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The Honorable Meenakshi Srivivasan, Chair
NYC Board of Standards and Appeals
9th Floor
40 Rector Street
New York, NY 10006

Reference:
Calendar 74-07-BZ
6-10 West 70th Street
New York, NY

In opposition to the application 74-07-BZ, this letter presents relevant background, conclusions, and financial analysis of the proposal by Congregation Shearith Israel to develop the 6-10 West 70th Street site. This letter is organized into Sections:

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Background

The application requests zoning variances for a single "New Building" with two uses, a Community House (CH), and Residential Condominiums (RC). During a hearing on 15 April 2008, BSA provided clear direction to Congregation Shearith Israel (CSI), requesting a final proposal and financial analysis of the RC portion.

On behalf of CSI, Friedman & Gottbaum LLP has responded with a *Statement in Support of Certain Variances from the Provisions of the New York City Zoning Resolution* dated 13 May 2008 (the SiS). In a letter dated 13 May 2008, also on behalf of CSI, Freeman/Frazier Associates (FFA) provided a financial analysis of the nine story "Revised Proposed Development", and two alternatives, using new acquisition cost figures. The two documents refer to the alternatives differently:

FFA Label for Residential Development Portion	Friedman's SiS Identification	Identification in earlier FFA Letter Dated 11 March 2008
Revised **Proposed** Development, Schedule A first column	residential use, 8 stories plus penthouse	Proposed Development with Courtyard, Schedule A, first column
Revised Proposed Development W/O Penthouse, Schedule A second column	**Friedman AOR #1**, eight stories, no penthouse. Introduced and stated to be As-of-Right on SiS page 43	Similar to Proposed Development with Courtyard W/O Penthouse, Schedule A, second column.
Revised Proposed Development W/O 8th Floor, Schedule A third column	**Friedman AOR #2**; seven stories plus penthouse. Introduced and stated to be As-of-Right on SiS page 44	None.

See Dovell's drawing rev. P-3 "Proposed Areas of Non-compliance" dated 12.26.07 showing 3 areas of non-compliance on floors 6 through 9, that persist even when eliminating the Penthouse or the 8th floor.

Since various CSI documents use different labels and use the word 'proposed' when they are not, the residential configurations before the BSA are herein identified as: **Proposed, Friedman AOR#1**, and **Friedman AOR#2**.

The difference in names is significant. The Friedman & Gottbaum LLP Statement (SiS) asserts that the second and third configurations are As-of-Right while Freeman/Frazier does not make that claim. Nor are there any architectural drawings or tables from Platt Byard Dovell White in support of the SiS contention. The assertion is not supported by FFA or PBDW; it is Friedman's alone. In order to demonstrate financial consequences only, this letter accepts the Friedman identification because he is the applicant of record. If, however, Friedman is unable to support it, the application would be deemed devious and to have wasted the BSA's and communities' time.

As explained in more detail in Section 1. SUBMISSION UNRESPONSIVE and Section 4. AS-OF-RIGHT ECONOMICS, the CSI's response does not comply with the BSA requests.

This letter considers the three configurations now before the BSA, and two As-of-Right configurations submitted earlier: the CF/Residential configuration (**AOR Scheme A** in PBDW drawings) and the All residential F.A.R. 4.0 (**AOR Scheme C** in PBDW drawings).

Two As-of-Right Alternatives

FFA Label	Architect's Drawing Table, Dates	Notes
Alternative As of Right CF/Residential Development	**Scheme A** **AOR-**2, 8.28.07 six stories: four CH, two RC	
All Residential F.A.R. 4.0, 21 Dec 2007	**Scheme C** **AOR**-C-2, 10.22.07 seven stories	Somewhat different drawings dated 8.28.07 were also labeled AOR-C-2

Conclusions

This letter reports five conclusions, supported by a corresponding numbered section on following pages.

(1) The 13 May 2008 submissions by CSI are not responsive to BSA requirements and requests. The omissions are serious and significant, affecting the credibility and accuracy of the submissions.

(2) The Proposed Residential Condominium (RC) development (requiring variances) meets CSI's goal of producing about $12,000,000 in net revenue to itself, while at the same time producing an additional 62% Return on Investment to a Developer.

(3) CSI misrepresents the 62% return on the Proposed development, claiming it is only 10.66%. CSI employs several inappropriate techniques to achieve this misrepresentation.

(4) At least two As-of-Right development alternatives, which require no zoning variances, are quite profitable to a developer. At least one fully meets CSI's stated financial and program goals as well.

(5) CSI's reporting of (partial) financials for only the Residential Condominium portion of the dual use building has hidden the true profitability and feasibility of the development.

> An analysis of the project as a whole shows that a) the residential area rights acquisition cost is immaterial to CSI as master developer, and b) that zoning variations are unnecessary because an As-of-Right configuration meets all of its stated goals.

1. Submission Unresponsive

During a 15 April 2008 hearing[1], BSA Chair Srinivasan identified several requirements for a final:

> *revised statement which really does speak to the case law that gives deference to religious institutions…[Page 1]*

No case law references were provided.

