

NEW YORK CITY BOARD OF STANDARDS & APPEALS

TRANSCRIPTION OF TAPE

Case # 74-07-BZ.

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

6-24-08.

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

3 MR. FRIEDMAN: Good afternoon, Madam Chair,
4 members of the Commission. Shelly Friedman, Friedman and Gotbaum.

5 I'm joined at the table by co-counsel in this matter, Louis Solomon, from Brosco
6 & Rose. Mr. Solomon is also a trustee of Shearith Israel.

7 We really have nothing to amplify on our most recent submission. We just want
8 to note that we are here and present. All of our professionals with regard to this
9 application are present and prepared to answer your questions and prepared to respond to
10 whatever questions you might have after the opposition speaks.

11 CHAIR SRINIVASAN: All right. We had a few questions
12 for you during our discussion yesterday. Would you like to respond to that? Do you
13 have them?

14 MR. FRIEDMAN: I'd be happy to respond to them if you
15 could just remind me which ones were current? We've heard them.

16 CHAIR SRINIVASAN: All right. I know that there were,
17 I think, essentially questions on the financials and just some, I think, clarifications.

18 Commissioner Ottley-Brown, would you like to - -

19 MR. FRIEDMAN: With your permission, I'll ask Jack
20 Freeman to come up and join us.

21 COMM. OTTLEY-BROWN: The first question is could
22 you clarify exactly what floors those terraces are on? And, they don't seem to be
23 accounted for in the financials, the outdoor space.

1 MR. FREEMAN: They are included in the financials.

2 COMM. OTTLEY-BROWN: They are?

3 MR. FREEMAN: Yes. The outdoor space and the

4 penthouse is accounted for.

5 COMM. OTTLEY-BROWN: No, those rear terraces - -

6 the rear terrace and the cutout in the back?

7 MR. FREEMAN: I think they're in the price. I will

8 double check for you, though.

9 COMM. OTTLEY-BROWN: Yes. You have it for the

10 penthouse but you don't have it for the floors that have that rear cutout terrace and it's

11 not clear to me how many of them there are. Is it just one floor? It's (Unintelligible) on

12 floor six, seven and eight.

13 MR. FREEMAN: I'll check with the architect and we'll

14 do what we have to do.

15 COMM. OTTLEY-BROWN: Okay.

16 CHAIR SRINIVASAN: All right. What I understand is

17 that it's only on one floor because you're not including balconies on the other floors,

18 right?

19 MR. FREEMAN: No.

20 CHAIR SRINIVASAN: It's just the cutout once you set

21 back your building, I believe, on the 6th, 7th and 8th floor?

22 MR. FREEMAN: Right.

1 CHAIR SRINIVASAN: And, the 9th floor? So, it should
2 be - - one of those apartments will get the terrace space?

3 COMM. OTTLEY-BROWN: You'll have outdoor space.

4 MR. FREEMAN: One new apartment would have a new
5 terrace. It may have been included in the pricing but I don't want to say that.

6 COMM. OTTLEY-BROWN: And, then, the other
7 question I had concerned the efficiency ratio.

8 If you could clarify how you calculated the efficiency ratio? Because if you look
9 at your three situations, your eighth floor plus penthouse, the actual proposal, your eighth
10 floor, no penthouse and your seven floor plus penthouse, your efficiency ratio for your
11 second example, eight floors, no penthouse, is actually lower than your seven floors plus
12 penthouse.

13 MR. FREEMAN: I'll check. The core size and circulation
14 space affect the efficiency ratio so that doesn't change.

15 COMM. OTTLEY-BROWN: Right.

16 MR. FREEMAN: But, the architect - -

17 COMM. OTTLEY-BROWN: Right. Because it doesn't
18 change, one would think, then, that the third alternative - - the second alternative should
19 have an even lower efficiency ratio because that penthouse floor is actually smaller than
20 your eighth floor and the eighth floor, no penthouse.

21 MR. FREEMAN: Well, we'll check with the architect
22 because he's the source of that information and we'll just, if necessary, correct it.

23 COMM. OTTLEY-BROWN: Okay.

1 CHAIR SRINIVASAN: Right. And, also, just on the
2 issue of efficiency, if you can clarify to us what you've taken out from your gross square
3 feet, so you have a gross residential and then you have, I think, the sellable residential.

4 MR. FREEMAN: We'll do that.

5 CHAIR SRINIVASAN: All right. So, if there's - - we
6 understand the core is taken out and there may be other things, the lobby.

7 MR. FREEMAN: There are public areas that are not
8 sellable areas.

9 CHAIR SRINIVASAN: All right. But, if there are other
10 things like if you're taking into consideration or removing any spaces that are taken up by
11 walls so we understand that.

