

New York City Board of Standards & Appeals

TRANSCRIPTION OF TAPE

Case #74-07-BZ.

610 West 70th Street, Borough of Manhattan.

4-15-08.

1 MS. MATIAS: Item number four. Calendar number 74-
2 07-BZ. 610 West 70th Street, Manhattan. Congregation Shearith Israel, Friedman and
3 Gotbaum.

4 MR. FREEMAN: Good afternoon, Madam Chair,
5 Commissioners. I'm here on behalf of the applicant.

6 We were at the Executive Session and Shelly Friedman asked me to be the
7 principal here since most of the questions seem to be focused on at least, initially, the
8 financial analysis.

9 CHAIR SRINIVASAN: All right. There's one whole
10 other part which had to do with the programmatic needs and reinforcing that in a revised
11 statement which really does speak to the case law that gives deference to religious
12 institutions as well as the program and as it's defined by the institute.

13 MR. FREEMAN: Okay. Well, you can start with me.

14 CHAIR SRINIVASAN: All right. Yes, we did have some
15 comments on the recent financials. Commissioner Ottley-Brown.

16 COMM. OTTLEY-BROWN: Yes. My comments
17 concerned your price per foot for the development and the comparables that you used
18 because it seems like the comparables were adjusted to such an extent that I'm not sure
19 that they were really comparable to begin with, because you've got several adjustments.
20 You've got two locational adjustments on the R-10 as well as various other adjustments
21 bringing your adjustments to well over one and a half times your comparable's price.

22 MR. FREEMAN: Well, we made it - - we discussed this, I
23 think, at the prior hearing.

24 We make adjustments locationally for two factors, one geographic location, for
25 example, something on West End Avenue is not geographically comparable to something
26 which is 100 feet off of Central Park West. So, that's one type of adjustment we make.

27 I think we provided narratives which describe what they are.

28 The other adjustment we made had to do with the fact that at the request of the
29 Board, we looked at only the residential portions of the building which in the case of both
30 the as-of-right building and proposed buildings are at the upper floors and, in the as-of-
31 right that we analyzed also had views of Central Park.

32 So, if you're only buying the premium space as compared to the ground floor
33 space, then we feel that an adjustment in value is appropriate. There's a big difference
34 between the second floor of a building and the upper floors of a building.

35 So, those are the two locational adjustments that we made, one for geographic and
36 the other for location within the building. Relative to views, relative to the height, upper
37 floors are always at a premium.

38 CHAIR SRINIVASAN: All right. But, what you've done
39 is you've looked at the R-8 (b) and then you've looked at the R-10 (a)?

40 MR. FREEMAN: We came up with different values. The
41 R-8 portion of the building, at the time we did the analysis, was on the west side of the
42 building and represented one floor and it was adjusted significantly less than the R-10
43 portion of the building. So that the R-10 portion of the building, which was higher and in
44 a tower portion of the building and did have Central Park views, that was about 74
45 percent of the residential area that had that characteristic.

46 The other 26 percent of the building was residential floor area and it was in the R-
47 8 and the difference was, I think the R-8 portion of the building was valued at about \$590
48 a foot and the R-10 portion of the building was valued higher than that.

49 CHAIR SRINIVASAN: All right. I know that the
50 opposition had papers and they talked about the fact that actually from a zoning
51 prospective you may be limited because of the Sliver rule.

52 I think it's worthwhile to just go back to your original analysis that you gave us in
53 October where you looked at all the rights in terms of an R-8 (b) comparable and I can
54 understand if you want to do your adjustments according to that. I think you were at \$500
55 and if you want to adjust for location and for - - location meaning from one neighborhood
56 to another neighborhood and location within the building, it's one thing. But, it seems
57 that it somehow got overcomplicated.

58 You were at about \$500 per square foot in your initial analysis, isn't that correct?
59 And, I just want to go on that, I think, based on subsequent things that we asked you to do
60 which is, essentially, remove the rights that are attributed towards the synagogue space
61 and take that out of your equation.

62 Why can't you just go back to those numbers and just take out the synagogue
63 space?

64 MR. FREEMAN: We'll take out - -

65 CHAIR SRINIVASAN: And, look at the adjustments that
66 relate to the R-8 (b).

67 MR. FREEMAN: We will take a look at that.

68 CHAIR SRINIVASAN: I think you'll get a site value that
69 is more credible than what we're seeing right now.

70 MR. FREEMAN: Okay. We will do that, Madam Chair.

71 I think in our last submission, the March 11th submission, we did look at R-8
72 comparables and we made adjustments and that's where we wound up with an average of
73 about \$590, given the location within the building.

74 CHAIR SRINIVASAN: I know but - -

75 MR. FREEMAN: I have to point out that when we did our
76 initial analysis, we looked at the building in a different way and we gave an average
77 dollars per square foot for the whole building, including the community facility space
78 which means that the \$500 included second floor level, third floor level, fourth floor
79 level.

80 If you're only looking at the upper portions of the building, I think that you're
81 going to wind up not with \$500 a foot and I don't want to mislead the Board into thinking
82 that \$500 is the place to start.

83 CHAIR SRINIVASAN: No, I understand that. And, in
84 fact, in your recent analysis, it went up to about \$590 - -

85 MR. FREEMAN: Yes. That's what it - -

86 CHAIR SRINIVASAN: - - based on location and within
87 the building, itself, which is the higher floors.

88 I think we're concerned because after that, you've adjusted this based on this R-
89 10 portion, which has increased the average value to \$750.

90 So, it seems that we're looking at a value which is close in the range of \$590,
91 \$600.

92 MR. FREEMAN: We'll take another look at it and we did
93 in response to the questions that came up.

94 I just want to point out that the reason that the R-10 portion of the building was
95 valued as high as it was is because in the configuration of that building, it had real
96 Central Park views.

97 CHAIR SRINIVASAN: I understand that.

98 MR. FREEMAN: And, the \$590 that we arrived at for R-8
99 is for that portion of the building which was essentially one residential floor on the west
100 side of the building with only, if at all, Central Park views that would be oblique on 70th
101 Street.

102 CHAIR SRINIVASAN: That's fine, Mr. Freeman, but I
103 think we're questioning whether you can actually build the Sliver building given that
104 there are other zoning rules that may adjust - -

105 MR. FREEMAN: No, I understand that.

106 CHAIR SRINIVASAN: So, that's, I think, the reason why
107 there is some concern on the Board's part of whether you can actually get Central Park
108 views and so we think a more reasonable analysis is to essentially take that out of the
109 equation.

110 It's a more conservative approach but I think it would be more credible.

111 MR. FREEMAN: Well, we'll be glad to do that. That
112 leads to a second series of questions that came out of the Executive Session and I'm not

113 sure where, since I don't do the zoning analysis, I just reflect what's done by the
114 architect.

115 I think that we're uncertain as to what is the as-of-right building that the Board
116 would like to see us analyze because the square footage - - if the building - -

117 CHAIR SRINIVASAN: I think you should go back to
118 your initial as-of-right, which is the mixed community facility and residential within R-8,
119 the envelope. That was the threshold issue which you started off with and then you could
120 look at the two alternatives that you provided to us now which is your current proposal
121 and your lesser variance alternative.

122 MR. FREEMAN: Okay. I need to review that. It's with
123 the architect.

124 CHAIR SRINIVASAN: Fine.

125 MR. FREEMAN: So, it's unclear to me as to whether the
126 use, if you use the R-8 bulk, you can, in fact, achieve the full floor area - -

127 CHAIR SRINIVASAN: - - All right.

128 MR. FREEMAN: - - that's been discussed both with the
129 Board and Board staff as well as - - so, if we're talking about an overall reduction in floor
130 area treating the entire site as if it was R-8, that's something that I'm confused about and
131 I think we need to have some clarification on that because it's not clear to me whether or
132 not - - if we look at the site, which has an R-10 portion and an R-8 portion, we arrive at
133 and we've discussed that, a certain amount of floor area.

134 If we then apply the R-8 bulk completely to that, I'm not sure whether that floor
135 area can be achieved in building because the R-8 bulk provisions cut off what the floor
136 area is that you would have.

137 CHAIR SRINIVASAN: Isn't that what the trust of your
138 analysis showed? That, in fact, you cannot accommodate that because of the location of
139 the existing building and the portion which is developable?

140 MR. FREEMAN: If we don't use the R-10 floor area for
141 the R-10 portion of the site. If we look at it all as if it were the R-8 bulk applying
142 completely across the site, then we would wind up with a less than the bulk that the site
143 would afford with consideration of the R-10 portion.