She further suggested:

> *I think you should go back to your initial As-of-Right, which is the mixed community facility and residential within the R-8, the envelope [Page 6]*

The CSI 13 May proposal does not invoke the referenced "CF/Residential" As-of-Right but relies on the Sliver analysis (to derive an Acquisition Cost for the current proposal) which the Chair had already addressed

> *from a zoning prospective you may be limited because of the Sliver rule [Page 3]*
>
> *we're questioning whether you can actually build the sliver building given that there are other zoning rules…[Page 5]*
>
> *we're questioning whether you can get an As-of-Right bulk that can actually go up higher in the R-10 portion because of the Sliver rule. [Page 7]*

Concerning that same original As-of-Right, Chair Srinivasan said

> *… you came to this board with an As-of-Right proposal in your initial financial analysis and said that it didn't work, [Page7]*

and

> *But, isn't that the threshold that you have to show us; that, in fact, your As-of-Right — the As-of-Right — as a part of the (b) finding, the As-of-Right, you're supposed to show us that an As-of-Right alternative doesn't work right? Otherwise, you're not making the (b) finding. [Page 8]*

The FFA analysis only addresses two newer alternatives, called AOR#1 and AOR#2 in Friedman's SiS that are not shown to actually be As-of-Right. They have ignored the true As-of-Right configurations submitted earlier. As documented below, both the two

[1] Page numbers reference transcript of that hearing.

stalking horses presented on 13 May 2008 and the earlier As-of-Right configurations all do, in fact, 'work'.

And in regard to the Acquisition Cost basis of 19,755 ft^2, she asked

> *And, just clarify to us these numbers in terms of how you're identifying the square footage in terms of what is your As-of-Right bulk that you should be looking at in terms of the analysis for the (b) finding. If you're saying it's 19,000 and change, just explain to us where that came from?*

In response, the FFA letter discussed how some numbers were greater than that figure, but never explained where that figure "came from". As described in the Floor Area Basis of Acquisition Price Section below, it came from the invalid Sliver building idea.

Concerning alternatives, the Chair asked

> *And, so I think you should look at whether the removal of the penthouse and the courtyard is really your minimum variance or it's something else? [Page 10]*

CSI continues to assert that the Proposed configuration provides the minimum variance, (incorrectly) claiming that Friedman's newer configurations with lesser variances labeled AOR#1 and AOR#2 were uneconomic. They failed to identify those two as lesser variance configurations, so their purpose is unknown. No additional alternatives were submitted.

In regard to Return on Investment (ROI), the Chair referred to a letter from James Mulford received on April 11th, saying:

> *it's in the record and it's, I think, worth reviewing.*

Freeman responded by saying that the figure identified on his Schedue A, "Return on Investment" section, was not a Return on Investment after all, as required by BSA application rules[2], but was actually a "return on total project development cost" as appropriate for projects based "on profits". Definitions aside, see more in the Return on Investment Section below.

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[2] Item M (5) of BSA's "Detailed Instructions for Completing BZ Application" pertaining to "condominium development proposals" requires "equity" and "percentage return on equity, (net profit divided by equity)" otherwise known as Return on Investment. Contrary to Freeman's written statement on his page 7, the ROI is required for BOTH "condominium development proposals" AND "commercial rental projects" as stated in M (4). Was the presumption here that BSA wouldn't know or adhere to its own rules?

2. CSI Goals

Details of the FFA analysis follow from the the underlying logic of CSI's proposed developments. From their point of view the logic seems to consist of several steps:

Step 1 CSI wants to replace their existing Community House (CH) AND wants to develop their Lot 37 to pay for the new CH.

Step 2 CSI estimates the construction cost of a new CH at roughly $12 million.

Step 3 Market priced condominium residences built on top of the CH have the potential to produce revenue.

Step 4 The condominium revenue must produce the $12 million so that CSI will not have to fund any of the CH cost. On the SiS page 20, Mr. Friedman states:

> *Finally, the addition of residential use in the upper portion of the building is consistent with CSI's need to raise enough capital funds to correct the programmatic deficiencies described throughout this application.*

Step 5(a) A putative condominium Developer must pay CSI the $12 million as a rights acquisition fee, and

Step 5(b) In order to justify variances, the Proposed condominium development financials must show a reasonable return to the developer, while As-of-Right alternatives must not. (This is required because zoning variances cannot be granted solely because an applicant wants them. A variance can only be granted under defined conditions that do not include developer dreams.)

Step 6 The Proposed architectural plans for the New Building development, encompassing the two uses that together meet the income and space requirements, require zoning variances. They don't fit into an As-of-Right envelope.

Step 7 Produce analyses that tread the narrow path between three constraints: the Proposed development must produce a reasonable return to the developer, produce $12 million in cash for CSI and, most important, show that no As-of-Right will produce a reasonable return to the developer in order to invoke the hardship condition of 72-21 (b).