12 Because, the efficiencies that you have are really in the range of 60 or 70 percent.

13 MR. FREEMAN: That's a pretty inefficient building but
14 it's consistent from alternative to alternative, as I understand it how it was calculated.

15 CHAIR SRINIVASAN: Right. But, the calculations are
16 pretty straight forward because they're based on a set of drawings that we have which
17 actually identify how much residential space is occupied by the core and how much
18 residential space is occupied by the lobby and so if you do some of those calculations,
19 they should be consistent.

20 MR. FREEMAN: We'll review it with the architect.

21 CHAIR SRINIVASAN: Okay. Yes. Are there other
22 questions from the - -

23 COMM. OTTLEY-BROWN: No, I think that's - -

1 CHAIR SRINIVASAN: All right. Commissioner
2 Montanez.

3 COMM. MONTANEZ: I think, basically, it was more on
4 the same lines of, you know, what is the salable area versus the built area? And, you
5 have the apartments - - once you come up on the elevator, you have a small hallway. It's
6 basically the entire floor. I would think that should have a high efficiency.

7 MR. FREEMAN: We'll provide you with some
8 documentation.

9 COMM. MONTANEZ: Okay.

10 CHAIR SRINIVASAN: All right. And, I think there was
11 just an issue that was raised by testimony that was received which has to do with the
12 comparables that you've used and whether the comparables for the other apartments,
13 which is the basis of your revenue or what you find is your revenue that you get from per
14 square foot for the condominiums, whether those comparables, does it make the same
15 assumptions that you've made?

16 There was some question about whether those comps actually include spaces that
17 are used as common areas and I know that in the analysis that you've done, you've taken
18 out the common areas.

19 So, if there's a way to establish that.

20 MR. FREEMAN: Well, usually, there's no way to do that.
21 We just go by whatever the available published information is and when they say saleable
22 square footage, we have no idea what was their gross, what was taken out? There's no
23 way to back into that. It's that much saleable.

1 So, I'd love to be able to answer the question but it's based on what the recorded
2 saleable area is. It doesn't tell you what - -

3 CHAIR SRINIVASAN: Right. So, when you're saying
4 that the other is a transaction that took place where a 1000 square foot apartment, the
5 assumption is a 1000 square feet is inside the unit?

6 MR. FREEMAN: It's the sellable area.

7 CHAIR SRINIVASAN: It's the sellable area.

8 MR. FREEMAN: It's the sellable area.

9 CHAIR SRINIVASAN: It's the sellable area.

10 MR. FREEMAN: It's the sellable area.

11 CHAIR SRINIVASAN: Is the sellable area.

12 MR. FREEMAN: And, that would be - - I mean, when we
13 can, we try to get a copy of an offering plan but that's what is identified in the offering
14 plan as sellable area to a prospective purchaser.

15 CHAIR SRINIVASAN: All right.

16 MR. FREEMAN: When it's recorded, that's what shows
17 so we go by what they say is sellable and then we looked to our architect to identify what
18 would be the sellable area. I think partly with the caveat that these are very schematic
19 conceptual plans so as they evolve, the sellable area may change a bit but not in its sort of
20 overall character.

21 By the time it gets to the Attorney General, it's vetted by the Attorney General's
22 Office to have met his standards.

23 CHAIR SRINIVASAN: All right.

1 MR. FREEMAN: But, we're not there yet.

2 CHAIR SRINIVASAN: Any other questions for the
3 applicants. Thank you, Mr. Freeman.

4 Mr. Friedman, do you have anything to add right now? We'll take testimony
5 from - -

6 MR. FRIEDMAN: We're here.

7 CHAIR SRINIVASAN: All right.

8 MR. FRIEDMAN: Thank you.

9 CHAIR SRINIVASAN: Thank you. All right. Yes.

10 MR. LEBOW: Madam Chair and members of the Board,
11 as you know, I represent the opposition to all seven of these variances and I want to thank
12 you for your patience in permitting an organized, although somewhat disorganized, at
13 times, opposition to have its say before you.

14 We appreciate the courtesies that you and your staff have given to us throughout
15 this.

16 If some of us have strayed a little bit from the reservation, I hope that you forgive
17 us because passions run high on the west side when it comes to changes in mid-block
18 zoning.

19 So, if any of us have offended you by being too excessive, I hope that you'll
20 forgive us.

21 This, I hope, is the last chance that I will have to persuade you in this presentation
22 that we are going to make today; that none of these seven variances should be issued.

1 And, as usual, I'm going to try, probably unsuccessfully, to take a little bit of a
2 step back and look at the whole situation, perhaps, from afar, so to speak, and the
3 subsequent speakers that we have scheduled through your staff for the rest of this half
4 hour presentation will go into detailed findings that you must make for each one of the
5 variances.

