, a place for a concierge and or doorman.

1096 I wonder what they were thinking of in setting up these plans.

1097 Basically, what you have as-of-right is a building lot that begins either on the
1098 fourth or fifth floor and someone, if they've chose to go that route, would probably build
1099 a very grand single-family home that has oblique views of Central Park with large
1100 terraces resulting from the setbacks.

1101 Finally, there's the soft construction costs. The costs charge the developer for
1102 \$14 to buy the land, revising that proportionately to the amount of land that's actually

1103 developable area that's being delivered, reduces the financing costs - - costs,
1104 dramatically, because the largest single element in the feasibility study in terms of cost is
1105 financing the land.

1106 So, when we take that out and adjust it, which I have, the construction costs drop
1107 dramatically.

1108 Further, there's an assumption that the interest rate on the construction loan is, I
1109 believe, 9.25 percent which assumes that - - 9.5 percent which assumes an 8.25 percent
1110 prime rate. Prime rate is not eight and a quarter. It's currently 6. I think a couple of
1111 months ago, it was 7. I've recalculated the Freeman/Frazier report using a 7 - - six and a
1112 half percent prime rate and 7.75 percent revised interest rate and the numbers come out
1113 dramatically different.

1114 The issues are that there are - - all the development, except for the tower, prove
1115 economically feasible.

1116 The as-of-right facility, all residential, is quite feasible and based on the numbers,
1117 I'm coming up with, they should consider a joint venture a private developer and kick in
1118 the land part. There's a lot of money to be made on this site.

1119 The as-of-right with the two floors of residential is also extremely profitable, both
1120 to a developer and or to sell the development rights above their facility. They could
1121 offset a portion of their costs by such a sale.

1122 And, I'll hand out these reports. Any questions?

1123 CHAIR SRINIVASAN: Yes.

1124 VICE-CHAIR COLLINS: You said that, generally, the
1125 sales price assumptions for the residential units were generally correct but I'm not sure I
1126 understood what you said about terraces after that.

1127 MR. LEVINE: Okay. The terraces were valued between
1128 \$250 a square foot and \$750 a square foot.

1129 Typically, outdoor space in Manhattan sells for about forty percent of the indoor
1130 space, meaning if the space indoors was \$1,000 a square foot, you'd expect to pay about
1131 four hundred for a terrace.

1132 I've modified the projections to reflect a \$1,000 square foot price for the terrace
1133 space.

1134 VICE-CHAIR COLLINS: Okay. And then your last
1135 comment about the - - if you could just flesh out a little bit about the sale, potential sale
1136 of development rights from the site?

1137 MR. LEVINE: Well, the - -

1138 VICE-CHAIR COLLINS: First of all, where would they
1139 go?

1140 MR. LEVINE: Okay. They could go - - if there was
1141 the - - that's their scenario, the revised as-of-right community facility residential
1142 development. I'm working from the architect's plans.

1143 If that plan, in fact, does accommodate their community use facility space, they
1144 would have approximately - - that's Table 1 in my report. It's clearer when you have the
1145 report in front of you but there are variously, depending on how you measure it, 5,316

1146 square feet saleable or 6,494 square feet saleable above the - - I believe it's a four-story
1147 or five-story community facility. That could accommodate their needs, so I'm told.

1148 And, so, the architect's plans appear to present - - and they could - - I believe they
1149 could sell those air rights for at \$500 a square foot. There's proceeds of seven million
1150 twenty-eight.

1151 VICE-CHAIR COLLINS: All right. I'll look at your
1152 report.

1153 CHAIR SRINIVASAN: All right. I just have one question
1154 because you talked about the acquisition price, and you talked about the fact that you
1155 think it's more in the range of \$500 per square foot versus, I believe, \$750.

1156 In your analysis, did you find any comparable land sales that reinforce that
1157 number or is it based on the fact that - - I understand you've rejected the comparables
1158 they've given us but I'm just curious to know whether you have identified some
1159 comparables that reinforce the \$500 per square foot?

1160 MR. LEVIN: Yes, I did, short of appraising the property,
1161 the site on West 86th Street sold for \$396 an FAR. 200 West End Avenue - - it's in the
1162 report- - sold for \$373. In another site on West 22nd at \$422 per FAR. There are sales in
1163 the upper West Side.

1164 CHAIR SRINIVASAN: All right. We'll definitely take a
1165 look at that. Thank you. Who's your next speaker, Mr. Lebow?

1166 MR. LEBOW: Our next is the architect, Craig Morrison.

1167 (Inaudible)

1168 CHAIR SRINIVASAN: You'll have to speak into the
1169 microphone, Mr. Lebow. I'm sorry.

1170 MR. LEBOW: Our next speaker is Craig Morrison, who is
1171 the architect who I said really does have experience in this area.

1172 CHAIR SRINIVASAN: All right.

1173 MR. MORRISON: Thank you. My name is Craig
1174 Morrison. I'm a registered architect in the State of New York and several other states.

1175 And, I've been accused of modesty. Actually, that's very untrue. I love to brag.
1176 I won't.

1177 In the 24 years of my independent practice, I would say virtually all of my clients
1178 have been not-for-profit. They haven't all been religious, but they've been not-for-profit.

1179 I had to say I feel like I'm in a surrealistic landscape of limp watches. None of
1180 my clients ever have complained about economic return. The spiritual return has been
1181 what they have been looking for. Anyway, enough of that.

1182 I was asked to review the architect's plans with views of answering the question
1183 of can the congregation's mission be accomplished within an as-of-right package.

1184 I was given a whole series of plans which says to me that this is a design that's
1185 very much in the process of evolution. I feel like there's a little (Unintelligible) climbing
1186 up onto the land. He hasn't quite learned the - - but he's working on it. He's going to get
1187 there. It will take a while.

1188 The plans seem to be in flux. Some things, even in terms of mission, seemed to
1189 be in flux.

1190 The caretaker's apartment appears in some places and it doesn't appear in others.

1191 There's a facility in the building called the small synagogue. This, apparently, is
1192 a recreation or a transplantation of something. I haven't really had a chance to visit the
1193 building, actually, of a historic synagogue that belonged to this congregation. It was
1194 implanted in the landmark synagogue when it was built.

1195 One plan shows they've moved it a different location. One leaves it where it is;
1196 probably where it should be. Enough of that. It's an evolution.

1197 One of the things that I was asked to look at was the question of accessibility to
1198 the landmarked synagogue which, as you are probably are familiar with, exists about a
1199 half story above the grade level.

1200 There's an elevator in the - - I'm Christian. I call it a parish house. It's a
1201 community facility, the name of this new building, that was put in. Actually, this
1202 building, so I understand, originally, was composed of two brownstones that have had a
1203 new façade on them and the elevator was inserted. It isn't quite big enough to deal with
1204 ADA considerations but if one hasn't been inserted, a larger one could be inserted.

1205 It would need to have a front door and a back door or side door to make that
1206 (Unintelligible) level.

1207 Presuming that there's going to be a new building, that will be solved. It's solved
1208 very close to the existing building within fifteen feet or so of the edge of the landmark
1209 synagogue, and it seems to be something that's taken care of.

1210 I was asked to look at space needs.

1211 There seemed to be three mission components, as I understand them. One is adult
1212 education that seems to surround the times of services in the synagogue.

1213 One is Hebrew School that has a student body of said to be 35 to 50 students.

1214 And, one is a toddler program which has a comparable numbers of students, a few
1215 more.

1216 Now, it was also called to my attention that the toddler program - - the toddler
1217 program is proposed for the second floor. It has been called to my attention that the New
1218 York City Department of Health has a regulation that toddler programs have to be on the
1219 first floor or the basement. I assume - - I didn't even go there. I assume that's being
1220 resolved between the City and the architects and the congregation.

1221 These programs tend not to be simultaneous occupancies. The Hebrew School
1222 and the adult education programs don't overlap.

1223 The toddler program, that overlaps the Hebrew School by an hour and a half a
1224 week, according to the analysis that was done on this and it would seem to lend itself to
1225 some creative programming and have the kids do their recreation in the community hall
1226 while the other groups shares their rooms.

1227 The question is is there enough room in the as-of-right? For all the study, the
1228 answer was yes.

1229 I did a kind of a space needs analysis based on the minimum requirements of the
1230 City Building Code.

1231 Now, nobody wants to design to minimum requirements. Thank you.

1232 Nobody wants to design to minimum requirements. That's not enough. We want
1233 a really nice place for these students. This is the house of God, and it deserves to be
1234 wonderful. However, that's a starting point.

1235 I looked at it also in terms of the actual facilities being provided.

1236 On two and a half floors, the proposal is to provide fifteen classrooms. Fifteen
1237 classrooms for a student body of 35 to 50 is sort of a classroom for every three and a half
1238 students, enough said.

1239 Each floor, as it should had, has toilet facilities to accommodate boys and girls
1240 and a separate one for either handicap use or the teachers.

1241 The total number of these, as I analyzed them, again by the Code, and we want to
1242 do better than the Code, provides sufficient toilet facilities for 840 people, a student body
1243 of 35 to 50 or maybe 60 with the toddler program. The reason I perseverated about this
1244 was these are ranges - - you know from the plans in two ranks back-to-back. Each one is
1245 about ten feet wide.