Two constraints of the requisite analysis are critical to CSI's argument. First, the Acquisition Cost (the product of some floor area and some price per sq.ft.) must be crafted to appear to produce at least $12 million regardless of reality. Second, a method for analyzing the developer return must be invented to show the Proposed configuration to be reasonable and those of As-of-Right configurations to be unreasonably small.

This construct is necessary because there are no provisions in zoning regulations that provide for variances where a lot cannot be developed to meet an applicants desired, arbitrary goal. If that were permitted, an applicant could claim a goal of reaping, say, $100 million from a tiny plot and demanding variances to achieve that marvelous outcome. The regulations, reasonably, make provisions only to avoid a lot-induced hardship. Thus, to achieve CSI's arbitrary goal of a development that yields at least $12 million and a new Community House, they must transform that goal into a hardship.

FFA has attempted to accomplish this by making up both floor area and area prices, applying the result incorrectly, and using an invalid return analysis method, as explained in SECTION 3. MISREPRESENTED RETURNS, and Section 4. AS-OF-RIGHT ECONOMICS.

3. Misrepresented Returns

The FFA analyses of the three Residential Condominium alternatives are flawed in four respects, each covered in a separate sub-section below:

A. Omitted Revenue and Cost Information
B. Floor Area Basis for Acquisition Costs
C. Equity
D. Return on Investment

Any of the four flaws is sufficient to reject the FFA analyses; together, the analyses are rendered useless. This Section deals with the Proposed configurations, see the next Section for As-of-Right configurations. (See also additional misrepresentations in Appendix C.)

A. Omitted Revenue and Cost Information

In the 13 May 2008 submissions, both costs and revenue for the two uses encompassed by the single construction project remain tangled, with the result that the financial figures for the profit-making portions are incomplete. See also Section 5. Mixed Use, Mixed up Projects below.

Costs for construction of the building have been estimated by a consulting firm, Mc Quilkin Associates, Inc. The cost presentations do not conform to BSA requirements, are not supported by assumptions and statements of methodology, and the consultants have no responsibility for the accuracy or applicability of the results.

The BSA Instructions for Form BZ application requires that

> 6. All construction cost estimates must be submitted by an architect, engineer, builder or contractor, other than the owner or applicant and must be signed and sealed.

No evidence has been submitted that Mc Quilkin is an architect, engineer, builder, or contractor, and the material is neither signed nor sealed. Only page 2 of 15 of its reports have been passed on, attached to the FFA letter dated 13 May 2008.

In addition, it is not possible to determine how costs within the single, proposed building have been allocated between the two uses: "school" and "residences" in their terminology. Demolition, paving, and masonry, for example, are all totally allocated to the school, as though the residences could be built in mid-air without demolishing the existing building. Other costs are simply allocated according to unexplained rules.

If submission of construction costs is required, it follows that they must be accompanied by sufficient support to ensure they are not 'out of the blue'. That support has not been provided.

> There is no evidence that the estimated residential construction costs are sound.

Revenue A portion of the revenue produced as a result of the residential development is missing. Although identified as 'acquisition cost', the $12,347,000 for residential development rights paid by the condominium developer to CSI (See FFA Schedule A) contains a subsidy to the community facility developer, earlier identified by CSI to be itself. A significant portion of the $12,347,000 will be used to construct income-producing facilities consisting of, among others, classroom space for an unaffiliated organization.

Although there were other errors in the analysis of a mixed use configuration in the FFA letter of 24 October 2007, the missing revenue was included, but has been omitted from the current submission. For another way of handling this income, see also Section 5. MIXED USE, MIXED UP PROJECTS below.

B. Floor Area Basis of Acquisition Price

As presented by FFA in its letter dated 13 May 2008, acquisition cost is the product of a buildable floor area (ft^2) and a price ($\$/ft^2$). The area for which rights are being 'purchased' is stated to be 19,755 ft^2 and the price is stated to be $\$625/ft^2$. Their product is $12,347,000, which figure is used in the FFA analyses as the acquisition cost to the developer for the Proposed, AOR#1, and AOR#2 alternatives, even though they have different buildable floor areas.

The figure of 19,755 ft^2 is a made up number. In the 15 April 2008 hearing Chair Srinivasan said, in relation to the area, on page 9 of the transcript

> *If you're saying it's 19,000 and change, just explain to us where that came from?*

and on page 13

> *Mr. Freeman, you've already mentioned at the podium today, you're talking about some 19,000 square feet. We've already said explain to us where that number comes from…*

Mr. Freeman's submission dated 13 May 2008 responds

> *...we have* ***assumed*** *[bolding added] that the 19,755 sq.ft. could be achieved by utilizing the as of right buildable floor area from the parsonage portion of the site.*

but neither provides a rationale for doing that, nor says where "that came from".

To explain the origin of the number as requested by BSA, we can look to Mr Freeman's letter dated 21 December 2007. On page 2 in connection with the Tower idea, since determined by the BSA to be an invalid basis, he said

> *The total gross residential area ... would be 19,755 sq.ft.*

but we can find no drawings or tabulation presented in support. On page 5 he said

> ***If*** *[bolding added] the value at an average of $450/sq.ft for all of the building is $17,050,000, with an as of right residential floor area of 19,755 sq.ft. ...*

On page 6 he said

> *... the **assumed** [bolding added] value of the residential portion of the property is 19,755 sq.ft....*

The area required for each of the different alternative constructions is different, but the current FFA analysis assumes they are all the same with the Developer paying the same, arbitrary acquisition price, for 19,755 ft^2. This artificially penalizes the smaller As-of-Right developments, making them appear unprofitable.