6 I would just like to urge you to please make specific factual findings for each one
7 of the statutory findings that you must make in order to justify each one of the variances
8 that you give.

9 The last thing that Mr. Friedman and I would like to do is come back here two
10 years from now and ask you to make further factual findings. Well, maybe I shouldn't
11 speak for Mr. Friedman, but it's the last thing that I would like to do anyway.

12 Let's turn to these findings one-by-one. First, for the (a) finding, this plot of land
13 is a perfectly garden variety rectangular spot and a perfectly garden variety rectangular
14 block.

15 There are no unusual hardships. There are no special strange conditions about it.

16 The fact that there is a landmark next to it and that a zoning line goes down the
17 middle of it have been held repeatedly not to present by themselves any unusual
18 conditions that require a variance pursuant to finding (a).

19 Turning very quickly to accessibility, there is no doubt that even minor repairs to
20 the existing structure will grant full and complete accessibility to the landmark.

21 And, certainly, an as-of-right structure can easily correct any accessibility
22 problems.

1 The main issue that we come to is whether or not programmatic needs are
2 satisfied by this non-profit application to you for its variances.

3 And, I ask you, once again, to look at what programmatic means? Programmatic
4 means that it must continue or foster the institution's programs and needs means it needs
5 them. That does not include luxury condominiums.

6 You have never, ever held that luxury condominiums are necessary for a
7 programmatic needs. And, this building is half programmatic needs, arguably, and half
8 luxury condominiums.

9 The programmatic needs can easily be put in an as-of-right structure.

10 We have given you so much evidence of that that it is absolutely overwhelmingly
11 clear that if you take out the half luxury condominiums that all of the real programmatic
12 needs can fit into the other half and that is not a surprise because even the applicant wants
13 to put luxury condominiums in half the building.

14 And, a look at these strange programmatic needs; a daycare center? I mean, I
15 would have thought that they would have probably wanted to have a reading room. At
16 least that's more like a programmatic need. And, a rental school, which anybody can go
17 to, which pays rent to the institution, these are pretty marginal programmatic needs as
18 they are. And, they can easily fit in to half the building.

19 So, therefore, the programmatic needs requirement does not extend to luxury
20 condominiums.

21 Turning now to the community, you heard what the Community Board said.
22 They voted against all seven of these variances.

1 You've heard what the narrow community on West 70th Street have said because
2 all those that we don't represent must have been here themselves, personally, throughout
3 one of these many hearings. The community doesn't want it.

4 And, you know why Community Board #7 was right? And, as I think you know,
5 I was a Community Chair - - Board Chair before and we don't always get it right. And,
6 you don't always listen to us.

7 But, Community Board #7, by heavens, got this exactly right.

8 The first thing that came before them was the Landmark's application and they
9 looked and they said does this building, as it's proposed, is it suitable for this landmark?
10 Does it mess it up having nothing to do with zoning?

11 And, they were smart enough for once to look at it and say, okay, it doesn't mess
12 up the building. It's not inappropriate. So, they said to Landmarks, we don't have any
13 objection if you give us a Certificate of Appropriateness. That has nothing to do with
14 zoning, though, because when it came back to see (sic) after Landmarks said what it said,
15 does it fit into the community from a zoning standpoint? Because, that is your job. You
16 don't have anything to do with appropriateness and Landmarks doesn't have anything to
17 do with zoning.

18 So, they looked at it after it came back and said it's too big and it's too fat. I
19 won't forget about too ugly because you know what I think about the aesthetics of this
20 building but that's just my opinion. All I know is that architects from Denmark and
21 Iceland or whatever they are from these days, aren't going to be traipsing over to look at
22 this piece of work.

1 But, in any event, what they said was from a zoning standpoint, it doesn't work
2 and they got it exactly right. And, my friend, Mr. Friedman, often gets these two
3 confused.

4 When he comes to you and he says that the Bloomberg Administration has
5 approved this, which is total nonsense and he implies by that that Landmarks has been the
6 final word on zoning, it's totally ridiculous. Even Community Board # 7 got that right.

7 And, why did they get it right? Because we have given you a list of seven or ten
8 or twelve other examples on Central Park West where there are cultural institutions and
9 where behind it there are low rises. And, they know that the Upper West Side of
10 Manhattan, today, is probably the most desirable place to live in New York. Maybe Fifth
11 Avenue or Park Avenue and parts of it, but Central Park West is catching up and if the
12 trend continues, it is the most desirable place to live in New York and why is that?
13 Because of its character.

14 High buildings on the avenues. I'm not even talking about Columbus Avenue and
15 what will happen there but just Central Park West, for a while. And Brownstones are
16 four to six stories in the middle. That is what makes it unique. That's what makes it
17 valuable and that's why people get upset about it.