1246 Now, if you eliminate one of those, squeeze the whole thing together, that takes
1247 care of your side yard or your rear yard encroachment.

1248 The last item was the caretaker's apartment. It exists in some proposals and not in
1249 others and there is a caretaker's apartment in the building now; two bedroom apartment.

1250 I looked at it, man, this is a nice pad. This overlooks a very pleasant street on the
1251 Upper West Side.

1252 If you look sideways, you have a Central Park view. This is a nice apartment for
1253 a caretaker, not that he doesn't deserve it.

1254 If I were the caretaker, I don't know if I would want to live in the middle of a
1255 school facility like this.

1256 But, be that as it may, the caretaker's apartment, as proposed, is located on the
1257 second - - fourth floor. It takes up half of the floor. There are three classrooms in the
1258 rear, the caretaker's apartment in the front.

1259 And, the question was if you really need more room for students, if I'm totally
1260 wrong in my analysis and need more room for students, more the caretaker up into one of
1261 the additional as-of-right floors that already is designated for residential use. It wouldn't
1262 be income producing but it would designate all right for residential use or the synagogue
1263 has appended to it since the day it was built a former parsonage that now has an income
1264 producing tenant in it. We probably don't know who it is.

1265 We have a feeling he may be leaving the City of New York for professional
1266 reasons.

1267 Again, be that as it may, it's hearsay but this is household (Unintelligible). The
1268 caretaker could be moved there or he could be given a housing allowance.

1269 You know, if it's felt that there needs to be 24 hour presence in the building, hire
1270 a security guard who will man it at night.

1271 Unless there are questions, I think this covers the areas of - - certainly others have
1272 presented it with much more eloquence than I have and I have to end with an apology.

1273 I had actually written this all up and I assumed you'd have it by now and
1274 somehow I sent it into cyber space but it's still circulating around with sputnik. It hasn't
1275 come to light. It will very soon and we'll be submitting it.

1276 CHAIR SRINIVASAN: All right. Any questions? Any
1277 questions for the architect? All right. Thank you.

1278 MR. MORRISON: Thank you very much.

1279 CHAIR SRINIVASAN: Mr. Lebow, who is your next
1280 speaker? I know there are some representatives of elected officials as well so I'm just
1281 trying to get - -

1282 MR. LEBOW: Certainly, if you want to go out-of-turn and
1283 take them, we would have no objection.

1284 CHAIR SRINIVASAN: All right. Are there speakers,
1285 elected officials here. Yes. Please come forward.

1286 I just want to make sure - - this is just for representatives of elected officials. Are
1287 you representing an elected official?

1288 SPEAKER: No.

1289 CHAIR SRINIVASAN: All right. We're not taking public
1290 testimony right now.

1291 I know it's a long hearing, but everybody is waiting and if you feel that you
1292 cannot wait, you can submit to us in writing as well.

1293 SPEAKER: I would rather wait till the public speaker - -

1294 CHAIR SRINIVASAN: All right. It will be happening
1295 soon. All right. Yes.

1296 MR. CHAUSOW: My name is Jared Chausow. I'm a
1297 legislator aid to State Senator Tom Duane, and I'm testifying on his behalf. I do have
1298 copies I will be passing out.

1299 "My name is Thomas K. Duane, and I represent the New York State 29th
1300 Senatorial District, which includes the Upper West Side, where Congregation Shearith
1301 Israel's site for its proposed building at 6 through 10 West 70th Street is located.

1302 Thank you for the opportunity to present testimony before the New York City
1303 Board of Standards and Appeals today.

1304 As you know, I spoke against CSI's original application for variances at the
1305 BSA's November 27th, 2007 hearing.

1306 I do not find CSI's new application to be substantively different and the same
1307 objections I had to that original application still stand.

1308 As you know, CSI, a religious not-for-profit institution, plans to construct a new
1309 community house at 6 through 10 West 70th Street for its programmatic needs. However,
1310 while CSI could construct as-of-right an appropriately sized building for these purposes
1311 under the (a) as a mid-block R-8 (b) contextual zoning and as a part of the Upper West
1312 Side Central Park West Historic District it is, instead, seeking seven variances from the
1313 BSA.

1314 Most of these variances will be used to construct five new floors of market rate
1315 residential units for revenue generating purposes.

1316 Sections 72-21 of the Zoning Resolution states that a variance must not alter the
1317 essential character of the neighborhood or district in which the zoning lot is located,
1318 substantially impair appropriate use or development of adjacent property or be
1319 detrimental to the public welfare.

1320 Unfortunately CSI's proposed plans will be harmful to the quality of life for its
1321 neighbors and the character of its neighborhood.

1322 To construct the additional five floors of private residential units, CSI is seeking a
1323 height variance that would allow it to build 30 feet taller than what is currently allowed
1324 under R-8 (b) mid block contextual zoning within which it is located.

1325 This additional height will block the air, light and view for at least seven east
1326 facing windows and dozens more courtyard windows for its adjacent building at 18 West

1327 70th Street and cast luminous shadows on neighboring low-rise historic buildings along
1328 West 70th Street.

1329 Current residents of these buildings will not only suffer the loss of open views and
1330 sunlight but also diminish property values as a result.

1331 Originally, CSI gave two reasons for the construction of these residential units;
1332 that it is necessary either to finance the construction of the building, itself, or to finance
1333 the programs that will operate within it.

1334 I and others argued persuasively that regardless of the reason, a religious non-
1335 profit institution should not be using zoning waivers in variances as a method of
1336 generating funding.

1337 So, CSI has now come back with a new rationale.

1338 The new application draws attention to its plans for programmatic use of four of
1339 the nine newly constructed above-grade floors and cites practical difficulties this zoning
1340 lot presents in producing a building that addresses CSI's current programmatic hardships.

1341 A closer look, however, shows many of these alleged hardships with the sole
1342 exception of a need for an ADA compliant elevator are self-created and there is no
1343 justification for the proposed variances.

1344 Indeed, the installation of an ADA compliant elevator would not require a
1345 variance at all.

1346 As a State Senator representing much of Manhattan, I continuously work with
1347 community activists and other elected officials to fight many inappropriate developments
1348 that would encroach on a neighborhood's character, quality of life and sustainability.

1349 The negative effects of this application, if approved by BSA, will not only
1350 directly harm the neighborhood of the Upper West Side but also the precedent created by
1351 such a decision would seriously set back preservation efforts across the City as
1352 developers and property owners become empowered to seek inappropriate variances to
1353 develop their real estate holdings.

1354 Our city's zoning and historic preservation laws specifically designed to protect
1355 the character and sustainability of our neighborhoods would be rendered ineffective if
1356 special exemption are granted - - excuse me - - are readily given to developers including
1357 non-profit organizations seeking to expand their coffers at the expense of the community.

1358 We cannot let that happen.

1359 In light of these matters, I strongly urge the BSA to deny CSI these variances."

1360 Thank you.

1361 CHAIR SRINIVASAN: Thank you. Are there anymore
1362 speakers who are representing elected officials? All right. Your next speaker, Mr.
1363 Lebow.

1364 MR. LEBOW: All the rest of our speakers are respectfully
1365 requested by me to try and complete their remarks in three minutes, if you can, but five
1366 minutes at the outset. That's my request to you.

1367 CHAIR SRINIVASAN: Excuse me, Mr. Lebow. We - - I
1368 know that you've had a discussion with our staff regarding the few speakers that you
1369 were going to have speaking and we said we would allow you five minutes.

1370 The members of the public are all required to for three minutes at the most.

1371 All right. So, I just want to make sure that you - -

1372 MR. LEBOW: I accept that amendment.

1373 CHAIR SRINIVASAN: All right. We're determining the
1374 amount of time.

1375 MR. LEBOW: Yes. Sorry.

1376 CHAIR SRINIVASAN: And, just to be clear, Mr. Lebow,
1377 you have how many more speakers?

1378 MR. LEBOW: On my list are one, two, three, four, five.

1379 CHAIR SRINIVASAN: Five speakers? But, I believe
1380 before it was - -

1381 SPEAKER: I will be brief.

1382 MR. COSTANZA: Just please state your name for the
1383 record.

1384 CHAIR SRINIVASAN: Please be brief and we have a
1385 long hearing.

1386 MR. DISANTO: My name is Charles Disanto.
1387 I'm an architect and a principal at Walter B. Melvin, architects, in New York.
1388 I mostly deal with restoration of existing buildings and preservation and have
1389 been working in Manhattan for twenty years.
1390 I was asked by Landmark West to specifically look at particular issues with the
1391 proposal with regard to impact on adjacent properties and I wanted to clarify one question
1392 or at least that came up in earlier discussions with Mr. Marcus regarding 91 Central Park
1393 West.
1394 I inspected that building in connection with this analysis.

1395 The drawings that I based that review on are apparently outdated but they're the
1396 October 22nd drawings that were prepared by Platt's office.

1397 The apartments that are affected at 91 Central Park West in the rear of the
1398 building are the - - I'm sorry, I've lost my spot.

1399 I also, as it happens, am consulting architect for 18 West 70th Street doing exterior
1400 work and the impact on that building has been discussed in terms of the lot line windows
1401 at the 7th, 8th and 9th floor A and C apartments as well as the court windows and that east
1402 facing court.