In its March 2008 analysis, FFA 'purchased' 17,854 ft^2 (Schedule B) for the Proposed configuration. It now proposes 19,755 ft^2 (Schedule B). Same building, same condos, same drawings. What grew, other than the pile of paper? (See also Appendix C: items 6 and 8 for more.)

To see the implications of the assumed 19,755 ft^2 and $625/$ft^2$, assume for the moment that they are substantial and are to be taken seriously. Their use would affect the rights sale to a Developer in different ways on Developer decisions. For example:

Decision Choice	Transaction	Consequence
1	The developer actually buys the right to develop 19,755 ft^2 for the Proposed development.	The developer must cut back on the architect's plan, dated 13 May 07, which requires 22,352 ft^2. A reduction by 2,597 ft^2 would be required.
2	The developer agrees to purchase the area required to build the Proposed development, 22,253 ft^2	The acquisition cost will increase from $12,347,000 to 22,352X625 = $13,970000.
3	The developer agrees to purchase the area required to build the Friedman AOR#1 Development, 21,798 ft^2.	Even using otherwise flawed FFA 'project' methodology, the project produces a profit of $1,600,000, and a developer ROI of 24%.

(See Appendix C, (5) for related area problems.)

C. Equity

Disclosure of an Equity figure would have made the omission of a Return on Equity (ROI) obvious.

BSA Application Instructions require the applicant to identify equity invested in a project. (See Appendix B: BSA Requirements.) CSI has failed to provide this figure in the 15 or so financial analyses submitted over the last year or so.

Equity is the amount invested by the residential portion

developer. In general, it is the total project cost less the amount financed or borrowed. The Equity for each of the five configurations covered in this letter is

Configuration	Equity
Proposed	$3,496,000
Friedman AOR #1	$3,118,000
Friedman AOR #2	$2,889,000
AOR Scheme A	$3,939,000
AOR Scheme C	$2,596,000

The significance is that the developer does not, itself, invest the total costs of a project. It invests only that cost less the amount borrowed, a portion of the loan, and other items.

Not only have the FFA analyses failed to provide an Equity figure, they have also have mislabeled the Project Cost in Schedule A, calling it "Est. Total Investment". One failure might be considered a mistake; two is deliberate misrepresentation, an affront to the BSA, particularly since FFA was alerted to this problem in my letter dated 10 April 2008, receipt of which FFA acknowledged in its 13 May 2008 letter.

D. Return on Investment

The BSA application instructions also require the applicant to provide a Return on Investment (Equity) or ROI. This important measure of development economics can be used to help ensure that zoning formulas do not impose an undue financial hardship to a developer. The return on the project as used by FFA, does not represent the return to any entity, not CSI, not a developer, not the bank. It is a pure number. The BSA requirement for return on equity brilliantly (give the governmental bureaucracy credit) requires a measure to be attached to an economic entity. In this case, it is the developer, whose financial involvement begins on day one of the project and ends, if all goes according to plan, 28 months later. Nothing before or after affects his return. (Ignore buildings, cranes, or market failures--please.)

> The only character that appears in the Proposed scene is the Developer. He is on stage for 28 months, then retires–a rich man.

The ROI for Proposed 'final' development is 62% rather than the 10.66% incorrectly reported on FFA's Schedule A . The 62% figure includes the purchase of the area rights actually used, 22,352 ft^2, according to the architect's drawings, for $13,970,000 rather than the artificial 19,775 ft^2 used by FFA.

Proposed Configuration Developer Financials

Income/Expense Item	Project Value, $	Investment Value,$	Source Notes
Net Project Value	34,039,000		1,5
Base Construction	(7,398,000)	(739,800)	
Soft Construction	(6,322,000)	(632,200)	
Lot Purchase	(13,970,000)	(1,396,997)	2
Carrying Costs	(664,000)	(66,400)	
Tax	(661,000)	(661,000)	
Net	**5,024,000**	**3,496,397**	3
Annual ROI	(5,024,000/3,496,397 x (12/28) =	**62%**	4

Notes: Figures taken from FFA letter dated 13 May 08 Schedules A and B.

(1) Project value probably low because FFA assumed a loss factor of 32% when calculating sale income.

(2) 22,352 ft^2 used from PBDW page 2 rev. dd 5.13.08. This is higher than the 19,755 figure used by FFA with no authority. 22,352 x 623 = $13,970,000.

(3) $5,024,000 is lower than FFA's $6,647,000 because the Lot Purchase price used here is higher.

(4) ROI is based on Equity of $3,496,397, including Tax. This is the Developer's true rate of return. The FFA 'project return' of 10.66% does not represent the return to any party.