144 And, I'm not saying what it is. I just want to understand that that's what you'd
145 like us to look at; R-8 bulk regulations applied across that lot which, I think, reduces the
146 amount of floor area that could be built.

147 CHAIR SRINIVASAN: Right. Because, I think we're
148 questioning the fact that leaving aside Landmarks, we're questioning whether you can get
149 an as-of-right bulk that can actually go up higher in the R-10 portion because of the
150 Sliver Rule.

151 MR. FREEMAN: I understood your question.

152 CHAIR SRINIVASAN: Right. So, we're actually to go
153 back your - - you came to this Board with an as-of-right proposal in your initial financial
154 analysis and said that it didn't work, right, and we subsequently asked you to make
155 adjustments; go back to that scenario and apply these adjustments, which is the site value

156 is going to drop and the portion that was valued for the synagogue space will be taken
157 out. And, you should look at your analysis for your as-of-right under those conditions.

158 MR. FREEMAN: Well, I will do that. But, we had - - that
159 being the case, I think we did analyze that alternative. It was not viewed as feasible
160 unless we throw away all the - -

161 CHAIR SRINIVASAN: I know. But, isn't that the
162 threshold that you have to show us; that, in fact, your as-of-right - - the as-of-right - - as a
163 part of the (b) finding, the as-of-right, you're supposed to show us that an as-of-right
164 alternative doesn't work, right? Otherwise, you're not making the (b) finding. So, what
165 is the question here?

166 MR. FREEMAN: But, I have a valuation question,
167 because we valued the property.

168 Right now there's roughly, I think, 19,000 square feet of residential floor area in
169 excess of the community facility's floor area.

170 CHAIR SRINIVASAN: Okay.

171 MR. FREEMAN: But, if you can't - - if you're saying that
172 is the maximum floor area then we can't build it on the site, then that's fine with me
173 because the valuation is based on that 19,000 square feet and change, and I don't have a
174 problem doing that. If we can't build it on the site, you know, we've done the analysis
175 where we beat the analysis and it's not - - you know, we will create an analysis that will
176 demonstrate that. I mean, I think we've already done it. We'll just (Unintelligible) - -

177 CHAIR SRINIVASAN: All right. And, just clarify to us
178 these numbers in terms of how you're identifying the square footage in terms of what is

179 your as-of-right bulk that you should be looking at in terms of the analysis for the (b)
180 finding? If you're saying it's 19,000 in change, just explain to us where that came from?

181 It's a larger lot, as you know, in terms of the entire zoning lot but there's a reason
182 why you're attributing that much to residential.

183 MR. FREEMAN: Yes. That's something we will show
184 you. I mean, we've reviewed that with the staff as well so I think that the square footage
185 number, based on what the amount of permitted floor is, given an R-10 portion and an R-
186 R-8 (b) portion.

187 If the R-8 (b) bulk is applied, then you can't achieve the full floor area that you're
188 permitted.

189 CHAIR SRINIVASAN: All right. Any other questions on
190 the financials? Commissioner Ottley-Brown.

191 COMM. OTTLEY-BROWN: No, I'm just having a little
192 trouble following the argument but I think I've got it.

193 CHAIR SRINIVASAN: All right. I think the other thing
194 to just look at - - since we've seen an analysis, which is what you provided to us right
195 now for your current proposal, that includes creating a complying court, am I right, in
196 understanding that? It's not - - the court that's been created right now - - but, otherwise,
197 basically, you are asking for the same height and setback that you asked for before?

198 MR. FREEMAN: Right.

199 CHAIR SRINIVASAN: You've done an analysis of that at
200 a certain site value and you've also looked at an alternative which is removable of the

201 penthouse and come back and say that that doesn't give you a return under these
202 assumptions.

203 I think what the Board is anticipating, a change in the site value. And, when you
204 look at these alternatives, again, it's - - we don't know what the number are. But, we're
205 not expecting you to change all the other assumptions to come up with something else.

206 I suspect what's going to happen is that the current proposal that you have right
207 now may not be a minimum variance.

208 And, I think you should - - I think it would be helpful to us that we don't see
209 shifting of numbers taking place except for the things that we're anticipating right now
210 which we've just said.

211 MR. FREEMAN: We'll try our best.

212 CHAIR SRINIVASAN: All right. And, so I think you
213 should look at whether the removal of the penthouse and the courtyard is really your
214 minimum variance or it's something else?

215 MR. FREEMAN: Well, we will revisit - - the courtyard, I
216 think, we've accepted and that's the revised proposal as the courtyard. The penthouse
217 removal is something that was not feasible at all.

218 And, if you'd like us to revisit that considering a reduced value, we'll be glad to
219 do it.

220 CHAIR SRINIVASAN: All right. Okay.

221 MR. FREEMAN: So, I think I understand the parameters.
222 The other question you said that there were some - -

223 COMM. OTTLEY-BROWN: Could I - -

224 CHAIR SRINIVASAN: Yes, of course. Commissioner
225 Ottley-Brown.

226 COMM. OTTLEY-BROWN: I just have a question.

227 With the proposed development with the courtyard without the penthouse, you're
228 suggesting that with the land values as high as they are and the site value as high as it is,
229 it would bring an investment of 1.94 percent.

230 If we're asking you to redo it and lower the price per floor for your site value,
231 why wouldn't that return go up and be a reasonable return?

232 MR. FREEMAN: I didn't say it wouldn't go up. I just
233 don't know whether it would be a reasonable return.

234 COMM. OTTLEY-BROWN: Because you should be
235 cutting out, what, roughly \$5 to \$6 million out of the site value?

236 MR. FREEMAN: I think that - - not necessarily. I mean, I
237 am going to revisit the R-8's but I'm not, at this point, prepared to accept that \$500 a foot
238 is what it would be.

239 We're going to revisit those and we'll see what they are given appropriate
240 adjustments because \$500 was what was based on an average among the community
241 facilities, (Unintelligible) of the second floor. We're still talking about the upper floors
242 of a building.

243 CHAIR SRINIVASAN: Right.

244 MR. FREEMAN: That was at \$590.

245 COMM. OTTLEY-BROWN: Right.

246 CHAIR SRINIVASAN: Right. That's what we're
247 anticipating.

248 COMM. OTTLEY-BROWN: We're anticipating it would
249 come in somewhere around \$590.

250 MR. FREEMAN: Well, we'll see what it is. I'm not
251 going to - -

252 CHAIR SRINIVASAN: Okay. So, we don't know how
253 it's - - in terms of the return whether it goes up to five percent? We just don't know.
254 You're going to basically show that to us.

255 But, I think, just in the same sort of trust as Commissioner Ottley-Brown is
256 saying, your current proposal which, I believe right now, is at 7.8 percent will also
257 increase.

258 MR. FREEMAN: The proposed development with the
259 courtyard is shown on the March 11th analysis at 8.58.

260 CHAIR SRINIVASAN: Okay, 8.58.

261 MR. FREEMAN: However, I will point out and we've
262 discussing this with staff, that we used a square footage based on the staff zoning
263 calculations of about 17,500 square feet.

264 But, I think that the value that we've been discussing with the staff is really about
265 19,500 square feet and we need to resolve that because although the value per square foot
266 goes down, if the calculation is 2000 square feet more, if I just threw that in at the same
267 values, that would affect everything here so I can't do that in my head at the podium.

268 CHAIR SRINIVASAN: Mr. Freeman, you've already
269 mentioned at the podium today, you're talking about some 19,000 square feet. We've
270 already said explain to us where that number comes from and how you rationalize that as
271 an as-of-right FAR on the property, all right? So, I understand what you're saying but
272 it's different from the 17,000 or something that was used by - -

273 MR. FREEMAN: Right. So, that will - - there will be a
274 somewhat reduced value per square foot but there will also be some increase in square
275 footage over what was here so that would - - I have no idea where the numbers are going
276 to fall out.

277 COMM. OTTLEY-BROWN: You mean for proposal (a)
278 which is 20,309 gross built residential area with - -

279 CHAIR SRINIVASAN: I think just based on - -

280 COMM. OTTLEY-BROWN: - - a sellable area of
281 (Unintelligible) - -

282 CHAIR SRINIVASAN: I think just based on how they
283 determine the site value of a certain number of square feet which is, I think, seventeen
284 eighty or something - -

285 MR. FREEMAN: Commissioner, I'll - - those numbers
286 wouldn't change. The zoning floor area is what we're talking about and what you're
287 buying is zoning floor area so if the zoning floor area goes up a little bit and the value
288 comes down a bit, it gets too complicated for me to sit down at my computer and see
289 what happens.