1403 But, in terms of the first setback above the 23 foot base in the back of the lot, the
1404 non-compliant scheme which would reduce to twenty feet the setback would impact
1405 apartments at the third, fourth and fifth floor F and E lines of 91, in particular, in the F
1406 line, the living room and master bedroom windows which are situated approximately ten
1407 feet from the lot line between the properties.

1408 The E line is the adjacent apartment to the east and is on the property line. The
1409 primary impact there would be in the living room window which faces to the west at that
1410 apartment.

1411 A similar reduction in view depth and light would occur at the setback above the
1412 base; a variance request at the 7th, 8th and 9th floors of 91, in those same apartment lines.

1413 There is also an impact on the smaller residence at 9 West 69th Street, which is the
1414 building adjacent to 91 to the west.

1415 This review is prepared in a report that I'm sure you'll be able to receive a copy
1416 of. Thank you.

1417 CHAIR SRINIVASAN: Thank you. The next speaker.

1418 Are you speaking as a member of the public or are you speaking - -
1419 SPEAKER: No.
1420 MR. LEBOW: I moved him up a little bit because he was
1421 lower on the list because he has to go - -
1422 CHAIR SRINIVASAN: What are you speaking on? What
1423 topic are you speaking on?
1424 MR. LITTON: I'm speaking as president of 91 Central
1425 Park West Corporation and as an individual.
1426 MR. COSTANZA: Please state your name for the record.
1427 You will have three minutes.
1428 MR. LITTON: My name is George Litton.
1429 I have been a resident at 91 Central Park West for over forty years and a life-long
1430 Westsider with a knowledge and love of my neighborhood.
1431 I appear personally and as president of 91 Central Park West Corp. It's a
1432 cooperative apartment house building immediately adjacent to the south of the
1433 synagogue.
1434 I represent some 92 families, only a small minority of which are directly affected
1435 by the synagogue's development plans.
1436 All of my tenant shareholders, however, care deeply about our neighborhood and
1437 are united in an opposition to the application before you.
1438 A few words of personal background.
1439 I'm proud of my Jewish heritage but have never felt the need to belong to a
1440 synagogue.

1441 My moral bearings were set early in life by having had the good fortune to attend
1442 the ethical culture schools a few blocks to the south of Congregation Shearith Israel.

1443 Ethical values matter to me.

1444 Although not a member of Congregation Shearith Israel, I am enrolled as a friend
1445 of Shearith Israel.

1446 Indeed, I count Alan Singer, Executive Director of the congregation, as a personal
1447 friend.

1448 We enjoy cordial neighborly relations. We have extended the hand of
1449 cooperation to the synagogue offering participation in our anti-terrorism training,
1450 granting the congregants the right of sanctuary in our building in the event of their forced
1451 evacuation.

1452 The synagogue has granted us access to its property for the conduct of our
1453 (Unintelligible) registration projects.

1454 That does not mean, however, that friends may not have honest differences of
1455 views on key issues. This is one of them.

1456 Others far more knowledgeable than I have dealt with the technical issues before
1457 you.

1458 In dealing with the technical issues before you, however, I respectfully ask you,
1459 also, to consider another criteria, perhaps not explicitly in your mandate but one that
1460 pertains to all matters, ethics.

1461 Is it ethical for religious institution purportedly unable to fulfill its mandate
1462 through the financial support of its congregants to seek a subsidy from its neighbors by

1463 forced contribution of light and air to which it is not entitled so that it may continue to
1464 serve its congregants? I think not.

1465 There are thriving synagogues throughout the City that neither seek nor need such
1466 subsidy.

1467 Congregation Shearith Israel should seek light and truth within itself, not at the
1468 expense of its community. Thank you.

1469 CHAIR SRINIVASAN: Thank you. The next speaker.

1470 MR. COSTANZA: Please state your name in the record.

1471 You'll have three minutes.

1472 MR. PRINCE: Hello. My name is Ron Prince and I
1473 represent the Board of Trustees at 18 West 70th Street and we'd like to put some new
1474 information on the record.

1475 Obviously, there's a lot of discussion of the lot line windows at 18 West 70th
1476 Street and from the beginning, BSA has sought this information; has sought more
1477 information on this topic from the applicant and the applicant has really made no effort to
1478 obtain it.

1479 What we've done is we've basically bought the floors and did a catalog of the
1480 units behind the affected windows to help document the significant loss of value that
1481 would take place if this proposal is allowed to go forward.

1482 In addition, we have shared this document with real estate brokers in the area
1483 familiar with the block and all agree that the loss of value to the owners would be
1484 absolutely enormous.

1485 I'm not going to detail this. We urge you to spend time with this. We know time
1486 doesn't permit it.

1487 The document shows for each unit who lives there; basic apartment layouts;
1488 location of each unit within the building and description and photos of impacted rooms.

1489 What I would like to do, if I could, is just take you two pages in where there is as
1490 summary sheet and you see that of the seven lot line windows that would be fully bricked
1491 over, they belong to a total of six different units.

1492 We've actually thrown in another additional apartment on the 9th floor that is just
1493 so significantly impacted by this, even though it doesn't have classic lot line windows.
1494 Its window is actually around fifteen feet from the lot line.

1495 The room breakdown here is that the windows that would be fully bricked over,
1496 of those seven, four are in master bedrooms; two are in children's bedrooms and one is in
1497 a bathroom.

1498 Three are what we're classifying as combo windows and is a particularly
1499 upsetting combo on the value front, because the combo means that there is a lot line
1500 window in the room that would be bricked over and then there are other windows in the
1501 room that face the eastern courtyard which, as you know, is effectively rendered into an
1502 air shaft.

1503 So, a window that is currently filled with light and air is effectively plunged into
1504 darkness.

1505 And, then that - - I won't go into detail on it, here, but apartment 9E, which is
1506 documented on the 9th floor, is one that we feel is rendered virtually unlivable given that
1507 its one main window in the studio apartment is merely fifteen feet from the brick wall and

1508 then there's a small side window in that room as well that's facing the darkened
1509 courtyard.

1510 So, we hope you will spend time with this document; hopefully since there are
1511 people in lives behind these windows and a very, very real sense of a loss of value to
1512 people who are banking on this as their primary real estate investments. Thank you.

1513 CHAIR SRINIVASAN: I just have a question.

1514 Is there a way to supplement this by explaining or, at least, confirming to us that
1515 even though there's a loss of value that a window may be blocked but they are deriving
1516 light and air legally from other windows?

1517 MR. PRINCE: You'll see in each instance that - - if I could
1518 just take you to one of the apartments on the 9th floor so that you can make that
1519 determination. Actually, if I could take you to apartment 9C, I think is a clear example.
1520 I'm sorry, I can't figure out the pages on these darn things. It's apartment 9C and you'll
1521 see that in the bedroom, one of three total windows would be bricked over. Both of their
1522 windows in that room would face the darkened courtyard.

1523 So, in each case where there's a bricked over window, we've indicated if there are
1524 other windows within that room.

1525 I don't know if that quite answers your question.

1526 CHAIR SRINIVASAN: It does to some degree.

1527 MR. PRINCE: Can I help you answer it more?

1528 CHAIR SRINIVASAN: We'll review this material.

1529 MR. PRINCE: Okay. Because, we'd be happy to follow
1530 up if it would be of help to the Board.

1531 CHAIR SRINIVASAN: All right. Thank you.

1532 MR. PRINCE: Thank you.

1533 CHAIR SRINIVASAN: The next speaker.

1534 MR. COSTANZA: Please state your name. You will have
1535 three minutes.

1536 MR. ROSENBERG: Good afternoon. My name is David
1537 Rosenberg.

1538 I'm a member of the firm of Marcus Rosenberg and Diamond. I'm a member of
1539 Landmark West and I represent some of the community groups involved.

1540 I've made submissions to BSA on January 28th, October 30th, May 25th. I'm not
1541 going to go through all of those in the interest of time.

1542 I'm going to limit my remarks to one of the issues that I raised which goes to the
1543 procedures and processes of BSA; goes to the jurisdiction of BSA and it goes to the
1544 fundamental due right - - excuse me - - fundamental due process rights of the objectants.

1545 As this Board well knows, the original application was based upon an objection
1546 sheet which was issued by the Department of Buildings, stamped on March 27th, 2007.

1547 The Board's jurisdiction derives from its appeal, the applicant's appeal of that
1548 determination.

1549 That determination was submitted with an application to this Board. This Board
1550 than raised eight objections to the application.

1551 The eighth objection was that the proposed separation between buildings in R-10
1552 (a) does not comply with the requirements that is contrary to the Sections 24-67 and 23-
1553 711.

1554 And, in three different questions, the Board asked the applicant to respond and to
1555 explain this and how, in fact, their plans complied with the minimum distance required
1556 between residential buildings and other buildings.

1557 The applicant never did respond to that. The applicant came forward, thereafter,
1558 and produced another set of plans which the applicant said had been filed with the
1559 Department of Buildings on August 28th and resulted in an objection sheet that now only
1560 had seven objections, eliminating Objection 8 that I was just discussing.

1561 No explanation was provided as to how that objection disappeared. No
1562 explanation was provided as to what information was given to the DOB to change its
1563 determination.