(5) The Net Project Value omits income to CSI from the related Community House, and is therefore too low. If this income were to be included, the project returns to CSI would be huge, perhaps the reason for this as the Proposed configuration.

This table shows that the Proposed configuration has a Developer return of 62% rather than the misleading 10.66% reported by FFA. This is achieved while paying $13,970,000 (based on the actual area required according to the PBDW drawings) to CSI as an Acquisition Cost, rather than the pro forma $12,347,000 used by FFA.

It seems that the financials reported by FFA, which are inconsistent with BSA BZ application requirements, are deliberately held low in order to force the configurations purported to be As-of-Right by Friedman to be under water. But as seen on the next page, a proper analysis shows that they, too, are quite profitable.

Again using the FFA data, the profitability of the other two alternatives presented in the 13 May 2008 package are provided in the table. As with the Proposed alternative, actual buildable areas are used. Taking the SiS definition of 'reasonable' as exceeding 10.66%, both of these options are reasonably profitable using BSA guidelines and methodology.

The SiS statement on page 44, that Friedman AOR#1 produces "an annualized loss of $983,000" is incorrect as shown by both the the FFA Schedule A, and by this analysis.

Friedman AOR#1 and Friedman AOR#2 Financials

Income/Expense Item	Project Value,$, Friedman AOR#1	Project Value,$, Friedman AOR#2	Source Notes
Net Project Value	28,576,000	26,098,000	1
Base Construction	(6,547,000)	(6,291,000)	
Soft Construction	(6,170,000)	(5,809,000)	
Lot Purchase	(12,247,000)	(11,085,000)	2
Carrying Costs	(664,000)	(637,000)	
Tax	(555,000)	(507,000)	
Net	**2,393,000**	**1,769,000**	3
Annual ROI	**30%**	**26%**	4

Figures taken from FFA letter dated 13 May 08 Schedules A and B.

(1) The project values (income) provided by FFA are used here even though they use a possibly inflated $625/ft^2 and loss factors of 38% and 34% respectively. For sake of comparison, these EXCLUDE the income available from the Community House revenue produced as a direct result of the Lot Purchase funding that enables it.

(2) The Lot purchase (Acquisition Cost) figures are based on actual area required as lifted from PBDW architecture drawing page P-2 rev. dd 5.13.08, 19,595 ft^2 and 11,085 ft^2 respectively. The unsubstantiated 19,755 figure in the FFA letter was not used.

(3) The Net figures differ from those of FFA because real buildable areas are used here.

(4) The ROI's demonstrate that these two alternatives exceed the profitability criteria established in the SiS.

The three three configurations presented by CSI assume loss factors of 32%, 38% and 34% respectively. These, roughly double the conventional factor, are not credible on their face, and are not supported by certified figures from the architect. Unless supported by supplemental data from CSI, they must be considered a deliberate attempt to hide development revenue, creating false conclusions concerning a 72-21 (b) finding.

Whether the Friedman AOR#1 and Friedman AOR#2 are truly as of right is not the point here. Whatever these are, they are profitable, while CSI has submitted that they are not.

4. As-of-Right Economics

There are two relevant As-of-Right configurations referenced by Chair Srinivasan on page of the transcript the 15 April 2008 hearing, Scheme A and Scheme C. The 13 May 2008 CSI submission fails to include include them in spite of the Chair's pointed request. These As-of-Right configurations are important because PBDW drawings are available to substantiate an As-of-Right claim.

The reason for the omission is clear. FFA's own numbers show the As-of-Right Schemes to be quite profitable to a Developer as well as providing between $12 million to $15 million in funding back to CSI. CSI not included these references as requested.

CSI has never specifically explained why Scheme A and Scheme C are not acceptable, other than submitting false financials.

In support of BSA request, the "As-of-Right Configuration Financials Table on the next page presents the financials using a similar method as for the 'final', Proposed configuration of the previous Section, but with two differences.

> First, in the case of As-of-Right Scheme A, the capitalized income produced from the transfer of funds to the Community House is included because it directly results from and is a part of the Residential Condominium project.
>
> Second, rather than using the FFA artificially concocted Lot Purchase Price (Acquisition Cost), it is derived as would a developer, not the seller, from the other costs and desired return. While lower than the $17 million figures presented in October 2007 by FFA, the Lot Purchase price Scheme A is higher than that for CSI's Proposed configuration, and the price for Scheme C is about the same.

This approach also eliminates the controversy over whether 500 or 800 $/ft² is a fair rate for a rights Lot Purchase price (Acquisition Cost). It sets a value on the rights that is appropriate to this particular project, not some other project in another part of town, for some other land use.

As-of-Right Scheme A meets all of the stated goals stated by CSI. It is true that the Community House revenue is not realized immediately upon project completion but it is also true that the amount assumed does not include Community House revenues from a fully expanded school, day care center (called a toddler program), the banquet hall, and caretaker's apartment.