290 CHAIR SRINIVASAN: All right. So, I think in your next
291 set of papers, if they're numbers that have changed, we expect the site value to change.

292 The determination of a site value is based part in per square feet which is 590 or
293 600 or - - versus 750 - - I believe something what it is right now and it's an adjustment
294 from 1700 to 1900.

295 As long as you, in your papers, clearly explain to us - -

296 MR. FREEMAN: That's what we'll do.

297 CHAIR SRINIVASAN: - - what those changes are, then I
298 think it would be clear about the assumptions.

299 MR. FREEMAN: We'll be glad to do that.

300 CHAIR SRINIVASAN: Commissioner Ottley-Brown.

301 COMM. OTTLEY-BROWN: Yes. That will be fine as
302 long as he justifies - -

303 MR. FREEMAN: You know, I mean I appreciate that this
304 has been going on a long time and there has been changes and assumptions and changes
305 in a way we've been asked to look at it, so we'll try to do it in a way that's clearer in our
306 next submission so that at least we're all on the same page.

307 CHAIR SRINIVASAN: All right. And, if there have been
308 subsequent papers that have been entered into the record from the opposition which
309 relates to the financials - - I don't know if you have had a chance to rebut some of the
310 recent submissions - - I think - - Commissioner Montanez - - there was, I think, a recent
311 submission. I don't know if you've been able to get a chance to look at that.

312 MR. FREEMAN: I don't know if we've gotten that one
313 even.

314 COMM. MONTANZEZ: Well, there seemed to be some
315 discussion about the actual process of evaluation and whether the proper process has been
316 followed.

317 MR. FREEMAN: I had seen their previous submission
318 that was a question that was asked. We responded to that.

319 If there has been something subsequent in terms of a response to our response,
320 then we'll address that but I think our response in the first instance was that the material
321 provided by the opposition was not, in fact, anything other than a critique. And, the
322 information provided was information that was simply verbatim information. There were
323 no adjustments. There were no discussion as how assumptions were made by the
324 opposition and I think we responded to that.

325 So, to our mind and we've said it before, a list is not the same as an evaluation.

326 CHAIR SRINIVASAN: All right. I think its papers that
327 were submitted on April 11th from James Mulford so - -

328 MR. FREEMAN: I haven't even seen those.

329 CHAIR SRINIVASAN: All right. So, I know it came late
330 but it's in the record and it's, I think, worth reviewing.

331 MR. FREEMAN: We'll read it and respond.

332 CHAIR SRINIVASAN: Okay.

333 MR. FREEMAN: Now, if there are any other questions
334 that I can take back with me unrelated to the financial - -

335 COMM. MONTANEZ: Yes. There was one other
336 question about the financials.

337 These factors that you apply, is there any way to provide a basis of their
338 magnitude, you know, of how you obtain these factors that, you know, increase the
339 comparables by fifty, sixty, percent?

340 MR. FREEMAN: Well, I think that there's no set of
341 references you could go to since the most important aspect of evaluation is looking at the
342 differences between one location and another. There's no rulebook of factors.

343 COMM. MONTANEZ: Well, there seem to be large
344 round numbers. I was wondering how you came up with those factors.

345 MR. FREEMAN: We come up with it based on taking a
346 look at how the market changes over time.

347 I mean, it's the same method that was used in opposition papers, for example; in
348 the analysis of co-op values. There were round numbers.

349 COMM. MARTINEZ: So, it's a subjective analysis?

350 MR. FREEMAN: It's a subjective analysis but subjective
351 in the sense that it's not a lay person's analysis. It's subjective relative to the experience
352 of whoever is doing the analysis.

353 So, for example, you know, when someone uses a value of thirty percent to
354 identify the difference between a Central Park view or another which, I believe, was in
355 the co-op analysis that was provided, that's not very different than the numbers that we
356 came up with in a previous response that we showed just based on other statistics that - -
357 a range of difference between a property with a Central Park view or not was something

358 that was valued within the thirty percent range and it's reflected, also, in terms of the
359 difference in valuation that the tax assessor might apply to a property in the mid-block as
360 opposed to a property on Central Park West.

361 But, there's not a hard and fast rule. It is at some point becomes subjective. It's
362 empirical.

363 CHAIR SRINIVASAN: All right. But, the methodology is
364 typically you have a series of adjustment factors, whether it's location, time - -

365 MR. FREEMAN: Right.

366 CHAIR SRINIVASAN: - - views, zoning, size of the lot
367 and then you have - - you add, subject and you come to a cumulative adjustment - -

368 MR. FREEMAN: That's right.

369 CHAIR SRINIVASAN: - - which is 1., whatever the
370 number is.

371 MR. FREEMAN: Whatever it is. It is really
372 (Unintelligible) some multiplication.

373 CHAIR SRINIVASAN: And, it's basically an add and
374 subtraction of the all the various adjustments, is that correct?

375 MR. FREEMAN: It's, in effect, the same, except that
376 they're multiplied. It's an across the line multiplication.

377 So, when we have a cumulative adjustment factor of, let's say, ten percent, that's
378 the result of the relationship between all of the other factors that arise at the
379 accumulation.

380 You know, there are appraisal textbooks and we use a methodology there but they
381 don't tell you that in this case or that case this is the adjustment factor that you would
382 provide.

383 CHAIR SRINIVASAN: Okay. It seems like the highest
384 adjustment factor was really in the R-10 and we're assuming that that's not going to be a
385 part of the next analysis and that's where you were getting to like 1.56.

386 MR. FREEMAN: Well, actually, we went back and
387 looked at that. And, the R-10 properties, just in terms of a raw transaction without
388 adjustment, and a lot of it has to do with maybe where they're located because the city
389 doesn't zone everywhere R-10; tend to have transactional prices unadjusted higher than an
390 R-8 (b).

391 I mean, it's just a fact. If you go back and look at the raw data that we provide
392 and the first column which is what this actually sell for in the dollars per square foot, the
393 R-10 properties seem to sell for higher.

394 And that is because the zoning of R-10 is not across the city. It applies to specific
395 locations and the value higher might reflect the location where the R-10 was zoned as
396 compared to where an R-8 might be zoned just in terms of intrinsic value.

397 When but we went in terms of thinking about some of the questions that came up
398 yesterday, the R-8 districts tend to have a slightly lower raw dollars per square foot than
399 the R-10 districts do and that may be just intrinsically because R-10 districts are mapped
400 differently in different areas and so they are just intrinsically higher valued land. I mean
401 that's what can conclude from that.

402 If you look at the information we submitted, you'll find that there's a difference
403 between the R8-10 unadjusted and the R-10 unadjusted. People pay more.

404 CHAIR SRINIVASAN: Okay. I think what would be
405 helpful, because it's come up a couple of times in the adjustments, is, again, in your
406 papers, just make it very clear, especially when you have things like other.

407 And, if you're saying that it's 1.2 times, it's better if you just give us maybe more
408 narrative than as vague as it right now.

409 MR. FREEMAN: I'll try to make it clearer.

410 CHAIR SRINIVASAN: I mean, it was very broad. You
411 just had location units, location within the building. Maybe you could just - - what do
412 you really mean by that?

413 MR. FREEMAN: We'll try to explain it a little bit more
414 clearly.

415 CHAIR SRINIVASAN: All right. Any other questions?

416 COMM. MONTANEZ: I think there was just some
417 discussion about whether or not they were true Central Park views?

418 CHAIR SRINIVASAN: Yes, but we've already talked
419 about that because we're assuming that, in fact, we're going to get a revised analysis and
420 we're just not looking at that.

421 MR. FREEMAN: You're going to get a revised analysis.

422 CHAIR SRINIVASAN: Right.

423 MR. FREEMAN: And, in the scheme that we looked at,
424 they were true Central Park views. They were above the landmark synagogue and that
425 synagogue is not something that could be torn down or replaced.

426 So, in fact, they were true Central Park views that would be there for the life of
427 the landmark and the Landmark's Commission doesn't take away that life, generally.