1564 No explanation was provided as to what changes in the plans existed. In fact, the
1565 plans that were provided to this Board show no evidence that they were filed with the
1566 Department of Buildings.

1567 In fact, the plans that have been submitted to this Board have various dates on
1568 them inconsistent with the dates that the applicant claims applications were made.

1569 This Board asked three questions of the applicant. The applicant didn't answer
1570 those questions. The applicant should answer those questions.

1571 In an attempt to find out the answer to those questions, we attempted to find
1572 information from the DOB.

1573 As the Board may know, the DOB now has a process called a Sensitive Building
1574 List.

1575 Since September 11th, certain buildings in this city, including religious institutions
1576 and properties related to them are now on a list that is now deemed to be exempt from
1577 FOIL unless one obtains permission from the owner.

1578 I wrote a letter to the applicant's attorney and I asked him, could we have
1579 permission to see the filings at the DOB so that we could respond to this Board.

1580 That permission was necessary because the DOB had rejected our application to
1581 see the files.

1582 The applicant's attorney said, no, we will not grant that permission.

1583 So, in effect, we were denied the fundamental right to see the underlying papers
1584 that were filed with the DOB.

1585 We were denied the right to see the papers upon which the DOB acted.

1586 We were denied the right to see the papers upon which this Board derived its
1587 jurisdiction and I respectfully suggest that the application should be denied for that
1588 reason alone or least deferred until permission is granted to objectants and anyone else to
1589 see the plans which were actually filed at the DOB.

1590 CHAIR SRINIVASAN: Mr. Rosenberg, I'm just trying to
1591 understand your concern.

1592 You have the entire Board's record which is what we will be reviewing to make
1593 any determination so I don't understand why - - you have access to everything this Board
1594 has access to so what is your concern?

1595 MR. ROSENBERG: There is no evidence that the latest
1596 plans that were submitted and supposedly resulted in the seven objections from the DOB

1597 actually were ever submitted to the DOB, were reviewed by the DOB and any other
1598 information was provided to the DOB.

1599 VICE-CHAIR COLLINS: We have an objection sheet
1600 from the Department of Buildings that's based on a review of the same drawings that are
1601 in our files.

1602 MR. ROSENBERG: We don't know that. We don't know
1603 that it's based on the same drawings. That's the point. They're not stamped by the DOB.
1604 We don't know what else was submitted.

1605 There was no application to DOB provided with the plans, so we don't know what
1606 was - -

1607 CHAIR SRINIVASAN: All right. Just in terms of process
1608 over here and we've seen this many times, people will go to the Buildings Department
1609 with a set of plans. They may have an initial set of objections. They may come back and
1610 revise their proposal. They may get a different set of objections.

1611 I don't see what the issue is because even - - what's before us is a series of
1612 objections. That's where they're requesting a waiver. That's all - - if there's a positive
1613 vote here, that's all they're going to get.

1614 If there's another objection that they did not identify for the Board, there's no
1615 waiver to that so it just seems to me that we have - - this Board determines whether we
1616 have a proper record to make a determination. You have access to that record.

1617 So, at least - - our counsel will review this as well and I don't see there's any
1618 reason why we should either dismiss or defer.

1619 MR. ROSENBERG: There's been no explanation required
1620 as to the difference between the original plans which formed the basis for the application
1621 to this Board and the subsequent plans which they claim were provided to DOB.

1622 VICE-CHAIR COLLINS: I don't understand the relevance
1623 of that.

1624 The Buildings Department has given an objection sheet. They told us where these
1625 filed plans don't meet the zoning. That's what we're here to rule on.

1626 MR. ROSENBERG: They're not filed plans.

1627 VICE-CHAIR COLLINS: Now, do you think that there
1628 should be further objections based on the plans that you have access to?

1629 MR. ROSENBERG: As far - - this Board should ask for
1630 the answers to its 8th objection that it raised.

1631 VICE-CHAIR COLLINS: But that objection is not before
1632 us anymore because revised plans were filed and a new objection sheet was filed. It's a
1633 common practice. We see it all the time. I think you're seeing demons where none exist.

1634 MR. ROSENBERG: No, we haven't been told what the
1635 difference is between the revised plans and the original plans, if there is any.

1636 VICE-CHAIR COLLINS: All of our files are completely
1637 open. You can make an appointment to come and see them. It's my understanding that
1638 they've been made available to you from the beginning. I think this is a bogus issue
1639 you're raising.

1640 I don't think there's any legal basis for it.

1641 MR. ROSENBERG: Well, with all due respect, what is
1642 the difference between the original plans and the revised plans?

1643 CHAIR SRINIVASAN: It doesn't matter. We have a set
1644 of objections which is what we're reviewing.

1645 MR. ROSENBERG: Well, then that's a separate
1646 application I would respectfully suggest because the original appeal was from the eight
1647 objections.

1648 VICE-CHAIR COLLINS: Right. So, if there's another
1649 objection, then they'll have to come and get another variance. I think that's what the
1650 Chair said.

1651 MR. ROSENBERG: No, what I'm saying is that the
1652 application was from the original objections. If they want to do another filing - - if they
1653 claim they have made another filing and they have changed their plans, then that's
1654 another objection and another application.

1655 VICE-CHAIR COLLINS: Well, look, the nature of the
1656 objections may change based on some of the discussion that we have had here today.

1657 We've talked about possibly doing a courtyard. That may raise another objection
1658 in which the plans will have to go back to Buildings and they may have to issue another
1659 objection. We will then have jurisdiction over that one.

1660 But, what we have right now are seven. Everybody else in the room seems to
1661 know what they are, Mr. Rosenberg.

1662 MR. ROSENBERG: So, the original plans, then, are
1663 meaningless in that they have - -

1664 VICE-CHAIR COLLINS: They have been substituted.
1665 There's new current plans.

1666 MR. ROSENBERG: And, we don't what the change is
1667 between them?

1668 VICE-CHAIR COLLINS: Does it matter, sir?

1669 CHAIR SRINIVASAN: All right. The next speaker.

1670 MS. USHER: Hi. My name is Naomi Usher.

1671 I own a townhouse on 13th Street in Manhattan and I have lived and worked in
1672 Greenwich Village for twenty years.

1673 I'm here because although I do not live in the West 70's, I am a resident of
1674 another historic district in the City and I am very aware that the double protections of
1675 landmarking and zoning are only good if they're enforced through public officials like
1676 this Board.

1677 Shearith is asking for an upzoning but not to fulfill its religious mission. Instead,
1678 they want to give their upzoning to a private developer to build luxury condos that are
1679 out-of-character with the surrounding neighborhood and, basically, exactly the kind of
1680 buildings against which Boards like you are supposed to protect.

1681 If you allow this construction to proceed, you will set the precedent and other
1682 community institutions like schools, hospitals, churches can and will replicate this
1683 strategy.

1684 There appears to be a trend throughout the City that powerful institutions with
1685 influential individuals in the lead are seeking exceptions that would never be considered,
1686 let alone granted, for others.

1687 Shearith Israel is no more entitled than others and its heritage does not give it the
1688 right to have value transferred to it from - - to itself from its immediate neighbors.

1689 CHAIR SRINIVASAN: Thank you. The next speaker.

1690 ~~MR. COSTANZA: Please state your name. You will have~~
1691 three minutes.

1692 MR. SIMON: My name is Bruce Simon. I have lived on
1693 the Upper West Side for 48 years.

1694 I do not live within BSA's 400 foot range. It's probably more like 500 or 600 feet
1695 to my home on West 67th Street, therefore, my views aren't affected. My windows aren't
1696 blocked and perhaps that gives me the license to take a slightly broader view of what is
1697 before you and to ask you to take a slightly broader view.

1698 That view is triggered by a talk a few months ago by the Chair at City Law about
1699 the functioning of the BSA.

1700 She reported, not surprisingly, that part of the Board's mission was to protect the
1701 zoning law from constitutional challenge.

1702 We all have a stake in that because zoning restricts individual property owners
1703 unrestricted exploitation of the development potential of their property in the exercise of
1704 government's police power to protect community interests.

1705 That is to say, that private interest profit maximization yields to government
1706 restriction in the interests of the community as a whole and that holds true whether the
1707 private property owner is profit or non-profit, secular or religious.

1708 This Board, the Chair reminds us, is a safety valve; a device to provide relief,
1709 when justified, from the automatic mechanical application of the standard zoning rules to
1710 a particular situation when circumstances warrant.

1711 Put aside, for the moment, the devilish question of when the circumstances
1712 warrant but let's just focus on the safety valve concept.

1713 What it really means is that a variance, an authorized departure from the norm, is
1714 basically provided as a shield to protect an individually deserving applicant an exception
1715 from the general rule applicable to all.

1716 But, a variance is not a sword, an aggressive exploitation of an intended safety
1717 valve to use as a mechanism to rewrite or bypass the generally applicable rule for the
1718 advantage of a particular owner.

1719 The issuance of a variance, a departure from the standard rule otherwise
1720 applicable, is not a frivolous act, nor is it the grant of an indulgence for obeisance
1721 offered, nor is a token of friendship.

1722 And, readers of the New York Times last week describing the Rudin family
1723 political donation and friendships will not miss my meaning.

1724 This Board must be rigorous in its examination of the bases offered for the
1725 issuances of these requested variances.