As-of-Right Configuration Financials

Income/Expense Item	AOR Scheme A "Revised AOR CF/ Residential"	AOR Scheme C All Residential F.A.R. 4.0	Source Notes
Project Value	26,380,000	37,437,000	1,4
Base Construction	(3,722,000)	(11,808,000)	
Soft Construction	(4,663,000)	(7,173,000)	
Lot Purchase	(14,762,000)	(12,401,000)	2
Carrying Costs	(515,000)	(733,000)	
Tax	(230,000)	(727,000)	
Net	**2,488,000**	**4,595,000**	3
Annual ROI	**50%**	**50%**	4

Notes: Except where noted, figures taken from FFA Schedule A1, page 8,October 24, 2007.
(1) Scheme A revenue includes both residential sale and capitalized school income as provided on FFA, Schedule A2, page 9, October 24, 2007.
(2) The Lot Purchase (Acquisition Cost) figures are lower than those **assumed** by FFA. See text. However, both As-of-Right schemes pass more than enough money to CSI to construct a Community House of the capacity required of CSI.
(3) Both As-of-Right Schemes are profitable using BSA method.
(4) The Project Value data provided by FFA certainly understates the amount derived from the development because they use loss factors of 45% and 38% respectively.

These options demonstrate the interdependence between amount paid to CSI and developer profit. As the amount paid to CSI for development rights increases, the developer profit decreases. The material presented by FFA artificially inflates the amount to be paid for the rights without regard to project economics, then claims that As-of-Right developments are uneconomic.

Loss factors also distort the FFA-reported profitability. By assuming factors from 32 to 45%, revenue is understated.

The question of why CSI has not provided this data and proposed an As-of-Right building has three possible answers. First, they are confused and do not understand the financial data they have provided. It is true that their numbers have wandered over time, for whatever reason. Second, their Proposed configuration is even more profitable. Third, there is some unstated motive or potential use of the property. There is nothing to prevent CSI from changing the development plan after zoning changes have been approved, then putting the property to even better economic use. Such a scenario could obtain zoning variances that might not otherwise have been permissible.

5. Mixed Use, Mixed Up Projects

BSA has requested that the applicant to provide financial analyses for the residential portion of the development only. CSI has taken advantage of this to hide the true, overall profitability of the New House development.

The CSI application revision of 13 May 2008 lists costs for both the Residential Condominiums and the Community House, but lists revenue for only the Residential Condominium (RC) portion of the overall project. A problem is created when the SiS text explains that the major cost component of the RCs, the Acquisition Cost for development rights, provides revenue to the Community House (CH) part of the New House. The residential part's acquisition cost, decreasing the developer's return, is bled out to the Community House development, increasing its return. Failure to report that return hides the true financial impact of the development and permits false conclusions.

The acquisition cost assessed to the residential part of the project is not an arm's length transaction with CSI, who has claimed to be the Community House Developer. It is, in fact, an artificial, paper transaction that hides the true return to CSI of the overall development project.

The next table demonstrates the effect using the SiS-defined Friedman AOR#1 figures. It shows that Acquisition Cost is a cost paid by the RC portion, and is income to the CH portion. For the two parts of the project together, then, it is a wash. The result to CSI as master developer is shown in the rightmost column. It receives income from outside sources, and spends money to outside suppliers leaving $12,894,000 as profit. Assuming that 90% of the out-of-pocket costs are initially funded by a bank loan, the result is an overall Return on Equity (Investment) of 157%.

Now we get to look behind the scenery, to see the real force behind the project, the CSI as producer, and what happens.

These results omit the ongoing value to CSI of the Community House for its program needs and the improved access to the Synagogue. The significant non-school areas of the Community House have value to CSI and a full financial analysis would impute value whether money changes hands or not. That analysis would show vastly increased return to CSI of the New Building.

Overall Project for Friedman AOR#1

Income/Expense	Residential Condominium Development $	Community House Development $	New Building Total $
Residential Sales	28,576,000		28,576,000
Capitalized Rental Income		14,514,000	14,514,000
Acquisition Price Transfer	(12,247,000)	12,247,000	0
Base Construction	(6,547,000)	(11,160,000)	(17,707,000)
Soft Construction	(6,170,000)	(4,500,000)	(10,670,000)
Carrying Cost	(664,000)	(600,000)	(1,264,000)
Tax	(555,000)	0	(555,000)
PROFIT	**2,393,000**	**10,501,000**	**12,894,000**
Project Return (not ROI)	**3.69%**	**27.67%**	**18.64%**
Annual ROI	**30.00%**	**277.00%**	**157.00%**
	Notes: CH Soft development costs estimated in proportion to RC construction costs, as thought they were separate projects. The sum would be expected, however, to be lower than shown. Annual classroom rental, Toddler program, and special event estimated net income of $1 million capitalized at 7% even though the actual figure is probably much greater. Acquisition Price is set to purchase actual area required.		

A compound cash flow analysis of the same configuration, using timing of more complete figures for expense and revenue could also be done. It could not be done here because CSI has not provided the necessary information in their latest submissions. The results, however, would substantially the same.