18 And, you have never once departed from mid-block zoning on the Upper West
19 Side to depart from this four to six story brownstones. I couldn't find one single case
20 where you have ever done it before.

21 And, if you say, well, all right, the buildings are on Columbus or Central Park
22 West. Well, because you're an institution, a religious institution, we'll let you put a high-
23 rise 100 feet in, 150 feet in. We'll move it back just for you. That's the beginning of the

1 end because that's not what the zoning law says. That's not what the character of the
2 neighborhood is. And, it will really open a Pandora's Box for you.

3 The rule is the high rises are on the avenues; mid-block zoning is four to six story
4 brownstones.

5 Of course, there are some anomalies there which existed before the Code but you
6 have steadfastly said you are not in the business to perpetuate anomalies. Don't do it
7 here.

8 CHAIR SRINIVASAN: Thank you, Mr. Lebow. The
9 next speaker.

10 MR. GREER: Madam Chair, I'm Jay Greer. I've been
11 before you before.

12 I will be very brief. I want to address, as I have been addressing, the issue of
13 programmatic needs, particularly for classrooms.

14 I would remind the Board that since November, you've had a long series of
15 discussions with the applicant and his lawyers requesting detailed information about the
16 programmatic needs for classroom space and, particularly, the relationship between CSI
17 and its tenant school, Betrabon (Phonetic).

18 There's been a lot of paper. There's been a lot of talk and with great respect to
19 the applicant and its lawyers, you still don't have the answer.

20 I have been through this with great care. You have part of an answer. The
21 answer, which is buried deeply in the latest Environmental Impact Report, is that there
22 will be 165 students in Betrabon (Phonetic) in this proposed building if it gets built.

1 That is in addition to the 60 toddlers that the CSI has said are part of their
2 religious program. Assuming that for the sake of argument, that generates a need for 225
3 students with the best (Unintelligible) in the world, even their elaborate new building will
4 not accommodate 225 students.

5 There are a few footnotes scattered around; notes on diagrams that are not before
6 you this time, that say that Betrabon and CSI will share as their programs may required or
7 words to that effect.

8 There is no detail of how this is going to work and I respectfully submit that until
9 you get this clear, you have no basis for making a finding (e).

10 I also do not understand how you can possibly find if there is any physical
11 impediment to putting these programmatic needs, whatever they are, in an as-of-right
12 building.

13 I have letters which lay this out in great detail. I also have a collection, which I'll
14 provide the Board today -- I also have a collection of exhibits. Unfortunately, my wife
15 died very recently and I'm a little bit behind in my efforts to put those together but I
16 should have those to you in the next few days.

17 I do believe that the programmatic needs you've asked for have not been spelled
18 out and that you really should insist on getting some straight answers. Thank you very
19 much.

20 CHAIR SRINIVASAN: Thank you. The next speaker.
21 Mr. Sugarman.

22 MR. SUGARMAN: Good afternoon. I've just distributed
23 a letter that I sent by e-mail the other day that you may or may not have.

1 The Board has skirted, if not ignored, clearly material issues and facts. I believe,
2 in all due respect, deliberately declines to ask questions or otherwise exhibit curiosity as
3 to material issues and facts.

4 Consequently, in what looks like an Article 78 proceeding coming up, the Board's
5 findings could be questioned as being arbitrary and capacious. We would rather the
6 Board get it right now.

7 In neglecting its obligations, as we see them, the Board is able to shape the record
8 to meet the Board's or someone's desired outcome.

9 Not only does the Board not ask certain questions but it ignores objective and
10 expert testimony from the opponents.

11 And, I'll be specific. Consider finding (a) and you all know that. It requires,
12 among other things, "Practical difficulties or unnecessary hardships that arise in
13 complying strictly with provisions of the resolution."

14 Now yesterday, at the Executive Session, I heard no discussion of that. And, also,
15 you lumped all the variances together.

16 Now, in this case, the applicant has kindly stated in its last submission that access
17 and accessibility of hardships are the heart of its application.

18 In fact, it referred to it thirty times in its last submission. And, yet, the Board has
19 really never gone into that to figure out what they are talking about as it relates to finding
20 (a), which requires that connection between the hardship arising from the strict
21 compliance with the Zoning Resolution.

1 So, here we have an issue that is without question legally relevant in the
2 mandatory findings and the applicant says is the heart of its application. So, what do we
3 have in the record?

4 We keep asking the Board to ask and get into these issues and, frankly, I think
5 we're ignored.

6 I don't understand how this wasn't taken care of months or over a year ago where
7 we (Unintelligible) not see it thirty times; thirty times in one submission?

8 So, here's the question. Can the applicant explain how a building strictly
9 complying with the Zoning Resolution, does not address the access and accessibility
10 difficulties; a hardship described by the applicant as the heart of its application.