1726 The deference afforded to religious institutions and respect of their religious
1727 missions and the land use decisions that are made to accommodate them and to
1728 accommodate their institutional programmatic needs fit within our constitutional mandate
1729 not to interfere with the freedom of religion.

1730 I beg your indulgence for thirty seconds.

1731 But, the other side of that constitutional coin must also be respected.

1732 The grant of variances to an applicant to build hi-rise luxury apartments merely to
1733 monetize an air rights asset and to substitute that monetization for the normal fund
1734 raising, a non-profit organization would undergo to erect a new building to house its
1735 programmatic functions when that new programmatic space could be built as-of-right
1736 without variances raises serious first amendment establishment issues.

1737 In fulfillment of your mission to protect the zoning law from constitutional
1738 challenge, please proceed with that distinction in mind.

1739 CHAIR SRINIVASAN: Thank you, Mr. Simon. The next
1740 speaker.

1741 MR. GREER: Good afternoon, Madam Chairman,
1742 members of the Board.

1743 My name is James Greer. I have appeared before you before.

1744 I am not going to speak at any length, because I've written you a letter which I
1745 will have delivered in the next or so, but I do have a couple of things that I would like to
1746 say.

1747 First of all, I think that Shearith Israel very much needs a new community house.
1748 The present one, by all accounts, is structurally deficient.

1749 Secondly, from an outside standpoint, it's an eyesore so that's long overdue.

1750 Secondly, I do not wish to manage or be seen to manage Shearith's Israel's
1751 micromanages program, although I must say, I've had enough experience with religious
1752 institutions doing just exactly that but I feel competent to do so if asked.

1753 And, I don't expect the Board to do that.

1754 What I am here is to oppose - - my opposition has been consistent - - opposing
1755 their trying to say that their programmatic needs cannot be met except in the proposed
1756 building.

1757 I think on any analysis, from what you've heard today, a fair reading of their
1758 proposals, there is just no way that they cannot do with the space they have in an as-of-
1759 right new building, plus the enormous amount of space they will have with the rest of
1760 their construction, all of which is as-of-right but they cannot meet these requirements.

1761 I will say I will submit a letter to add on to what I've previously said and I thank
1762 you for your time and your patience.

1763 CHAIR SRINIVASAN: Thank you, Mr. Greer. The next
1764 speaker.

1765 MS. WOOD: Good afternoon, Commissioners, Madam
1766 Chair. Thank you for your patience.

1767 I'm Kate Wood, speaking on behalf of Landmark West, and I am certain on
1768 behalf of many other concerned citizens who either couldn't make it to this daytime
1769 hearing or have made the effort to attend, not necessarily to speak, but to show their
1770 concern and concur with the important points that have already been raised.

1771 Clearly, this issue has generated a strong response from the neighbors and the
1772 immediately affected area, those whose lives and properties would be most directly
1773 impacted by the proposed seven variances.

1774 It's worth noting that the Board received nearly two hundred objection forms, of
1775 which, over one hundred and sixty or eighty percent were from neighbors within the four
1776 hundred foot radius that for BSA purposes defines the area of impact.

1777 The applicant collected nearly three hundred forms from individuals consenting to
1778 the project but, significantly, only fourteen or five percent were from people within the
1779 four hundred foot radius and not one was an owner of an affected property.

1780 There is simply no way around the fact that the community is overwhelmingly
1781 opposed to this application because they, themselves, would lose light, air and property
1782 value; because they sympathize with their neighbors who would; because they see this
1783 application as part of a larger trend lead by powerful developers and institutions that
1784 ultimately diminishes the character and quality of our City.

1785 I look around the room, and I see people from Central Park West, the Upper East
1786 Side, Chelsea, Greenwich Village, each facing the same development dilemma.

1787 It is not that we question the valuable missions of these institutions but when non-
1788 profits enter the for-profit arena, they must be held to the same rules that govern every
1789 other developer and all developers must meet the same appropriately high standard for
1790 variances if the process is to work at all.

1791 Again and again, Congregation Shearith Israel has failed to produce the evidence
1792 that this Board requires and has asked for again and again.

1793 The case for variances, any variances has just not been made.

1794 And, yet, the applicant has the audacity in its most recent letter to call on the
1795 Board to close the proceeding and set a date for approval.

1796 This kind of cavalier confidence when the case, on its merits, should be anything
1797 but a done deal. This is what has people across the City on the edge of their seats.

1798 At stake, is nothing less than the public's faith in the laws and procedures that
1799 keep our neighbors whole.

1800 In conclusion, I would like to submit for the record a letter addressed to the Board
1801 from Dr. Elliott D. Sklar, (Phonetic the Director of Columbia University's center for
1802 Sustainable Urban Development, the Earth Institute, Dr. Sklar directed the planning
1803 studio that was the starting point for the creation of the city's first contextual districts on
1804 the Upper West Side back in 1982. He writes, quote, "the Upper West Side, today is a
1805 delicate - - I'll just do this quote and then I'll close.

1806 "The Upper West Side today is a delicate balance of intense and highly congested
1807 urban living.

1808 The low-rise and mid-blocks give the area the necessary respite of light, air and
1809 human scale to remain vital.

1810 Once the scale of these mid-blocks is reached in one place, the case for enforcing
1811 zoning in other places will be severely compromised.

1812 The precedent that the granting of these variances will create may effectively
1813 render the carefully crafted land use development plan for the Upper West Side moot.

1814 A carefully crafted land use development plan, will this be overturned for the
1815 benefit of one developer to remedy a hardship that just does not exist?

1816 We ask you to affirm the contextual zoning and deny these variances. Thank you
1817 very much.

1818 CHAIR SRINIVASAN: Thank you, Ms. Wood. The next
1819 speaker.

1820 MR. LEPOW: My name is Howard Lepow. I'm a
1821 developer and I'm also on the Board of 18 West 70th Street.

1822 What was brought up earlier was the fact that there are other precedents that have
1823 been set.

1824 There have been thirty story buildings done with similar problems and so on.

1825 Now, I have worked diligently with Landmarks Preservation in trying to preserve
1826 certain very sensitive sites.

1827 What I'm concerned about here is if, in fact, these variances are granted - - I
1828 mean, this should not be a precedent that continues on.

1829 The fact that variances have been granted to other sites doesn't mean that we
1830 continue doing this.

1831 My feeling about the CSI application is that it's basically quite disingenuous.

1832 As you know, they tore down their original structure about thirty years ago. I
1833 think it was because landmarking was coming in.

1834 At that time, I'm sure they must have had some feeling that the congregation was
1835 going to grow and that, you know, having this building would have provided the space
1836 that they would need for their programmatic needs. So, that's been torn down.

1837 Now, they have a parsonage house that probably has a market value of
1838 somewhere around \$25 million in this market. It's got to have about ten thousand square
1839 feet.

1840 The parsonage house is being rented out and I believe the figure that I heard was
1841 about \$20,000 a month. I don't know if that's going to continue but, certainly, it has
1842 been going on for some time.

1843 Certainly, the 10,000 square feet in that parsonage house building could have
1844 been used for their programmatic needs.

1845 Also, recently, there were trailers that were set up on the vacant lot between 80
1846 West 70th and the congregation house.

1847 Those trailers were not used for CSI. They were actually leased out to other
1848 organizations.

1849 So, one starts to wonder, you know, what is CSI? Is it a religious institution or is
1850 it really a profit center. Are they becoming developers or are they going to stay in the
1851 context that they were originally formed for which is a religious aspect.

1852 Furthermore, I mean, you know, there's also been testimony today saying that the
1853 building has to have five more floors in order for them to have views of Central Park
1854 West. Well, that's great. So, there is value to that and I agree with it completely.

1855 What it also means is that takes away the value from the apartments in 18 West
1856 and 91 Central Park West.

1857 So, basically, what we are doing is we are going to use our value so that CSI can
1858 build additional floors and have a profit.

1859 The other thing that was brought up today was doing a court. Well, the court is
1860 the same thing. It's going to be a dark shaft which is not going to allow any light in so all
1861 of the apartments that are going to face that shaft are going to lose views, light and air.

1862 Thank you very much.

1863 CHAIR SRINIVASAN: Thank you, Mr. Lepow. The next
1864 speaker? Are there anymore speakers on this item? Please come forward.

1865 MR. COSTANZA: Please state your name into the
1866 microphone. You will have three minutes.

1867 MS. DAVIS: Katherine Davis. I'm a resident, thirty year
1868 resident of the Upper West Side.

1869 I live several blocks north of the synagogue so I will not be immediately impacted
1870 by it. I'm simply interested in the character of the West Side.

1871 I would like to address the financial hardship argument as the reason for the
1872 condominium development.

1873 Shearith Israel commenced a campaign in 2004 for its 350th anniversary to raise
1874 \$10 million for a rainy day fund. The rainy day is now here.

1875 You do not need a residential condo to fund their community house.

1876 A primary function of the trustees and campaign directors of any non-profit and
1877 CSI, in particular, is to either give or get donations.

1878 So, with all the millions in available contributions, not just the rainy day fund, but
1879 from very substantial trustees and campaign directors, one might ask why are these
1880 contributions not available for this project? And, the reason is because the contributions
1881 invested in real estate would not be tax exempt.