428 CHAIR SRINIVASAN: All right. Any other questions?

429 All right. Thank you, Mr. Freeman.

430 MR. FREEMAN: Were there any other questions that
431 were not related to the financial analysis that I could - -

432 CHAIR SRINIVASAN: Well, I think there were other
433 issues that were related to some of the analysis that was put forward, including the EAS
434 but, basically, you should incorporate that into a revised EAS and not just give us a piece
435 of paper that attaches to it.

436 I think we need to review the document in its totality so that should be revised and
437 I think that we want a revised set of papers that clearly outlines your arguments.

438 If your arguments have changed over time, then you need to provide us - - you've
439 heard the concerns of the Board but I think you should really give us a stand-alone
440 document which explains all this information that we've seen up till now and how this
441 project has changed at one place so it means, really, discussion of the facts as well as the
442 discussion of the findings.

443 MR. FREEMAN: And, there was some question about the
444 programmatic; the program implications for this, that you mentioned when I first came up
445 to the podium.

446 CHAIR SRINIVASAN: Yes. Well, that incorporates that
447 as well.

448 MR. FREEMAN: Okay. I just want to make sure that we
449 get all the concerns.

450 CHAIR SRINIVASAN: Okay. Thank you, Mr. Freeman.
451 All right. Mr. Lebow.

452 MR. LEBOW: Members of the Board of Standards and
453 Appeals, we do have a number of speakers today and we're going and try and - -

454 CHAIR SRINIVASAN: I'll ask you to limit each speaker
455 to three minutes in the interest of time because we have hearings - - new hearings as well
456 where there are a significant people - - number of people here to speak and we have your
457 papers and this is our third hearing.

458 So, I hope that everybody will be mindful of meeting that three minute.

459 MR. LEBOW: We shall abide by your rulings and
460 conform our remarks to that time limit.

461 CHAIR SRINIVASAN: All right.

462 MR. LEBOW: I'm going to speak for a lot less than three
463 minutes.

464 CHAIR SRINIVASAN: Okay.

465 MR. LEBOW: Because I don't want to detract from the
466 appraisers and from the experts who will criticize some of the things that you have
467 already mentioned.

468 But, we have been going through this for quite some time, now, and this is still
469 the same flawed application that it always was.

470 This is seeking seven variances to really violate the most sacred part of the Upper
471 West Side Historical District, namely, mid-block zoning, which is four to six stories and
472 we can't get away from that.

473 There is basically no reason to grant any of these applications for any of these
474 variances.

475 The testimony is still the same. This is a perfectly normal garden variety,
476 triangular site.

477 It is nothing special, even though there are two zoning lines.

478 You have heard what the community thinks about it.

479 We represent ourselves, every neighboring building and everybody up and down
480 West 70th Street, and you've already heard that Community Board #7 is 100 percent
481 against granting any of these variances.

482 This is still a building which will be half luxury condominiums and there is
483 absolutely no doubt from all the testimony in all of these revisions that programmatic
484 needs can be fit into an as-of-right building.

485 And, I'm not talking about strange programmatic needs; every conceivable
486 programmatic need.

487 I mean, the biggest change is this daycare center, which is hardly a religious
488 institution programmatic need that I have ever heard of but all of our statistics that we
489 have given you show that the programmatic needs, even with a daycare center, the drop-
490 off for toddlers can fit in an as-of-right building.

491 At that point, I think I'm going to ask Marty Levine, who is Metropolitan
492 Evaluation, who is as good as they come, to talk about some of the things that you were
493 just addressing.

494 CHAIR SRINIVASAN: Okay. Mr. Levine.

495 MS. MATIAS: Please identify yourself for the record, Mr.
496 Levine. You'll have three minutes.

497 MR. LEVINE: My name is Martin Levine.

498 I'm a real estate appraiser. I have testified on this case before.

499 I have a handout summarizing - - actually explaining my review of
500 Freeman/Frazier's April 1st submission.

501 I would like to read a statement. "As I have maintained any representation that
502 the property located at 6 to 10 West 70th Street is not economically feasible to develop
503 with an as-of-right building is completely without merit.

504 This level rectangular site, located just off Central Park West, is zoned to permit
505 multi-family construction and can easily accommodate development of a highly
506 marketable condominium.

507 Only through gross distortion of economic valuation assumptions and
508 sidestepping the Board of Standard and Appeal's own instructions, do Freeman/Frazier
509 present analyzes that result in economic unfeasibility.

510 Their April 1st letters criticized MVS for not following and understanding BSA
511 regulations.

512 Quite interestingly, BSA has on their web site detailed instructions for completing
513 an application.

514 If we hold their feet to the fire and see how well they completed that, I think it's a
515 very good critique."

516 The financial submission, I'm quoting, "should illustrate the hardship caused by
517 the unique physical conditions present at the site." And, then you ought to present
518 economic analysis towards that.

519 For bulk variation, point number two, "For bulk variance applications, separate
520 financial analysis must be performed for the existing complying and proposed conditions.

521 No such financial analysis was provided on the existing conditions and there
522 analysis of the complying condition was not responsive to the BSA instructions and
523 request for an all residential as-of-right development."

524 Point number three, "The economic hardship that arises from the unique physical
525 condition must be quantified and the cost to remedy such hardship should be given in
526 dollar figures.

527 The Freeman/Frazier reports do not specify any unique physical conditions and
528 confuse site conditions with physical conditions; the latter being the language of the (a)
529 finding.

530 We were unable to find anything submitted that supports the Freeman/Frazier
531 assertion of unique physical conditions present at the site or of the relationship of the
532 financial hardship to the unidentified physical conditions.

533 The conditions described are not physical conditions of the site but circumstances
534 that result solely from the desire of having a mixed use community use facility and
535 residential condominiums sharing the same site."

536 Point number five. For condominium development proposal, the following
537 information is required, "The market value of the property; the acquisition costs and date
538 of acquisition and percentage return on equity, which is net profit divided by equity."

539 That's a definition that the BSA presents.

540 CHAIR SRINIVASAN: Mr. Levine, can you conclude
541 your statement?

542 MR. LEVINE: Yes, I will.

543 CHAIR SRINIVASAN: Thank you.

544 MR. LEVINE: They have not followed the BSA
545 requirements and following the BSA requirements, analyzing the net profit based on the
546 equity contribution in their various schemes, scheme - - as-of-right scheme, residential
547 FAR of four results in total percentage return on equity of fifty-five percent, fifteen
548 percent on an annualized basis and a whopping 46 percent on their proposed development
549 without penthouse scheme.

550 Analyzing this correctly in concurrence with the BSA requirements does result in
551 the aforesaid economic feasibility."

552 CHAIR SRINIVASAN: All right. I know you have given
553 us your papers. We will review them but we have to move onto the next speaker and
554 we'll ask Mr. Freeman to respond back to this set of papers as well.

555 MR. LEVINE: I spent a lot of time putting these points
556 together.

557 CHAIR SRINIVASAN: I understand the thrust of your
558 argument is basically the as-of-right works, isn't that correct?

559 MR. LEVINE: Thank you very much.

560 CHAIR SRINIVASAN: The next speaker.

561 MS. MATIAS: Please identify yourself for the record.

562 MS. COSETINO: My name is Kathryn Cosentino.

563 I'm a real estate appraiser with the Valuation and Consulting Group at Grub and
564 Ellis.

565 I prepared an appraisal report for seven apartments that are located on the 7th, 8th
566 and 9th floors of 18 West 70th Street that were most adversely impacted by the
567 construction of this new building that was going to close off the windows, closing the air
568 shaft to the apartments in that building and I found that the impacted value as a result of
569 losing views of Central Park from those seven apartments totaled approximately
570 \$2,570,000.

571 And, that's based on the fact that the top floor apartments have very good natural
572 lighting now without the obstruction and the Central Park views always command a
573 higher value or a higher price when they're being sold as opposed to buildings that are
574 located - - or apartments that are located in the same building on the other side of the
575 building on the west side that may not have the views.

576 I also took into consideration the fact that the apartments on the lowest floors of
577 18 West 70th Street, in addition to the apartments that face the courtyard from 90 Central
578 Park West and from the residential building on West 69th Street, were going to lose a lot
579 of the natural lighting and the air quality.

580 It's very hard to put a dollar amount on those features but I know from experience
581 that when you've given a choice to purchase an apartment with natural lighting, that's

582 good and without - - or with a flow air through the apartments, the buyer generally
583 chooses the apartment with brighter lighting.

584 And, I always make it a point to point out whether or not the apartment has good
585 natural lighting. That's one of the features that's generally in the (Unintelligible).