11 I've never heard that question asked. Has the Chair asked that? No. Has the
12 Vice-Chair? No. Has Commissioner Hinkson so inquired? No. Neither Commissioner
13 Ottley-Brown or Commissioner Montanez? Has the applicant answered this? No.
14 Where is the connection of the heart of its application to this mandatory finding which
15 wasn't even referred to yesterday?

16 So, I don't know how the Board is going to make this finding (a), which is
17 critical, particularly as it applies to the upper buildings.

18 We have provided our expert architect providing information on that. We have
19 provided schematics, analysis, everything you can possibly do. And, interestingly, when
20 the opposition testifies, no one questions it. None of the Commissioners question it. The
21 applicant doesn't question it.

22 So, it seems to me that the answer to the question is there is no relationship
23 whatsoever between this hardship and any requested variance.

1 There's no question and that's what we'll base our Article 78 proceeding on,
2 absolutely, including the refusal of the Board to collect the information on something so
3 material. It cannot just ignore it.

4 And, in a related matter, the last hearing, I quoted something from the applicant
5 on the same issue, again, I think where they say as a unique physical condition, "A
6 development site on the remaining one third of the zoning lot who's feasible development
7 is hampered by requirements to align its street wall and east elevation with the existing
8 synagogue building."

9 You may recall I read that at the last hearing.

10 We had a meeting with staff after that. I asked your entire staff if they could
11 explain to me what this is all about? I don't know what they mean; align the street wall
12 with the existing synagogue building and this is a unique physical condition? Have I
13 heard anything from the applicant? No. Do you know? Will you repeat this in a finding
14 without knowing what it means? I would hope not.

15 And, this is not the only material issue that I believe the Board has not inquired
16 into.

17 It hasn't inquired, as far as I know, why the congregation's programmatic needs
18 can't also be included on the 5th and 6th floor?

19 I mean, after all, the caretaker's apartment could be moved up there giving more
20 space on the fourth floor. There's never a question. Has it been raised in the
21 opposition's statements over and over again for the last sixteen months? Yes. Have you
22 ever gotten an explanation? No.

1 The Board blinds itself to the income, current and future, from the tenant's school
2 Betrabon. Is that relevant? Well, we see in the financials that was discussed yesterday,
3 that you're going to have the hypothetical developer pay for the rights for the entire
4 building but you just want to ignore the fact that they're getting a million dollars or so a
5 year.

6 Well, the only hard information we have is an official filing that Betrabon made
7 with the IRS showing \$480,000 a year and it's double in size. You can check the fact.
8 It's double. But, you haven't inquired.

9 How can you proceed and make the kind of findings you're going to make on the
10 feasibility with letting them charge for six floors when only two floors are being used in
11 Scheme A? I do not understand that nor do I think a court will.

12 And, in that regard, I think a court, also, will have substantial questions about the
13 analysis that yesterday I think I heard the Board suggested it was okay to charge a
14 hypothetical developer that six floors of space and only use two. I don't think that's
15 going to go over.

16 I know some of the Commissioners had questions about that and that will be one
17 other item.

18 We have - - Marty Levine is tied up in another proceeding and I hope he might
19 get here in a few minutes but, if not, I wanted to point out a couple of things.

20 Last time we pointed out that the pages were missing in the construction estimate,
21 so we got them for two or three of the proposals, not for Scheme A, though. And, there
22 was sort of, if I may say so, a snide remark that someone can - - we can look this over but
23 we did.

1 And, if you recall, right in the beginning of this proceeding, we looked at these
2 estimates and we said what do they mean by school? What do they mean by residential?
3 We asked staff. They don't know. But, this disclosed now that every single residential
4 construction estimate, they are including as a condominium a two bedroom apartment on
5 the fourth floor.

6 Because the construction estimator didn't know that this residential wasn't going
7 to be a condominium. That is perhaps a million dollar error in every single - - every
8 single feasibility study and we just found out because that could have been answered a
9 year and a half ago and we still don't know what the assumptions are for allocations.

10 Another little minor thing that showed up in the last large submission in May was
11 unbelievably, if you recall, the purpose behind or the reason for the second floor
12 extension, the rear extension, was the toddler program which suddenly appeared out of no
13 where because in everything else at the beginning of this proceeding and in Landmarks, it
14 was offices. Well, they can't keep their story straight because go look at pages 30, 31 of
15 the May 13th application and guess what, now they're going to be putting offices back on
16 the second floor.

17 So, one day it's toddlers. The next day it's offices. They have a table there that
18 came from a year and a half ago and why? This isn't a mistake. The story isn't being
19 told straight. It's hard to keep everything straight and that's what happened again. In
20 fact, it's happened hundreds of times.