1882 Secondly or similarly, you might ask how come CSI does not invest directly in
1883 the development? It's because they also would be taxed; would not be consistent with
1884 their tax exempt status.

1885 So, what are they doing? They're going to sell to a developer at a sufficiently
1886 high price that it imbeds the future profits, in a sense, hiding taxable income.

1887 So, I just want to highlight a few of the 2004 campaigners for the rainy day fund
1888 and so their financial and business backgrounds and their rich contributions to the capital

1889 and culture of this city, which really makes the financial hardship argument of CSI a
1890 joke.

1891 The Honorary Chairman, Jack Rudin (Phonetic), he's Chairman of Rudin
1892 Management for the Rudin family, which owns and manages the largest private portfolio
1893 in the city.

1894 He's a member of the Board of Sloan Kettering. He's an honorary trustee of the
1895 American Museum of Natural History.

1896 Ronald P. Stanton, he's the Chairman of Transmonia (Phonetic), over \$5 billion
1897 in revenues from which he built his fortune. He donated \$100 million or ten percent of a
1898 billion dollar campaign for Yeshiva University. It was the largest single gift to a Jewish
1899 organization ever. He also happens to be on the Board of New York Presbyterian
1900 Hospital, a Director of Emeritus of Lincoln Center; Leon Levy, a founder and co - -

1901 CHAIR SRINIVASAN: You have to conclude your
1902 statement.

1903 MS. DAVIS: Just give me thirty seconds; a founder and
1904 executive of Oppenheimer.

1905 The Metropolitan has devoted its entire well-known classical collection about
1906 around which he gave.

1907 Ray Zuckerberg, partner/Chairman investment committee, Senior Director of
1908 Goldman Sachs; trustee of the American Red Cross; Chairman of the North Shore Long
1909 Island Jewish Health System.

1910 CHAIR SRINIVASAN: All right. You'll have to
1911 conclude. You can submit it in writing to us.

1912 MS. DAVIS: Okay.

1913 CHAIR SRINIVASAN: Your testimony is over.

1914 MS. DAVIS: The closing point is the (Unintelligible)

1915 inability to - -

1916 CHAIR SRINIVASAN: Thank you.

1917 MS. DAVIS: - - pay or give donations - -

1918 CHAIR SRINIVASAN: You can submit it in writing, now.

1919 The next speaker, please.

1920 VICE-CHAIR COLLINS: Madam Chair, if I could offer a

1921 comment on the most recent testimony.

1922 CHAIR SRINIVASAN: Yes.

1923 VICE-CHAIR COLLINS: The presence of wealthy

1924 individuals in a congregation, regardless of the denomination, is of absolutely no

1925 relevance to the legal findings that this Board is going to make. I just wanted to state my

1926 opinion on that.

1927 CHAIR SRINIVASAN: Thank you, Vice-Chair.

1928 VICE-CHAIR COLLINS: Thank you.

1929 CHAIR SRINIVASAN: Are there anymore speakers on

1930 this item? Any more speakers? All right. Mr. Lebow, do you have anything else?

1931 Otherwise, we'll ask Mr. Friedman to come up.

1932 MR. LEBOW: Nothing further.

1933 CHAIR SRINIVASAN: Okay. Mr. Friedman.

1934 MR. FRIEDMAN: We've heard an awful lot in the last
1935 hour and a half; precious little about the findings. I'd like to return to those and to the
1936 case before you.

1937 CHAIR SRINIVASAN: Yes.

1938 MR. FRIEDMAN: There was testimony regarding the (c)
1939 finding and comments that the Landmark Commission's issuance of a Certificate of
1940 Appropriateness did not speak to - - did not indicate its approval of the design façade, the
1941 harmony with the Historic District and the harmony with the individual landmark and I
1942 believe that's simply not the case.

1943 The Certificate of Appropriateness is in your record; can be read for exactly what
1944 it stands for.

1945 It has been throughout my experience with the BSA a highly material, germane
1946 and relevant document in determining community standards based on the views of
1947 another agency of the City New York, and I commend its reading to you in refutation of
1948 the characterizations made by the previous witnesses.

1949 CHAIR SRINIVASAN: Just on that point. It's just the
1950 Landmark's approval or issuance of a Certificate of Appropriateness does not speak to
1951 the potential effects of zoning waivers.

1952 And, so, that is a part of the (c) finding, so I understand that we do take into
1953 consideration that the Certificate of Appropriateness does discuss this particular building
1954 in the context of the Landmark as well as the Historic District.

1955 MR. FRIEDMAN: Understood.

1956 CHAIR SRINIVASAN: Okay.

1957 MR. FRIEDMAN: With regard to the testimony of
1958 Community Board #7, that submission was made at the last hearing, as well.
1959 I will only say in the recitation of the process that we worked with the Zoning
1960 Committee of Board #7; had two public hearings and a private meeting with them to go
1961 over the findings.

1962 The Committee, itself, issued a resolution which supported the variances with
1963 regard to the programmatic need of the synagogue. That was overturned by the full
1964 Board, but I did want to indicate that I thought that's also relevant that after hours of
1965 testimony and work with the Co-Chairs of the land use - -

1966 MS. MATIAS: Please turn that off.

1967 CHAIR SRINIVASAN: I'm sorry - - Mr. Friedman.

1968 MS. MATIAS: I'm sorry, Mr. Friedman.

1969 MR. FRIEDMAN: No problem. Thank you. That after
1970 several hours of work with them, the Community Board that met - - members that met
1971 with us over a long period of time did, in fact, pass an equally articulate eloquent
1972 resolution supporting several of the variances with regard to Shearith Israel's
1973 programmatic need.

1974 We have had discussion, again, about the lot line windows but now we enter into
1975 new evidence regarding 91 Central Park West.

1976 With regard to the location of the building to the wall of 91 Central Park West, we
1977 will supply you with a diagram but you have HP 16 which shows you the distance from
1978 our façade; does not show you the ten foot request that we're looking for but it shows you
1979 the clear distance between our site and 91.

1980 I think we've all learned many good and valuable things from Norman Marcus
1981 but one of them is an appreciation for language and specificity.

1982 This is not about views and discussions about light and air and legal light and air
1983 that confuse those very important concepts with the loss of views are misplaced and
1984 inarticulate.

1985 We are not blocking any legal light and air or any light and air with regard to 91.
1986 We are affecting views from those units but I think that's a very important distinction.

1987 I think it's equally true with regard to 18 West because those courtyard windows
1988 are there for exactly that reason; in case there is ever development of natures that there
1989 would be an opportunity for ventilation and light and air as the City defines it to be
1990 protected.

1991 It's not about the protection of views and we would urge that distinction on the
1992 Board.

1993 We will, of course, continue our effort to - - as I indicated, to look at the situation
1994 with regard to 18, but I notice in the submission from the Board Chair of that co-op, that
1995 the apartment layouts are shown as gross perimeter layouts and do not reflect the
1996 individual room layouts in those apartments which are critical to any determination about
1997 whether legal light and air is being affected.

1998 That is material which is not available to us and we would ask the Board if it
1999 wants to entertain this discussion; if it would ask the co-op at 18 West, either through its
2000 legal representatives or through its Board Chair, to provide us with the actual apartment
2001 layouts so we can all have the relative specificity to determine what this issue is all about

2002 because we cannot get that material from anyone other than the applicant - - from the
2003 owner.

2004 CHAIR SRINIVASAN: All right. Mr. Friedman, you're
2005 talking about this information that we got recently?

2006 MR. FRIEDMAN: Yes. It does not - -

2007 CHAIR SRINIVASAN: The follow-up to what we had
2008 also - - we were asking them to do?

2009 MR. FRIEDMAN: But, it does not show - - it shows the
2010 gross perimeter of the unit but it does not show the room layouts, which is, of course, the
2011 bottom line here.

2012 So, we would ask the Board, in fairness, that if it wants us to evaluate the
2013 situation, to place some responsibility on the only party that can provide us that
2014 information.

2015 We would like to either be able to inspect those units that are affected or to have
2016 submitted to the Board for our review the actual apartment layouts of those affected
2017 windows and then we can all have a fair and open discussion about what we can do and
2018 what impact our building will be having on their units.

2019 And, so, I would ask the Board, following my remarks, to make that request.

2020 CHAIR SRINIVASAN: I think that seems reasonable and
2021 I'm sure they can provide that to us.

2022 SPEAKER: At the applicant's expense?

2023 MS. MATIAS: Don't call out.

2024 CHAIR SRINIVASAN: You cannot speak unless you're
2025 coming to the microphone. All right, Mr. Lebow, you'll get a chance to speak on this
2026 issue. We'll just complete this discussion with Mr. Friedman right now.

2027 MR. FRIEDMAN: With regard to the other experts,
2028 typically we're willing to rush forward with our rebuttal on their financial analyst and
2029 their architect but I'm going to do the unusual step here of asking the Board to simply
2030 keep an open mind because this is a very unusual and, in my experience, unprecedented
2031 situation where material requested by a due date from the Board not only is not submitted
2032 on the due date but isn't even submitted on the promise date of a day before the hearing
2033 so that we would have an opportunity to look.