586 Any questions?

587 CHAIR SRINIVASAN: Any questions? Thank you. The
588 next speaker.

589 MS. MATIAS: Please identify yourself for the record.

590 MR. MORRISON: My name is Craig Morrison. I'm a
591 registered architect and consultant to Landmark West and the opposition to this matter.

592 In response to Charles A. Platt's submission of March 28th, 2008, as has been
593 referred to in my prior submissions, I reiterate the statements in those submissions which
594 are no contraindicated by Mr. Platt's latest letter.

595 All of CSI's programmatic needs, as shown in Mr. Platt's drawings of December
596 27th, 2007 and filed on December 28th, could easily be satisfied that an as-of-right
597 building along and certainly with other buildings on the zoning site as reflected in as-of-
598 right schemes (a), (b) and (c), prepared by Mr. Platt on October 22nd, 2007, filed October
599 27th, all programmatic educational needs can be satisfied on floors two through four of
600 the opposed as-of-right buildings without a need of variance.

601 CSI's accessibility needs can be met easily in the areas marked on my previous
602 opposition Exhibit GG 12.

603 It appears that the only required change is to replace the existing elevator with one
604 that is ADA compliant and that extends to the cellar levels. I know that CSI does not

605 claim that the existing elevator, even though it may not be fully ADA compliant, cannot
606 accommodate most wheelchairs.

607 My submission makes no attempt to redesign the proposed facility, only to
608 demonstrate that an as-of-right envelope, combined with other facilities on the zoning
609 site, contains far more than sufficient space with which to house the congregation's
610 mission.

611 My graphics are only to support the fact that there's
612 sufficient space, not to propose alternative room layouts and assignments.

613 Regarding a couple of specific attacks, the Rabbi's office, we don't propose to
614 invade it.

615 While the Rabbi needs a private office to oversee the affairs of this large
616 organization, as its spiritual leader, he probably will do some tutoring, very possibly in
617 the comfort of his office.

618 (Unintelligible) they're presented on either suggestion. They use wide
619 (Unintelligible) facilities of every type to attain just the flexibility that the synagogue's
620 program indicates.

621 The babysitting rooms, it seems ironic that a room labeled babysitting is
622 unsuitable for what is, essentially, a babysitting function.

623 But, as I stated above, the only attempt that I make is to show the fact of sufficient
624 space.

625 If this room doesn't work for toddlers, use it for something else.

626 Code allowances. Well, my first submission referenced Code (Unintelligible).

627 My revision was based upon a much higher space allocation allowance.

628 There are two general statements, first, none of CSI's presentations considers the
629 issue of availability of the many spaces in the existing synagogue.

630 Note that pages 9 through 13 in Mr. Freeman's statement, dated December 28th,
631 2007, describe programmatic use of the Levy Auditorium, the Rabbi's and or Cantor's
632 offices and the Elias room.

633 Number two, CSI does not assign floors five and six of an as-of-right building for
634 programmatic use.

635 No justification is provided, for example, as to why caretaker can't be housed in
636 the existing parsonage.

637 The drawings submitted by CSI are clear that an as-of-right building provides
638 sufficient space to satisfy their claimed needs.

639 Even without a personal inspection, which was requested two months ago, the
640 Board should accept from the all reasonable inferences to be made from CSI's drawings
641 and other statements. Thank you.

642 CHAIR SRINIVASAN: Thank you. The next speaker.
643 You can come to the podium, first, and then sign in later.

644 MR. GREER: Madam Chair, members of the Board, I'm
645 James Greer. I've appeared before you in the all the preceding hearings on this case.

646 I have submitted a summary of some thoughts I had relating to two points, one
647 that came up yesterday regarding the need to provide for CSI's future program needs.

648 I believe that to put it most charitably, there is ample for any conceivable
649 expansion of CSI's needs.

650 Mr. Morrison has just referred to that. We can demonstrate that, I would guess,
651 probably something on the order of 20,000 square feet as opposed to the roughly 3800
652 that CSI thinks it needs now.

653 I have two - - the second thing I wish to amplify, something Mr. Morrison said
654 about the ability of CSI to get its program in an as-of-right building.

655 I have prepared a - - some charts, which you should have before you, the first of
656 which, LL 1 of 4, has two related tables and charts.

657 The top one, which shows in blue the amount of student hours per day used by
658 CSI's program, and the upper one, the difference between that and the total amount of - -
659 sorry, square footage, the total amount of square footage available in an as-of-right
660 building.

661 The second, Table B and Chart B, show those same calculations for a proposed
662 building.

663 The first, I think, makes reasonable clear that although it's close on Thursday,
664 every other day of the week CSI has no problem housing any of its programs and even
665 Thursday it's close, but there's ample room.

666 In a proposed building, the amount of surplus space is enormous and that forgets
667 the 1200 square feet for the caretaker's apartment and the five hundred feet on the floors
668 five and six and, I don't know, 10, 12, 13,000 square feet in the existing building or any
669 renovation of it.

670 The second thing, I want to emphasize, why is CSI so insistent? I think the
671 answer is very clear. It's all about Betrobon. (Phonetic)

672 If you look at Freeman/Frazier's exhibit, I think it's A-2, in their October 24th
673 submission, that shows Betrobon (Phonetic) paying something on the order of \$1.2
674 million per year in rent.

675 They now pay approximately \$480,000 a year in rent. There is no way in the
676 world that they can use as-of-right space to pay that kind of rent. And, it is abundantly
677 clear that that's the sole purpose that's driving this programmatic need discussion.

678 I've laid this out in much greater detail and hope with more clarity but that's the
679 essence of it. Thank you very much.

680 CHAIR SRINIVASAN: Thank you very much. The next
681 speaker. Mr. Sugarman.

682 MR. SUGARMAN: I'm Alan Sugarman. I've appeared
683 before you previously.

684 I don't want to take up a lot of your time. First, I want to go over a couple of
685 comments made yesterday during the executive committee or the executive meeting.

686 It's something that was just said yesterday and today.

687 I believe the Chair called the courtyard a scheme - - a complying scheme and I'm
688 not sure what you mean by complying.

689 CHAIR SRINIVASAN: A complying courtyard; a
690 complying court under the regulations for outer court.

691 MR. SUGARMAN: Right. But, it does - - it also, you
692 understand it, that they could have put a courtyard on the front of the building and we
693 suspect the reason they haven't shown you that is they would have to go back to
694 Landmarks. I just wasn't sure what you meant by that.

695 CHAIR SRINIVASAN: That's what I meant.

696 MR. SUGARMAN: Yesterday, also, you mentioned
697 shadow studies, and I don't think you brought that up again today but I think you
698 mentioned that yesterday.

699 And, I want to point out that Mr. Mulford, (Phonetic), he's not part of this formal
700 or informal consortium and we thought he had sent a copy to Mr. Freeman, and if he
701 needs a copy, we'll give him one immediately.

702 I wanted to go to my letter that I sent to you and just go briefly through some
703 requests I had. One was that I want to have Mr. - - our architect inspect the site. We
704 asked for this two months ago.

705 Since the applicant is claiming the building is obsolete, which is something an
706 architect could look at. He's claiming, also, its access issues, which our architect has to
707 see visibly. And, their recent submission criticizes his analysis of the existing space. We
708 need an inspection for that.

709 They also claim that the parsonage is - - although they can charge \$20,000 a year
710 for a private tenant, it's not suitable for the caretaker. We believe the architect should be
711 allowed to inspect the premises.

712 The second thing is we ask that we have the opportunity to review the findings of
713 facts submitted after they are submitted. I know you asked for those, again, yesterday.

714 And, in a moment, I will look at what I see their findings are in Condition A.

715 We have some other requests in my letter. I believe, again, in looking at the rules,
716 that the Board should be collecting more information on the Betraben (Phonetic) income.
717 It's in your rules. It clearly goes to the heart of what this transaction is about.

718 Now, yesterday, it was questioned whether or not there was any - - I had said in
719 my memo that a split lot in an obsolete building were not unique site conditions and that
720 was questioned. We have done research on it. We haven't found any legal precedent for
721 that.

722 And, the statute is pretty clear. If you read the English language in that, it doesn't
723 encompass what they're trying to include here.

724 I would just like to point out that one of the problems we're having here is the
725 rehash of material that's basically rubbish. And, if I could just have a moment to look at
726 just one item, here.