21 The last thing - - I mean, that's pretty incredible. How are you going to make a
22 finding on the second floor? Do they have a programmatic need for sixty toddlers and
23 right now they only have five toddlers, two hours a day, two days a week and they're

1 going to have sixty toddlers on this one floor. This is bizarre. And, I don't know how
2 you can buy that. I know you have to give deference to the synagogue or you feel you do
3 but deference doesn't mean accepting anything they say when it so conflicts with
4 everything else they're saying. They can't keep the story straight.

5 I'm done with my part of the presentation. Do you have any questions?

6 CHAIR SRINIVASAN: Any questions for Mr. Sugarman.

7 Thank you. The next speaker.

8 MR. PRINCE: I'm going to distribute my statement and
9 an attachment, if I may. Thank you. And, just really top line my remarks.

10 MR. COSTANZA: I'm sorry. Could you state your name
11 for the record?

12 MR. PRINCE: Yes. I'm sorry. It's Ron Prince and I've
13 spoken before this Board and I am part of a committee formed by the Board of 18 West
14 70th Street and, obviously, we're very disappointed in the direction things are taking here.

15 The thing that we really want to go on record to say is that the applicant has said
16 in its recent filings that - - has mentioned his concern to blocking the windows on 91
17 Central Park West, and I guess we'd like to applaud their half sensitivity to blocking
18 windows but I guess when you're on 70th Street and not Central Park West, your
19 windows don't matter as much as if you're on Central Park West.

20 So, you see in this statement some remarks related specifically to the reality that
21 all through this process that the congregation's submissions have failed to take into
22 account in their environmental assessments the effect that their proposed building would

1 have on the windows of 18 West 70th Street. That continues for the most recent May
2 filing and it's simply disgraceful that that would be tolerated.

3 The second attachment you'll see relates to the shadow study. This is sort of the
4 photographs I've submitted before. Given the shadow study, I thought it had bearing,
5 again, and the synagogues shadow study says that whatever shadows are produced would
6 be, I believe, the language is only incremental.

7 Of course, it's preposterous to think that where there's a vacant lot and then
8 there's a one hundred or whatever story - - foot building, that there will not be a new
9 shadow and I hope that that photograph documents for you that the shadow study, like so
10 much else being filed, is a sham.

11 And, finally, we just want to say from 18 West 70th Street that we're sorry that the
12 Board is inclined to accept CSI's request to subsidize itself at the expense of its
13 neighbors.

14 We think it's time for you to find your voice and your commitment to the zoning
15 law and reject this application now. Thank you.

16 CHAIR SRINIVASAN: Thank you. The next speaker.

17 MS. NIAL: Good afternoon, members of the Board,
18 Madam Chairman, my name is Susan Nial and I think you have received a number of
19 letters from me, and I'm here as counsel representing the opposition but on a pro bono
20 basis.

21 And, I wanted to talk a little bit about some conceptual items that I think have
22 been missing in the discussion of this case. In fact, I think they have been misinterpreted
23 in large sense.

1 The Chairman has made a lot of good comments about how important public
2 participation is in this process and how important this Board is to the protection of
3 neighborhoods and the protection of the quality of life in this city and the enforcement of
4 the zoning regulations.

5 Clearly, you balance the interests of developers and the interests of the
6 neighborhood but in that balance, that balance has to look toward preserving
7 neighborhoods.

8 In this case, I think the variances being asked for have been shown almost beyond
9 a reasonable doubt to have been destructive.

10 Professor Sclar (Phonetic) has written you a letter regarding contextual zoning; a
11 concept which has been very important in protecting neighborhoods in this city; a
12 concept and, in this particular case, contextual zoning and mid-block zoning was
13 considered and democratically enacted, and I would suggest to you that granting these
14 variances, as they now stand before you, would destroy that whole idea of contextual
15 zoning and, in fact, do very grave damage to a legitimate considered system of regulation
16 of land use.

17 There has been a lot of discussion about deference and how religious institutions
18 deserve deference and there's been a lot of law review articles and newspaper articles
19 written about land use and religious institutions.

20 The concept of deference to religious institutions when they wanted to build a
21 church, build a synagogue, have some parking space so that they're congregants could
22 come and worship was one thing. But, we have seen a dramatic change in the way that

1 religious institutions wish to use their land; the way non-profit institutions wish to use
2 their land.

3 This is a perfect example of that change. That change is they use their land not
4 for congregational purposes, religious exercise purposes which is the thing to which
5 deference must be given but rather they use it to make a profit.

6 Now, maybe you have a different definition of profit that I might so we'll call it
7 money so that we won't run up against some professional definitions.

8 In this case, money has always been at the bottom, at the center and at the top of
9 why these variances have been asked for.

10 And you, yourselves, have voiced concern about that being the issue. Your
11 decisions past have said that that kind of quote, "Programmatic need" getting revenue to
12 fund your congregants exercise is not an appropriate programmatic need.