2034 We have not - - we have only received from staff the financial analysis and the
2035 material from Mr. Morrison - - (Unintelligible) excuse me, Mr. Morrison claims it's out
2036 there somewhere.

2037 So, we have absolutely no ability to respond to any of those issues. We've heard
2038 plenty.

2039 We, if necessary, could shoot from the hip on much of it but we would ask that
2040 either this information be discounted by the Board or, at least, keep an open mind until
2041 we've had a chance to analyze it, because you asked for this material some time back,
2042 and it only arrived at the hearing today.

2043 CHAIR SRINIVASAN: That's fine. You'll have a
2044 chance to review it.

2045 We understand you can't speak to those submissions today.

2046 MR. FRIEDMAN: With regard to the issues raised by
2047 counsel to the building regarding the objection sheet, I'm prepared to give you an
2048 explanation, if you wish now, of what that situation is all about. It's really up to the
2049 Board.

2050 CHAIR SRINIVASAN: Why don't you just tell us what
2051 the situation is.

2052 MR. FRIEDMAN: Fine. I would be happy to do so.

2053 CHAIR SRINIVASAN: It seems like you can put it to rest
2054 after that.

2055 MR. FRIEDMAN: The original objection sheet that was
2056 obtained at the request of the counsel at the Landmarks Commission when this matter
2057 was before the Landmarks Commission, which is kind of unusual, because you're in
2058 gross schematics at that stage. You haven't really submitted anything to the Buildings
2059 Department but the Landmarks Commission wants to know what the Building
2060 Department feels are the zoning waivers requested. We submitted that.

2061 Originally, the building, the tower had a slot between the residential building and
2062 the synagogue. There was a physical space there that several of the Landmark's
2063 Commissioners wanted us to explore. They thought some separation between the two
2064 were important.

2065 That gave rise to an objection regarding the separation of buildings.

2066 Now, that zoning - - that envelope did not emerge from Landmarks, although, by
2067 that time, nobody was thinking about the objection sheet that had been asked about in
2068 2003.

2069 So, when we got to the Building's Department and it was submitted for zoning
2070 review, we recognized that that zoning objection sheet was in error because the building
2071 no longer contained the separation issue between the buildings because the two buildings
2072 were - - now the new and the old were now joined. That was amended.

2073 CHAIR SRINIVASAN: So, it's straight forward?

2074 MR. FRIEDMAN: That was amended. That was amended
2075 simply.

2076 With regard to my refusal to release information, I simply said that since the
2077 attorney would not identify who his clients were and would not enter into any
2078 confidentiality agreements; that we did not believe that a policy devised by the
2079 Department of Homeland Security and the Buildings Department and - -

2080 CHAIR SRINIVASAN: That's fine, Mr. Friedman.

2081 MR. FRIEDMAN: - - NYPD required us to waive our
2082 rights.

2083 And, if he wanted to provide me with that information of who his clients were and
2084 we would enter into confidentiality agreements, we could certainly continue the
2085 discussion and there was no effort to follow up on that request. That is the sum of it.

2086 Other factoids that emerge here, obviously, we're not requesting a rezoning. You
2087 are not the Planning Commission. We understand that.

2088 We're here before you on a series of findings which we believe we have
2089 effectively and responsively discussed and provided you with the necessary information
2090 to make those findings.

2091 If you wish more information, we're more than happy to continue along that
2092 route, and I would only ask that we proceed apace with a hearing schedule that will allow
2093 us to bring this matter to a close after we've provided you the requested information and
2094 explored the lot line window issue, and I thank you all for your time today.

2095 CHAIR SRINIVASAN: Any questions of Mr. Friedman?

2096 All right, just on the issue of lot line windows and getting additional information,
2097 we haven't had a chance to review this as yet, either, so I'm not sure what all the
2098 information it has.

2099 I think my question that was directed to the person who provided this, can you
2100 come to the microphone, please. Mr. Prince. Yes.

2101 MR. COSTANZA: Just please state your name into the
2102 microphone for the record, again.

2103 MR. PRINCE: Ron Prince, with 18 West 70.

2104 CHAIR SRINIVASAN: All right. The question which I
2105 had asked which is can you identify or confirm to us that the rooms where the windows
2106 would be blocked, they are getting light and air from other windows? In other words,
2107 their legal light and air is coming from somewhere else.

2108 And, I think you said that you tried to give some of that information to us? Does
2109 your document actually speak to that issue? Will you clarify to us that the windows that
2110 are being blocked have other - - for those rooms have other windows?

2111 MR. PRINCE: Yes. It will indicate the number of
2112 windows in the room.

2113 So, we'll say of three windows, one is directly bricked over. So, that would mean
2114 that you have two windows that are not.

2115 COMM. HINKSON: It doesn't actually do the calculation
2116 that one goes through to determine light and air. In other words - -

2117 CHAIR SRINIVASAN: And, I'm not sure we necessarily
2118 need that.

2119 COMM. HINKSON: But, I think that's what - -

2120 MR. PRINCE: I would like to help but I don't know what
2121 the legal determination of light and air is. I'm sorry. Are we talking a legal
2122 determination of light and air?

2123 COMM. HINKSON: Well, there's a particular calculation
2124 that determines the amount of light and air for a room volume.

2125 MR. PRINCE: Right.

2126 COMM. HINKSON: And, I think that's what he was
2127 leading to was in order for them to do their analysis to see if a particular room - -

2128 MR. PRINCE: I see.

2129 COMM. HINKSON: - - meets the criteria, he needed to
2130 see the partition layout.

2131 MR. PRINCE: No doubt why my friend, Bruce Simon,
2132 chimed in, are they going to pay for it?

2133 I don't know if that calculation can be determined with - - we go around with a
2134 tape measure, so I don't really know. I think this is a case for outside experts and - -

2135 CHAIR SRINIVASAN: I understand that. But, do you
2136 have access to the apartments? We're not asking for a very elaborate sketch but just on
2137 these drawings, can you just show us - -

2138 MR. PRINCE: Show us where the room is on the layout?

2139 VICE-CHAIR COLLINS: Does the co-op's offering plan
2140 perhaps have floor plans? Most co-ops - -

2141 MR. PRINCE: I'm sorry, Commissioner Collins, I'm
2142 actually giving you my eye peal for Mr. Lepow if he's still in the room. He's gone
2143 because he knows these history things.

2144 VICE-CHAIR COLLINS: So, probably somewhere in
2145 your offering plan, there are floor plans for the apartments.

2146 MR. PRINCE: There are floor plans.

2147 VICE-CHAIR COLLINS: And, I think it would be helpful
2148 to us - -

2149 MR. PRINCE: Those floor plans have changed
2150 dramatically.

2151 VICE-CHAIR COLLINS: Because people combine
2152 apartments.

2153 MR. PRINCE: I've seen them (Unintelligible) registries,
2154 etc. - -

2155 VICE-CHAIR COLLINS: I know. My building has the
2156 same thing.

2157 MR. PRINCE: Yes.

2158 VICE-CHAIR COLLINS: But, maybe you could explore
2159 that possibility and see what's there for us?

2160 MR. PRINCE: Sure.

2161 VICE-CHAIR COLLINS: That would be very helpful.

2162 MR. PRINCE: So, I just want to be clear. So, you are
2163 looking for, effectively, our best shot at depicting the apartment layouts on the floors with
2164 the affected rooms?

2165 CHAIR SRINIVASAN: Well, I think there are a couple of
2166 things.

2167 In some instances, if rooms are created and, I'm not saying it has been, those
2168 things put a different spin on what we have to consider.

2169 Some people may subdivide their rooms and create another little alcove and
2170 perhaps that shouldn't be done.

2171 I think we want to understand what are the little light and air are? What are the
2172 windows that are legal? And, the effect that it has on the rooms - - if these windows that
2173 are going to be blocked?

2174 So, I don't know if I have made myself clear on that issue but if it helps to have
2175 the drawings - -

2176 MR. PRINCE: It's fair to say that we'll take our best shot
2177 at those drawings. I'm sorry. I don't mean to be difficult.

2178 CHAIR SRINIVASAN: No, I know. I understand.

2179 Why don't you do this. You can also reach out to our staff and we'll be able to
2180 give you a little better instructions regarding this.

2181 MR. PRINCE: Okay.

2182 CHAIR SRINIVASAN: All right. But, I think the idea is
2183 really to get a better picture of what the effects are and I think we'll have to grapple with
2184 the issue of how to - - where are equities on these issues? Mr. Friedman.

2185 MR. FRIEDMAN: If I might, Madam Chair.

2186 The Vice-Chair is absolutely correct. The offering plan would be very helpful
2187 and then we would be willing to make a visual inspection of those affected apartments so
2188 that we could confirm that the apartment layouts that are there now, which are the basis
2189 of these claims, are, in fact, the legal apartments that have been improved in the offering
2190 plan.

2191 If there have been legal amendments to that offering plan or to those apartments,
2192 then - -

2193 CHAIR SRINIVASAN: Mr. Simon, we haven't called you
2194 up to the podium as yet.

2195 MR. SIMON: It is an outrage for him to suggest that
2196 (Unintelligible) want to attack the legality of - -

2197 CHAIR SRINIVASAN: Mr. Simon, will you please sit
2198 down.

2199 MR. SIMON: The burden is on the applicant not on the
2200 folks - -

2201 CHAIR SRINIVASAN: Mr. Simon, will you please sit
2202 down or we'll ask you to leave.

2203 VICE-CHAIR COLLINS: You're out-of-order, sir.

2204 MR. SIMON: You're out-of-order.

2205 VICE-CHAIR COLLINS: You're out-of-order.

2206 MR. SIMON: I'm out-of-order because you're out-of-

2207 order.