To explain the inherent profitability of the Friedman AOR#1 project in simple terms, it can be thought of as a business box. Using rough numbers, the developer puts in about $30 million, $4 million of his own money and $26 million borrowed from a 'bank'. At the end of the project he takes out $43 million, pays off the debt of $26

million, repays himself his $4 million equity contribution, leaving $13 million profit. This is an average profit of $6.5 million per year on an equity investment of $4 million or 157% per year.

A similar result is seen for the As-of-Right Scheme A.

Overall Project for AOR Scheme A

Income/Expense	Residential Condominium Development $	Community House Development $	New Building Total $
Residential Sales	26,380,000		26,380,000
Capitalized Rental Income		14,514,000	14,514,000
Acquisition Price Transfer	(14,762,000)	14,762,000	0
Base Construction	(3,722,000)	(11,160,000)	(14,882,000)
Soft Construction	(4,663,000)	(4,500,000)	(9,603,000)
Carrying Cost	(515,000)	(600,000)	(1,115,000)
Tax	(230,000)		(230,000)
PROFIT	**2,488,000**	**13,016,000**	**15,564,000**
Project Return (not ROI)		**34.31%**	**32.35%**
Annual ROI	**50.00%**	**343.00%**	**296.00%**

These two examples are representative of the enormous profitability of the alternatives to the Proposed development requiring zoning variances.

Considering the New House project as a whole also demonstrates that part of a project cannot be evaluated by itself when there is a large transfer payment from one part to another. It invites mischief.

J.E.Mulford

Appendix A:
Assumptions

The numbers used in the ROI calculation for the Revised Proposed Development are taken from the Freeman/Frazier letter dated 13 May 2008. This table is similar to that in Section 3, but provides more detail.

Income/ Expense Item	Value $	Derivation
Net Project Value (Sales Revenue)	34,039,000	FFA figure, even though understated.
Acquisition Cost	13,970,000	This is greater than the $12,347,000 figure assumed by FFA.
Leverage	90%	Less leverage than assumed by FFA which is 24,770,000/26,731,000 = 92.66%, rounded down to a lower 90%
Equity	2,673,100	Developer invests 10%, the unleveraged total investment.
Base construction cost	7,398,000	Per FFA Schedule A
Soft construction cost	6,322,000	Per FFA Schedule B. Includes interest.
Interest	2,353,000	Shown included in soft construction costs by FFA but separately in the ROI analysis
Transaction taxes	661,000	
Contract period	28 months	This includes the sales period and allows for overruns and slow sales over the stated construction period of 23 months.

Appendix B:
BSA Application Instructions

Board of Standards and Appeals BZ application instructions, Item M (5) for financial feasibility, requires an applicant to submit figures for: acquisition costs, construction financing, equity, net profit, and return, among other items.

It defines return (commonly called Return on Investment (ROI)) as "percentage return on equity (net profit divided by equity)".

The FFA letter of 13 May contends that BSA applications measure return on "total project development cost", even though the BSA application instructions require[3] return on equity and require the amount of equity to be stated.

Rules and conventions aside, the fundamental issue is what financial measure properly describes reality of interest to a developer. The best reference is a developer's books. The figure of interest to its stockholders is the amount of their cash invested in a project (equity) and the profit at the end of the project, regardless of whether the income derives from rents, sales, service, or other sources.

Equity is a critical figure because it is the primary amount at risk to the developer. A return on that equity must be commensurate with the risk. Project risk is different because it is backed by the development itself, insurance, and some is offloaded to the lender. It also has a comparative value. If a developer is not making much on his own money, he would be better off investing in a money market account, at much lower risk.

The BSA rules make sense because they are rooted in reality. They are intended to mitigate undue hardship to the developer, not a bank, and not the project itself which is not a financial entity. Therefore, ROI is the valid measure of interest to zoning decisions.

[3] Detailed Instructions for Completing BZ Application, item M, Items 4 and 5, undated. See copy in Opp. Ex. KK, page 1

Appendix C:
Comments and Notes

1. In the SiS, Friedman says

> *Freeman Frazier concluded that due to existing physical conditions on the Zoning Lot, including the need to address the Synagogue's circulation problems and the need to replace and enlarge the functions in the Community House, there is no reasonable possibility that a financially feasible mixed-use building could be developed in strict conformity with the Zoning Resolution.*

Freeman Frazier did not make that conclusion. They simply reported that (incorrectly-calculated) returns for AOR#1 and AOR#2 were 3.82% and 0.93% respectively and made the observation that

> *A return at this low level would not be considered a feasible development opportunity.*

without any suggestions about whether it would be so 'considered' by CSI or other party, or what 'feasible' criteria might be.

But the SiS provides a clear indication of what feasible means to CSI. It says that the purpose of the residential project is to fund development of the Community House. Both AOR#1 and AOR#2 do that and more, providing $12,347,000 (in FFA's numbers) funding to cover the $11,552,602 cost of building the Community House.

The obvious conclusion of the FFA analysis is that both are feasible according to CSI's own criterion.