727 CHAIR SRINIVASAN: Just one item and then - -

728 MR. SUGARMAN: It's the first page and it's item
729 number two.

730 "A development site and the remaining one third of the zoning lot as feasible
731 development is hampered by the presence of a zoning district boundary and requirements
732 to alien its street wall and east elevation with the existing synagogue building."

733 Now, what's that about? Can anyone explain that to me? I can explain what
734 they're trying to do. I feel like a Geico commercial interpreter. But, the point is - -

735 CHAIR SRINIVASAN: All right, Mr. Sugarman - -

736 MR. SUGARMAN: - - that the east elevation has to do
737 with the original variance they had to get for a forty foot separation. Well, that's gone.

738 CHAIR SRINIVASAN: All right, Mr. Sugarman.

739 MR. SUGARMAN: And, the street wall is the Landmark's
740 issue.

741 CHAIR SRINIVASAN: Okay. We're giving each person
742 three minutes.

743 MR. SUGARMAN: Well, I understand that.

744 CHAIR SRINIVASAN: All right. So, we have your
745 papers. We will review that, all right.

746 MR. SUGARMAN: Thank you.

747 CHAIR SRINIVASAN: Thank you, Mr. Sugarman. The
748 next speaker. Ms. Wood.

749 MS. WOOD: Good afternoon, Commissioners. I'm Kate
750 Wood, speaking on behalf of Landmark West.

751 Our testimony, today, addresses the applicant's failure to meeting Finding (a).

752 As evidence of this failure, Landmark West has submitted to the Board a draft of
753 a community initiated planning study that was prepared by professional, architectural and
754 urban design consultants, Weiss Pluse Yose, (Phonetic) analyzing potential development
755 sites along Central Park West between 59th and 110th Streets.

756 And, let me emphasize that this study was not prepared in order to respond to or
757 refute any aspect of the present application. Rather, it is an objective empirical report
758 that reflects long-standing community concern based on real-life observation of the kinds
759 of applications that are repeatedly presented to city agencies, including this Board, about
760 the cumulative impacts of development that seeks to exploit variance and Special Permit
761 processes.

762 The Weiss Pluse Yose Phonetic) study identifies ten soft sites along Central Park
763 West.

764 This finding is in stark contrast to the applicant's misleading assertion in its
765 March 11th, 2008 and December 28th, 2007 submissions that not a single soft site exists
766 along Central Park West in this area.

767 Each of the sites identified by Weiss, Pluse Yose (Phonetic) is occupied by a low-
768 rise, Landmark protected structure or structures and has a substantial amount of unused
769 zoning floor area.

770 Furthermore, each site is governed by contextual zoning that limits the matter in
771 which floor area can be used.

772 Congregation Shearith Israel, at 70th Street, the Fourth Universal Society at 76th
773 Street, the New York Historical Society between 76th and 77th Streets and Trevor Day
774 School at 88th Street are four examples of sites that are split between the two contextual
775 zoning districts, R-8 (b) and R-10 (a) further limiting potential development.

776 Approximately 27 percent of Congregation Shearith Israel site is in the R-8 (b)
777 zoning district. Seventeen percent of the - - I'm sorry - - the Fourth Universal Site; 31
778 percent of the New York Historical Society site and 33 percent of the Trevor Day School
779 site, all located in the R-8 (b) zoning district split between those two districts.

780 Therefore, the applicant cannot argue that the availability of significant unused
781 floor area; the contextual zoning or the presence of a zoning boundary creates a unique
782 condition.

783 Certainly, none of these regulatory factors constitutes a physical condition
784 peculiar to and inherent in the lot nor are they, by any means, rare in the surrounding
785 neighborhood.

808 And, I think at the first hearing - - I understand the concerns of the Upper West
809 Side that you worked very hard for the contextual zoning over here but that kind of
810 zoning proposals that have been enacted anywhere in the city have the same amount of - -
811 there as sacrosanct to another community as this is to you.

812 MS. WOOD: Right. And, I understand that there is
813 process that is a legitimate process.

814 But, what I'm pointing out is that the scenario that exists on the West 70th Street
815 site is not unique and there are all of these other sites where the same factors, regulatory
816 factors, physical conditions in some cases do apply.

817 So, I'm just saying that if this grant, this variance is granted, these set of seven
818 variance are granted, that there is a real issue about how that impacts the zoning of the
819 entire stretch of Central Park West and that's something that we just want to look at the
820 bigger picture and that was the goal of the report.

821 But, it hits home right here on West 70th Street.

822 CHAIR SRINIVASAN: All right. Thank you, Ms. Wood.

823 The next speaker. Yes.

824 MR. PRINCE: Hello. My name is Ron Prince. I've
825 spoken here before. I'm with a committee appointed by the Board of Directors at 18
826 West 70th Street.

827 There are three points that we feel essential to emphasize during this stage of the
828 process.

829 The first is, number one, we want to make our feelings on the so-called notch or
830 court proposal abundantly clear. It is not a satisfactory outcome. It provides no one at 18
831 West 70th Street with a sense of satisfaction or relief.

832 If you see it as a compromise, we ask with whom? It is an opt out if not a copout
833 and we hope that you won't opt out but, rather, do the job and reject the request for
834 variances that fail to meet the five findings.

835 Point two, a reminder. So much attention of - - and so much discussion has been
836 devoted to the seven lot line windows. There are actually many more windows that are
837 affected at 18 West 70th Street.

838 There are 27 courtyard windows on floors seven, eight and nine. These would see
839 sky in an as-of-right scenario. They would look onto an air shaft under the proposal.

840 Behind each window are people and families to whom injury will be done if the
841 variances are granted.

842 Point three. Mr. Freeman describes the luxury condominiums as the project's
843 economic engine.

844 We think this is a misstatement. In truth, we, in the neighboring buildings, are the
845 project's economic engine.

846 CSI is seeking to have its neighbors make a very sizeable and very forcible
847 donation.

848 Its financial gain is derived directly from our financial loss.

849 Please do not use your authority to grant zoning variances to create a compulsory
850 transfer of equity from community to this institution. Thank you.

851 CHAIR SRINIVASAN: Thank you, Mr. Prince. The next
852 speaker. Mr. Prince, if you can write your name down, please. Thank you.

853 MR. SIMON: My name is Bruce Simon, a resident of the
854 Upper West Side, and I've also spoken before the Board before.

855 First, I'd like to thank the Board and the Chair for requesting a new stand-alone
856 document from the applicant putting in one place what it is, actually, that is being sought
857 and the analysis that supports that and the comparisons that have to be made.

858 I would remind the Board that there have already been seven submissions from
859 the applicant on the financial analysis. This will now be the eighth.

860 I believe the total number of pages for the seven is upwards of 140, 150 pages.

861 I grew up in Hamels, (Phonetic) Queens, and we used to play stickball on the
862 street and there was a concept known as a do-over when the batter could, under certain
863 conditions, do over the previous play. But, it was only if there were extraneous
864 circumstances. If traffic was coming down, you could get a do-over. But, you didn't get
865 a do-over if you just didn't like the pitch or if you were expecting a fastball and you got a
866 curve. It had to be something external.

867 I would suggest that this Board has bent over backwards, and I'm sure it's in
868 connection with the Chair's perceived role as the protector and the Shepard of the statute
869 and its constitutionality, and we certainly understand that.

870 We would ask if there's going to be what appears to be, yet, another full-blown
871 application, that the opponents be given a reasonable opportunity to analyze it and to
872 respond.

873 You have seen from us repeatedly submissions from well recognized folks;
874 experts at the top of their field.

875 We would like them, once again, to review what will now be the eighth
876 submission by the applicant.

877 We assure you we will do it promptly. We will do it in good faith. We will do it,
878 I believe, with the competence with which we have done it and, perhaps, we will
879 approach the end of the series of do-overs. Thank you very much.

880 CHAIR SRINIVASAN: Thank you, Mr. Simon.

881 MS. MATIAS: Mr. Simon, can you sign.

882 CHAIR SRINIVASAN: Are there anymore speakers on
883 this item?

884 MR. LEBOW: This ends how we have divided it up
885 among ourselves but, as you know, we don't speak for absolutely everybody, so I don't
886 know whether there are speakers but they are - -

887 CHAIR SRINIVASAN: All right. Your team is done.

888 MR. LEBOW: Our presentation is finished.

889 CHAIR SRINIVASAN: Okay. Thank you, Mr. Lebow.
890 Are there any speakers? Yes. Please come forward. Each person will be given three
891 minutes.