13 I was stunned when I heard a Commissioner suggest that, in fact, the record
14 should be changed here and that information regarding that request for funding as a result
15 of these - - the variances should be taken out of the applicant's statement of support.

16 I put it to you that that is not an appropriate programmatic need and that that is
17 really the reason that these variances are being asked for.

18 So, I would ask you to consider your obligation to the community, not just this
19 small community of 70 West but rather the larger community because there, again,
20 there's a misconception of the importance of precedent.

21 While you may argue in some of your rulings that they are limited to the facts,
22 that will not happen here.

1 If you accept, as you have said in some of your other rulings that revenue
2 generation by the building of luxury condominiums is an appropriate basis for granting
3 neighborhood destroying variances, you will, without question, open the floodgates.

4 You will, without question, generate strife and concern as to why some will be
5 allowed to use that as a programmatic need to support variances while others were not.

6 If you allow a complete deference to everything that's been said by this applicant
7 because they are a religious institution, whether it was regarding the number of
8 classrooms they need; whether it's regarding accessibility, etc., without probing those
9 representations there, again, they will be being treated differently, not just differently
10 from other for-profit developers, which they surely are, but they will also be treated
11 differently than previous non-profit and religious applicants that you have had before you
12 in the past where you have looked at how many classrooms they needed; where you have
13 looked at the size of those classrooms and where you have said to them, you don't need
14 this. You don't need that. You'll take that out and you'll not use that.

15 So, I ask you to consider seriously your obligation to the community, 70 West;
16 your obligation to the Zoning Resolution and your obligation to maintain the kind of
17 neighborhood control and City control over development and not to open the floodgates
18 which will surely happen if you grant these variances.

19 Thank you.

20 CHAIR SRINIVASAN: Thank you, Ms. Nial. Mr.
21 Lebow, is that the completion of your presentation?

22 MR. LEBOW: Yes, almost, except for me.

23 CHAIR SRINIVASAN: All right.

1 MR. LEBOW: Our last speaker was supposed to be - -

2 MR. CONSTANZA: Could you please state your name,
3 again, for the record.

4 MR. LEBOW: Mark Lebow, I'm sorry, for the opponents.

5 Our last speaker was supposed to be Martin Levine, who is from Metropolitan
6 Evaluation Services Real Estate Consulting and Appraisal. And, as you recall, the
7 applicant submitted a report by Freeman/ Frazier last week which contained a number of
8 financial conclusions, especially about economic hardship, a rather dubious detour to
9 begin with and this would have been his response.

10 I ask that you take it in lieu of his speaking today and I would only like to read
11 one paragraph from what he says and he is a MIA, a member of the Appraisal Institute,
12 and does point out that Mr. Freeman's CV does not indicate that he is a member of any
13 recognized real estate appraisal organization or possesses any evaluation license, as Mr.
14 Levine does.

15 So, I shall just conclude with reading his one paragraph. "Inconsistency runs
16 amok in the Freeman/Frazier reports from the land value, the construction costs, soft
17 costs, saleable area measurement, traffic calculation. In justifying their inconsistencies,
18 sometimes they cite BSA submission practice which they do not document but only
19 assert yet, most of the time, they ignore the BSA's own directives to submit
20 documentation."

21 That concludes the opposition - - by the opposition but I'm here to answer any
22 questions that you may pose to me or derivatively to anyone else.

1 CHAIR SRINIVASAN: Are there any questions? Not at
2 this time.

3 MR. LEBOW: Thank you.

4 CHAIR SRINIVASAN: I know there are members of the
5 public here to speak. Each person will be given three minutes. Are there people here to
6 speak on this item?

7 MR. LEBOW: I think that there are some public officials,
8 also.

9 CHAIR SRINIVASAN: All right. Representatives of
10 public officials.

11 MR. VON SIMSON: Good afternoon. My name is Ernest
12 Von Simson.

13 I live on 77th Street between Central Park West and Columbus so I am no way
14 adjacent to the premises in question.

15 I'm here really to express the concerns and even fears of the wider West Side
16 community as to what's going to happen here after you make your decision.

17 We really understand - - we, the community, understand first principals as being
18 that the idea of the zoning laws are to give a predictable defense to homeowners against
19 the unreasonable incursions of real estate developers and other special interests.

20 And, we understand that the idea of a variance is to remove those predictable
21 those predictable defenses in the event that some special community interest has been
22 demonstrated without any question.

23 We don't see that here.

1 At the very minimum, you would have to say that all the arguments on either side,
2 which I would hardly be able to repeat, give you a tie.

3 And, in this case, I think the tie ought to go to the citizens. We would implore
4 you and now I'm talking for our community up on 77th Street and beyond, we would
5 implore you not to set off a land rush which will impact the entire west side and our
6 quality of life merely to serve the interests of single of a synagogue. Thank you.