2. Referring to the New Building in the SiS, Friedman says

> *In comparison, the New Building proposed herein ... [provides] a 10.66% return, which Freeman posits to be minimally sufficient consideration as an investment opportunity.*

Freeman does not posit anything. As is appropriate to his charter, he makes no judgement. He simply reports an (incorrectly-calculated) return of 10.66% without comment.

3. On SiS page 44 Friedman says

> *AOR#1 ... [produces] a capital annualized loss to a developer of $983,000.*

It does not. Freeman shows an annualized profit of $983,000 and a (incorectly-calculated) annual return of 3.82%.

4. On page 31 of the SiS, Friedman says

The financial analysis prepared by Freeman/Frazier& Associates demonstrates that the conversion of the 23,000 sf of unused development rights already owned by CSI on the Zoning Lot onto 23,000 sf of built residential floor area is an economic wash, ...

Freeman/Frazier does not. It neither mentions 23,000 sf nor does it demonstrate conversion. It doesn't wash.

In four statements (Items 1-4) then, the Friedman SiS document misrepresents the Freeman Frazier effort.

5. The areas in the text of the FFA 21 Dec 07 descriptions of the Tower differ from those reported on Schedule A: Analysis…

Area	**Text (ft^2)**	**Schedule A (ft^2)**
Gross	19,755	20,019
Sellable	14,980	10,346

No source has been found for the 19,755 figure that is the basis for all of the current FFA financial returns!

6. The areas used in the FFA analysis vary from time to time for the same configurations:

	Date	Salable Sq.Ft.	Built Sq.Ft.
Revised Proposed	Sep 6, 2007	14,980	20,863
	Oct 24, 2007	15,799	20,863
	Dec 21, 2007	15,799	20,863
	May 13, 2007	15,243	22,352
	None of the built figures are found in architec		

	Date	Salable Sq.Ft.	Built Sq.Ft.
All Residential FAR 4.0	Sep 6, 2007	15,883	25,642
	Oct 24, 2007	17,780	28,724
	Dec 21, 2007	17,780	28,724

7. The CSI submissions embody many tricks to appear to achieve its goals. The list includes:

   7a) Cost allocations between the RC and CH parts of the project unfairly load the RC portion, reducing its profitability.
   7b) Soft construction costs appear to be loaded onto the RC portion, reducing its profitability.

7c) Project profitability is proffered as the measure to be used to judge applicability of a 72-21 finding, but that measure does not accrue to any real party to the transaction.
7d) Absurd loss factors of 32, 34, 38, and 42% are used by FFA but are not supported by architectural drawings or other explanation.
7e) The FFA analyses use numbers that are different from those used in the application text and architectural drawings, and vary from time to time without explanation.
7f) CSI fails to provide basic and required and requested information. The application is a house of cards, but with less support.

The conclusion is obvious. The application is groundless. lIt does not appear to have been taken seriously by the applicant; it should not be taken seriously by the BSA.

8. A rational developer pays for the right to build the area specified in the architectural plan. But the FFA analysis have the developer paying vastly different amounts for a unit area from $821/ft^2 to $2,494/ft^2 in 28 March 2007, for example.

Date	Built Area in Proposed Plan (Sq.Ft.)	Built Area for Various As of Right Plans (Sq.Ft.)	Acquisition Cost ($)	Cost ($) per Sq.Ft.
28-Mar-07	23,067		18,944,000	**821**
		7,596	18,944,000	**2,494**
06-Sep-07	20,863		18,914,000	**907**
		7,594	18,914,000	**2,491**
		11,936	18,914,000	**1,585**
		25,642	18,914,000	**738**
24-Oct-07	20,863		17,050,000	**817**
		7,594	17,050,000	**2,245**
		12,575	17,050,000	**1,356**
		28,724	17,050,000	**594**
21-Dec-07	20,863		14,816,000	**710**
		7,594	14,816,000	**1,951**
		12,575	14,816,000	**1,178**
		20,019	14,816,000	**740**
		28,724	14,816,000	**516**
11-Mar-08	20,863		13,384,000	**642**
		20,309	13,384,000	**659**

Date	Built Area in Proposed Plan (Sq.Ft.)	Built Area for Various As of Right Plans (Sq.Ft.)	Acquisition Cost ($)	Cost ($) per Sq.Ft.
13-May-08	20,863		12,347,000	**592**
		18,006	12,347,000	**686**
		21,798	12,347,000	**566**

Note, however, that the FFA analysis of 13 May 2007 does not correspond with the architect's drawings dated 5.13.08 which shows 22,353, not 20,863 ft^2. The result is that the FFA analysis makes the Proposed development look more profitable than it is.

Would a developer really pay such different rates for the same use, in the same building, on the same lot? Of course not. What then is accomplished by this method? As driven by CSI's apparent logic, this method makes the smaller, As-of-Right, development appear financially inadequate. It separates out, eliminates, the As-of-Right configurations from consideration, 'justifying' zoning variances.

9. The FFA analysis of 21 December 2007 shows the Developer paying $14,816,000 for the right to develop Scheme A condos, on which he receives $11,866,000 from their sale, after spending an additional $8,529,000 in construction costs. One assumes this is the his last project.

T H E V E R Y E N D