892 MR. MULFORD: Commissioners, I'm Jim Mulford,
893 resident of the West Side and I'm not in principal opposed to a CSI expansion, per se, but
894 the submissions are flawed and there are errors. They might be considered technical or
895 conforming to a common practice but they have consequences.

896 Let me name three. The applicant has failed to identify equity as required, as Mr.
897 Levine said, in any submission concerning the financial feasibility of condominiums and
898 it defines what that equity is and it defines the return on equity. The applicant has not
899 supplied this information.

900 Second, the ROI's that they have submitted are incorrect.

901 The project financials show a line labeled ROI but it is neither a true return on
902 investment nor the BSA definition of return on equity.

903 Third, as I've heard today, the rights valuations are questionable. There's a
904 disagreement both on values and process and which arises because there's no developer
905 bid but there is a better method in my letter of - - as you mentioned - - received by April
906 11th which produces an acquisition cost based only on CSI figures that they've already
907 submitted and the definition of return on investment and this relates only to the West 70th
908 Street site. It doesn't require information on other sites or the extrapolation.

909 Now, these omissions or errors have consequences. First, the ROI figures as
910 presented mask huge profits.

911 On the most recent courtyard, for example, the ROI, according to your definitions,
912 is actually sixty-nine percent.

913 If CSI were to be its own developer, the figure rises to 144 percent.

914 Second, it shows that the as-of-right uses are, in fact, profitable. Therefore, for
915 example, two of the ones submitted in December have return-on-investment of fifteen
916 percent and thirty percent.

917 Consequently, it's difficult, at least, to make a finding, a 72-21 (b) finding that
918 lack of reasonable profitability produces a justification for variances.

919 Third, the BSA procedures, themselves, are vulnerable. If you ignore the BSA
920 rules, take questionable valuations and - -

921 CHAIR SRINIVASAN: Mr. Mulford, if you can conclude.
922 There are other speakers here.

923 MR. MULFORD: - - produce results that have enormous
924 profits, there's a vulnerability there. Thanks.

925 CHAIR SRINIVASAN: Thank you. The next speaker.

926 MR. LEPOW: My name is Howard Lepow. I'm on the
927 board of 18 Owner's Corp. I also was the person that converted the building to a co-op.

928 I subsequently still own a great number of apartments in the building, most of
929 which will be affected by this.

930 I'm also a developer and going through all the documents that I've seen so far
931 from CSI, from a development or developer's point-of-view, I mean, I can't fault them
932 for asking for it.

933 However - - I mean I don't have to remind you - - if these variances are granted,
934 the applicability of it is to the Remar (Phonetic) site on the East Side, the Historical
935 Society, St. Vincent's downtown. And, if you just extend it and look at it from a
936 developer's point-of-view, I get the variance. I build what I want on West 70th Street.
937 Then, I look at it and I know that Shelly has said this before, the reason they want to go
938 up as high as they want is because they have views of Central Park.

939 What then stops them from building on top of the Parsonage House. That's a
940 five-story structure. It's twenty-five feet wide. They could go up maybe another five or
941 seven floors on that.

942 So, I think you're going to have a problem because if you grant this on 70th, it's
943 definitely going to affect Central Park West and, of course, the other sites.

944 So, I hope you will consider this a very serious situation for the City of New
945 York, not just West 70th. Thank you.

946 CHAIR SRINIVASAN: Thank you. The next speaker.

947 MR. CHAUSOW: Thank you. My name is Jared
948 Chausow. I'm a Legislative Aid to State Senator Tom Duane. He is in Albany and so
949 I'm delivery testimony on his behalf, and I'll have copies for the Board.

950 “My name is Thomas K. Duane and I represent New York State’s 29th Senatorial
951 District, which includes Upper West Side, where Congregation Shearith Israel’s site for
952 its proposed building at 6 through 10 West 70th Street is located.

953 As you know, I spoke against CSI’s original submission to the Board of Standards
954 and Appeals at the November 27th, 2007 hearing and against the second submission at the
955 February 12th, 2008 hearing.

956 It is to my dismay that I have to testify on this issue, again.

957 I do not find CSI’s new submission to be substantively different from the - - and
958 the same objections that I had to the original application still stand.

959 Congregation Shearith Israel is a religious, non-for-profit institution; plans to
960 construct a new community house at 6 through 10 West 70th Street for its programmatic
961 needs.

962 However, while CSI could construct as-of-right an appropriately sized building
963 for these purposes under the area’s mid-block R-8 (b) contextual zoning that is part of the

964 Upper West Side Central Park West Historic District, it is, instead, seeking seven
965 variances from the BSA.

966 Most of these variances will be used to construct five new floors and market rate
967 residential units for revenue generating purposes and do not resolve any hardship or
968 satisfy any programmatic need that is not self-created.

969 As I have previously testified to the BSA, CSI has repeatedly modified its
970 rationale for the variances without substantively changing its proposal.

971 For example, in none of its submissions has CSI adequately addressed the
972 negative impact that the proposed building would have on its low-rise brownstone scale
973 mid-block neighborhood.

974 Finding (c) of Section 72-21 of the Zoning Resolution states, “That a variance
975 must not alter the essential character of the neighborhood or district in which the zoning
976 lot is located; substantially impair appropriate use or development of adjacent property or
977 be detrimental to the public welfare.”

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

981 As Community Board #7 noted in its December, 2007 resolution on CSI’s second
982 submission, a building of this height would be out-of-character with the mid-block
983 zoning of the historic brownstone block, with (Unintelligible) the nearby residences and
984 would alter the essential character of the neighborhood.

985 Additionally, the overhead building would block the light, air and views of
986 adjacent apartments casting luminous shadows on neighboring low-rise historic buildings
987 along West 70th Street, resulting in significantly diminished property values.

988 I understand and appreciate that CSI is considering a reduction in the outer courts
989 of floors six through eight or a notch to partially address this issue of obstruction of lot
990 line windows. However, there will still be windows that are blocked and the 105.8 foot
991 mixed use building would nonetheless violate this section of the Zoning Resolution.

992 While others have argued that some of the proposed variances meets some of the
993 requisite criteria, there is widespread consensus among community members,
994 preservation advocates and area elected and appointed (Unintelligible) that none of the
995 variances satisfy all five criteria established in Section 72-21 of the Zoning Resolution.

996 It is absolutely essential that the BSA gives the community the same credence that
997 it gives the applicant.

998 As the State Senator representing much of Manhattan, I continuously work with
999 community activists and other elected officials to fight many inappropriate developments
1000 that would encroach on the neighborhood's character, quality of life and sustainability.

1001 The negative effects of this application, if approved by the BSA, would not only
1002 directly harm the neighborhood of the Upper West Side but also the precedent created by
1003 such a decision would seriously set back preservation efforts across the City as
1004 developers and property owners become empowered to seek inappropriate variances to
1005 develop their real estate holdings.

1006 Our City's zoning and the Historic Preservation Laws specifically designed to
1007 protect the character and sustainability of our neighborhoods will be rendered ineffective

1008 if special exemptions are readily given to developers, including non-profit organizations
1009 seeking to expand their coffers at the expense of the community.

1010 CHAIR SRINIVASAN: All right, if you can conclude.

1011 MR. CHAUSOW: In light of these matters, I strongly urge
1012 the BSA to deny CSI's variances." Thank you.

1013 CHAIR SRINIVASAN: All right. You can submit the
1014 paper, also, if you'd like to. The next speaker.

1015 MR. KAPLAN: Good afternoon. My name is Michael
1016 Kaplan. I'm here to speak today on behalf of State Assembly Member Richard Gottfried,
1017 who like Senator Duane, is also in Albany today.

1018 "My name is Richard M. Gottfried. I am the Assembly Member representing the
1019 75th Assembly District, which includes Congregation Shearith Israel and the site of the
1020 proposed new building.

1021 If BSA approves these variances, the new building would harm its neighbors and
1022 neighborhood and advance a dangerous trend in land use.

1023 Hundreds of pages of new submissions and responses have been exchanged since
1024 these proceedings began in November.

1025 However, the underlying issues have not changed.

1026 The harms imposed on the synagogue's neighbors include covering more lot line
1027 windows than would be permitted in an as-of-right plan and reducing light and air for the
1028 neighboring apartments that face the rear yard.

1029 For the neighborhood, as a whole, the proposed building is too tall and out-of-
1030 character with the Historic District's side streets.