2208 CHAIR SRINIVASAN: Mr. Friedman, please continue.

2209 MR. FRIEDMAN: Thank you.

2210 We're trying to meet our burden to this Board. We're trying to do it in as easy

2211 way as we can. These are massive decisions for this application.

2212 You've told us that they are material to your thinking.

2213 I believe that if we had the offering plan and could compare that against the

2214 existing conditions and report back to the Board, we're willing to take their testimony on

2215 it as well.

2216 But, the fact of the matter is, there's nothing before the Board nor is there

2217 anything on file that we can use to answer the Board's concerns.

2218 I mean, maybe this is why nobody - - why there's been very few times the

2219 Board's gone down this road.

2220 But, if you do wish to go down this road, we are - - we do have to verify what

2221 rooms are receiving legal light and air and what rooms are not? And, we have to verify

2222 what protections are around those windows? Because, you know, they still are lot line

2223 windows and if they are lot line windows of a certain nature and they fall into a certain

2224 category, they either have to be chicken wired or there has to be sprinkling.

2225 And, we're not going to get to a decision base until we get to a data base.

2226 And, you've put the burden on us. We've tried to find this out, this information,
2227 at the Buildings Department. We can't.

2228 There's a submission here that gives gross apartment perimeters, a good first step
2229 and we appreciate it but I think, as Commissioner Hinkson knows, we can't get to your
2230 bottom line without knowing the apartment layouts and, somebody, if it's going to be a
2231 relevant issue, has to help us get those.

2232 CHAIR SRINIVASAN: All right. This is what I suggest.

2233 The Board will review this material. Our staff will reach out to both parties and
2234 we'll see if we need to supplement this with additional information and we can do that by
2235 letter so that both parties will know what we're asking for and of whom, all right. Yes.
2236 Vice-Chair.

2237 VICE-CHAIR COLLINS: Actually, I have a request for
2238 Mr. Friedman.

2239 I know that you've given us this information in several forms, I think, in a pie
2240 chart but I'm interested in seeing sort of a daily layout of the usage for both current and
2241 proposed usage of the classrooms on a - - you know, you've got proposed classrooms one
2242 through fifteen from whatever time in the day you start; from 8:00 in the morning until
2243 9:00 at night, whatever it is.

2244 So, what is proposed usage in a - - we're trying to get a better table that's easily
2245 referenced.

2246 We've had other cases for schools where we've asked for this sort of information
2247 so perhaps someone from our staff could give you an example.

2248 It's a pretty straight forward, easy to read thing, but I'm still grappling a little bit
2249 with all of the proposed classroom uses.

2250 MR. FRIEDMAN: By the way, with regard to the
2251 testimony about the trailers, those trailers are there because the synagogue is using more
2252 and more of these spaces and the tenant isn't finding - - the conflicts are growing to the
2253 point where the tenant finally had to move a portion of its educational facilities out of the
2254 building so we could accommodate the synagogue's needs.

2255 I mean, that hadn't been in the record before. I appreciate the mention of the
2256 trailers but I think that's an indication that there is a squeeze in this building that simply
2257 is now driving the occupants to extraordinary lengths.

2258 CHAIR SRINIVASAN: I think what would be helpful is
2259 just building upon this issue of programmatic needs.

2260 We've heard testimony where the opposition has gone through everything you've
2261 said in your program needs and said all of it can be taken care of under an as-of-right
2262 scheme. That's true because you've talked about many things that are not related to the
2263 variance. However, they are rightfully a part of your program needs.

2264 All the space that's below grade, you can do as-of-right.

2265 Almost all the spaces you can accommodate with an as-of-right envelope.

2266 So, I think, again, just to add onto what the Vice-Chair is asking is really do focus
2267 on the relief that you're seeking as well. It's not about the circulation. It's really about
2268 three floors where you get larger classrooms and the difference is really that, is that if you
2269 don't get the variance for the ten feet, you'll have smaller classrooms and, perhaps, some
2270 space goes to other floors. I think that would be helpful.

2271 MR. FRIEDMAN: We will do that. Again, this is keep an
2272 open mind (Unintelligible) - -

2273 CHAIR SRINIVASAN: Yes.

2274 MR. FRIEDMAN: Because, we haven't had a chance to,
2275 nor have you, to see what it is that Mr. Morrison believes are his difficulties with our
2276 programmatic analysis but we'll begin that work immediately.

2277 CHAIR SRINIVASAN: All right. We will set a schedule,
2278 then.

2279 MR. FRIEDMAN: A lot of this is outside my control at the
2280 moment.

2281 CHAIR SRINIVASAN: I understand that.

2282 MR. FRIEDMAN: Except to say that we would love to be
2283 back as soon as you'll have us.

2284 CHAIR SRINIVASAN: All right. What I would like to is
2285 I'm going to ask for one submission from Mr. Lebow's group, first, which has to do with
2286 this information that we've received and whether we're going to ask for something
2287 supplemental to that, because that will allow you to further your analysis and any
2288 redesign that you're doing with that information, right, because, otherwise, you can
2289 continue down this path of redesigning the building but you haven't got this other
2290 information.

2291 MR. FRIEDMAN: Well, this puts me in the unusual
2292 position of asking the Board when it will be ready to proceed because devising - - coming
2293 to a conclusion about what it is you want them to develop us to analyze - -

2294 CHAIR SRINIVASAN: Yes. We'll do that fairly quickly.

2295 MR. FRIEDMAN: - - is - -

2296 CHAIR SRINIVASAN: So, what we will do is we will

2297 assume that that - - if a submission is required, we will get it in two weeks, all right.

2298 So, we're going to set a submission date for one of the parties in Mr. Lebow's

2299 group on February 26th.

2300 And, in the meantime, Mr. Friedman, you can also respond to all the other issues

2301 that we've raised and we'll set your submission date for March 4th. It's two weeks after

2302 that.

2303 MR. FRIEDMAN: Fine. Thank you.

2304 CHAIR SRINIVASAN: I'm sorry, March 11th. Why don't

2305 we do that? Two weeks from then.

2306 MR. FRIEDMAN: Okay.

2307 CHAIR SRINIVASAN: All right. Mr. Lebow, you can

2308 have a chance to respond back to that. It's going to be a very - - submissions but on

2309 March 25th and you can give your papers in on April 1st. Is that fine?

2310 MR. FRIEDMAN: Fine.

2311 CHAIR SRINIVASAN: It's one week afterwards and

2312 we'll have the hearing on April 15th.

2313 I would urge all parties to follow the schedule.

2314 And, once again, if we're not expecting a submission on the 26th in supplement to

2315 what we have right now, then we will let the parties know. Is that clear?

2316 MR. FRIEDMAN: Very. Thank you.

2317 CHAIR SRINIVASAN: Thank you.

2318 SPEAKER: I think I just - -

2319 MR. COSTANZA: Just please state your name?

2320 MR. LEBOW: Mark Lebow. I think that I follow

2321 everything except I'm not sure that we can get the floor sketches since we have to do

2322 those by hand by February 26th.

2323 But, I understand that we're going to work with the staff to see what is exactly

2324 required there and how to do it.

2325 But, other than that, we can, I think, adhere to the schedule.

2326 CHAIR SRINIVASAN: All right. And, if there's any

2327 reason to reschedule or change the schedule, we'll, again, let all parties know but, at this

2328 point, let's see if we can meet the schedule, all right?

2329 MR. LEBOW: Thank you for your patience.

2330 SPEAKER: I have one request that Mr. - -

2331 CHAIR SRINIVASAN: You'll have to speak - -

2332 MR. COSTANZA: Please state your name.

2333 MR. SUGERMAN: I'm Alan Sugerman. I just ask that

2334 because of the tight schedule that if Mr. Friedman, when he files something with the

2335 Board in the evening, if he would hand-deliver it to one of the attorneys.

2336 CHAIR SRINIVASAN: Are you going to do the same?

2337 MR. SUGERMAN: Yes, absolutely.

2338 CHAIR SRINIVASAN: Hand-deliver it?

2339 MR. SUGERMAN: Yes. I'll hand-deliver it or fax it.

2340 The big submission to you last week with - - two or three weeks ago was hand-
2341 delivered to Mr. Friedman the same evening. Thank you.

2342 MR. FRIEDMAN: Madam Chair, the guts of this
2343 application are in the financial analysis and the architect's submission, neither of which
2344 showed up in front of the Board until today, so I believe, you know, if there's going to be
2345 some issues about the integrity of submissions, this should be felt by all parties.

2346 CHAIR SRINIVASAN: All right. I just hope in the spirit
2347 of cooperation, everyone will provide the submissions to the other side as quickly as
2348 possible and to the Board.

2349 MR. LEBOW: And, we shall remember to do so.

2350 CHAIR SRINIVASAN: All right. Thank you.

2351 MR. COSTANZA: This concludes the public hearing.

2352 0o0