1031 If BSA allows these variances, property owners and developers across the city
1032 will feel empowered to develop their real estate holdings without regard for the city's
1033 zoning and Historic Preservation Laws and policies.

1034 The Congregation's application does not meet the findings required for variances
1035 under Section 72-21 of the New York City Zoning Resolution.

1036 The split zone nature of the lot, which includes the Landmark synagogue, does
1037 not represent a unique physical condition or a hardship under Finding (a).

1038 The Congregation can develop a viable building suitable for a number of different
1039 uses without variances.

1040 There are no physical conditions restricting the Congregation's ability to generate
1041 a reasonable return on this lot as discussed under Finding (b).

1042 If it chose, it could generate a more than reasonable return on an as-of-right
1043 residential building on the site.

1044 I am very concerned about the four to seven, depending on which version of the
1045 developer's plan you're reviewing; lot line windows on 18 West 70th Street that will be
1046 covered by the new community house and residences.

1047 This deprives the residents of 18 West 70th Street of property value, light and air.

1048 The project deprives all the residents of the Historic District their value for the
1049 financial benefit of the Congregation.

1050 Transferring the property value from the neighbors to the Congregation
1051 effectively forces them to make a substantial and involuntary contribution for a facility
1052 which the Congregation's members ought to be paying.

1053 According to the appraisal reports submitted by Grubb and Ellis, the estimated
1054 aggregate loss to the residents at 18 West 70th Street will be nearly \$2.6 million.

1055 Finding (c) dictates the variance will not substantially impair the appropriate use
1056 or development of adjacent property and will not be detrimental to the public welfare.

1057 Reducing light and air diminishes the value of the surrounding buildings and the
1058 health of their residents.

1059 There is nothing preventing the congregation from developing a viable as-of-right
1060 building on its site.

1061 The cited hardships are generated by the Congregation's desire to utilize the space
1062 for both programmatic uses and to create a significant financial return and are, therefore,
1063 self-imposed under Finding (b).

1064 Neither of these functions could be accomplished as-of-right.

1065 The Zoning Resolution does not allow for variances that - - so that not-for-profit
1066 organizations can meet both goals.

1067 Whether or not the Congregation's Pastor (Unintelligible) could have envisioned
1068 this future zoning regulation is irrelevant.

1069 CHAIR SRINIVASAN: If you can conclude, please.

1070 MR. KAPLAN: I urge the Board of Standards and Appeals
1071 to reject the application in its entirety." Thank you.

1072 CHAIR SRINIVASAN: Thank you. The next speaker.

1073 MS. DAVIS: Good Day. I'm Katherine Davis. I spoke at
1074 the last BSA meeting.

1075 CSI intermixes two kinds of hardship, the regulatory site-specific hardship with
1076 an additional form of hardship, also (Unintelligible) to as residential solely to provide the
1077 economic engine. But, who's hardship is it? The developer's? The Congregation's? It
1078 has been shown that the developer has high returns on equity if, irrespective, of whether
1079 CSI is the developer or a third party.

1080 Yet, no evidence has been provided for the Congregation's hardship.

1081 If BSA accepts CSI's additional hardship, then one pursues a certain path, if not,
1082 then another.

1083 The economic engine argument is that CSI has insufficient funds to build a
1084 community house without the condos.

1085 If this is true, the need to rise from CSI's financial position, for which BSA has no
1086 information, project financials are irrelevant.

1087 The information that needs to be analyzed is, first, CSI's audited financial
1088 statements for the past three years. Resources are spent over time.

1089 Second, CSI forecasts before and after the community house is built for all
1090 sources of income and cost delineated by type to test credibility.

1091 Third, any contributions or explanation for lack of contributions to the community
1092 house from the congregation. These individuals are highly publicized for the
1093 philanthropy, in general, and in specific, for Jewish organizations. See my letter of
1094 March 31st for a starter kit.

1095 When evaluating this information, BSA has tacitly concurred with CSI's claim of
1096 financial hardship which is simply an obstruction for a profitable real estate deal.

1097 On the other hand, if BSA does not except the CSI additional form of hardship
1098 that leaves only the site-specific hardship where there are no unique conditions.

1099 But, even if there were unique conditions, how could BSA decide on the
1100 minimum variances without knowing the rules of allocation of costs and income from the
1101 community house, all of which determine the number of condos needed and their size.

1102 So far we know that the CSI statement, money is totally eaten up by replacement
1103 is not accurate based on CSI's numbers. Thank you.

1104 CHAIR SRINIVASAN: Thank you. The next speaker.

1105 MS. MATIAS: The next speaker?

1106 CHAIR SRINIVASAN: All right. Anymore speakers on
1107 this item?

1108 All right. Mr. Freeman. Are there anymore speakers on this item? All right.

1109 Yes, Mr. Freeman, do you want to respond to any issues or - -

1110 MR. FREEMAN: Not at this time. I think we'll respond
1111 to - -

1112 CHAIR SRINIVASAN: All right.

1113 MR. FREEMAN: There is information we haven't
1114 received yet that we will have to review.

1115 CHAIR SRINIVASAN: Okay.

1116 I just want to say two things that I think, again, the development team's paper
1117 should address.

1118 One has to do with the issue of shadows, Mr. Sugarman did remind me, but I
1119 know there's been discussion regarding the change from an as-of-right envelope to the

1120 proposal in terms of - - from a CEQR prospective and how it affects neighboring
1121 properties?

1122 I think that's fine but I think what you should look at is from the finding - - from
1123 the (c) finding prospective and brief us on that.

1124 So, in your revised statement of facts and findings, you should discuss the
1125 implications of a larger building on the surrounding buildings on 70th Street and on 69th
1126 Street as well.

1127 And, on the issue of program, at the first hearing, I believe the development team
1128 came to the Board and said that the variances that are being requested for the program is
1129 essentially the rear yard issue; is on three floors; is driven by the program of Shearith
1130 Israel and not by the fact that there's a tenant school that may be using those spaces.

1131 So, I think what would be helpful in just - - in the diagrams that you've given us,
1132 because we understand that you may be using some of the spaces for the tenant school
1133 but I think we just want to make it clear, diagrammatically, that the variance aspect of
1134 this is really being driven by the programs that are essential to Shearith Israel which,
1135 essentially, is the toddler program and the Hebrew School and, I believe, the adult
1136 training and those other aspects that you've identified.

1137 So, it's a little broad right now in terms of how the tenant school fits into those
1138 spaces and when they do? But, I think we just want to make it very clear that that
1139 additional ten foot encroachment is really driven by Shearith Israel's program.

1140 Are there any other questions or comments for either Mr. Freeman and their team
1141 or Mr. Lebow and his team?

1142 All right. So, we will set a schedule. Okay. Mr. Freeman, how much time does
1143 your team need?

1144 MR. FREEMAN: I think we probably would need for the
1145 financial questions about three weeks.

1146 CHAIR SRINIVASAN: Well, we're talking about the
1147 entire - - whatever - - you can confer, but three weeks?

1148 MR. FREEMAN: Four weeks.

1149 CHAIR SRINIVASAN: All right. Four weeks.

1150 So, May 13th, all right. And, Mr. Lebow, we can give you four weeks as well, all
1151 right.

1152 So, June 10th and we'll continue the hearing on June 24th.

1153 The development team, if you can respond back to us on June 17th, that would be
1154 helpful. June 10th is your submission date, yes? All right, and - -

1155 MR. FREEMAN: I'd just like to request that we get all of
1156 the opposition's submissions in a timely fashion. There were pieces that came in after the
1157 rebuttal date that we haven't even seen yet.

1158 CHAIR SRINIVASAN: Yes. And, we understand that
1159 some of those papers are not related to the team.

1160 UNIDENTIFIED SPEAKER: (Inaudible)

1161 CHAIR SRINIVASAN: All right. I know there's been a
1162 lot of back and forth and, in fact, you've given us papers today, as well, and we haven't
1163 had a chance to look at it.

1164 MR. FREEMAN: That's what I mean. It's the - -

1165 CHAIR SRINIVASAN: So, on the outset we will - - your
1166 team, we should make sure that you get the papers that we've been given today and you
1167 can respond to those papers as well as the instructions the Board has given you.

1168 MR. FREEMAN: Okay.

1169 CHAIR SRINIVASAN: All right.

1170 UNIDENTIFIED SPEAKER: Madam Chair, did you set a
1171 hearing date?

1172 CHAIR SRINIVASAN: Yes, the 24th of June.

1173 0o0