7 CHAIR SRINIVASAN: Thank you. The next speaker.
8 Yes. The next speaker.

9 MR. CHASUW: I'll be brief this time. I represent State
10 Senator Tom Duane. My name is Jared Chasow and, unfortunately, the Senator is in
11 Albany, today; hopefully his last day of session but he is unable to attend.

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

15 I’ve spoken CSI’s application at each of the three previous hearings before the
16 Board of Standards and Appeals and I’m disappointed that this application is being heard
17 yet, again.

18 CSI’s latest submissions do not modify any of the requested variances, all of
19 which are in direct contradiction with the letter and spirit of the Zoning Resolution and
20 the interests of the community.

21 Therefore, my objections to the original application still stand.

1 In the interest of brevity, I will refer you back to my previous testimony, however,
2 I feel compelled to repeat that none of the variances requested satisfy all of the criteria
3 required by Section 72-21 of the Zoning Resolution.

4 Granting these variances in light of the application's failings would violate the
5 Zoning Resolution and, thus, I strongly urge the BSA to deny CSI these variances."
6 Thank you.

7 CHAIR SRINIVASAN: The next speaker.

8 MS. BLUMKIN: My name is Linda Blumkin. I reside at
9 111 East 85th Street and I'm here as a concerned citizen concerned about the issues
10 presented by this application for an entire city, not just this block and not just the west
11 side.

12 What we have here is what would seem to a lay person or to a lawyer like myself,
13 who is not a real estate specialist to be a very simple situation.

14 You have an institution that has more than enough space to build an as-of-right
15 building that will more than adequately address its programmatic needs.

16 Why that is not the end of the inquiry and why this proceeding has been going on
17 for so many years totally escapes me.

18 We're not talking now about variances to fit in; more classrooms or more rabbis
19 or more social halls or more anything else having to do with the synagogue. Instead
20 we're talking about luxury condos and penthouses and terraces and Central Park views
21 from luxury condos and penthouses and terraces.

22 I simply cannot begin to understand why this kind of a proceeding is being
23 entertained here and to warn that this kind of a proceeding, if entertained, here, has

1 implications for the entire city because there are many other institutions that are blessed
2 with more than enough space for their programmatic needs as well.

3 I was present at a hearing some months ago where the rabbi spoke and concluded
4 his remarks by talking happily about how his congregation was growing; how it had
5 attracted more families; how he saw nothing but growth in its future and God bless them,
6 that would be a wonderful thing for them to see and then the rabbi said to you in words or
7 substance and, you know, I - - he'll be back before this panel in a few years to ask for
8 more variances but let's look at the situation; what this synagogue and this rabbi have
9 done is sell their birthright, their potential for future expansion by instead of building a
10 structure that now accommodates their programmatic needs that could be built with a
11 potential layering on, you know, one, two or three additional stories in the future to hold
12 more classrooms for more children and more programs, instead, is deciding to cash in
13 now and sell its expansion space to the highest bidder so that instead of future
14 classrooms, you're going to have condos.

15 And, when the rabbi comes back to you in a few more years for expansion space,
16 presumably what he will be talking about is tearing down the parsonage to build
17 something there that will require more variances or something else.

18 This is not what the zoning laws were designed to do. It is simply wrong.

19 CHAIR SRINIVASAN: Thank you. The next speaker.

20 MR. FERNANDEZ: My name is Kevin Fernandez, and
21 I'll be reading testimony on behalf of Assembly Member Gottfried, who can't be here.

1 “My name is Richard N. Gottfried, and I am the Assembly Member representing
2 the 75th District, which includes Congregation Shearith Israel and the site of the proposed
3 new building.

4 I regret that the Legislative session in Albany prevents me from appearing at
5 today’s hearing.

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

9 If the BSA approved these variances, the new building would harm its
10 neighborhood and advance a dangerous trend in land use.

11 Hundreds of pages of new submissions and responses have been exchanged since
12 the proceedings began in November. However, the underlying issues have not changed.

13 I have previously testified that the application falls drastically short of conditions
14 required under the five findings required for the variances under the Zoning Resolutions.

15 The applicant has still failed to prove otherwise.

16 Repeatedly, the community has shown that an as-of-right building can spatially
17 accommodate the applicant’s programmatic needs.

18 The applicant can rearrange its floor plan to meet these programmatic needs or
19 even relocate some of them to the parsonage on Central Park West.

20 I and other opponents have previously demonstrated that the height and setback
21 variances are intended solely to accommodate the construction of residential units and are
22 not related to the congregation’s programmatic needs.

1 I also remain concerned that the true motive of their rear yard variance is maybe
2 to accommodate revenue generated by the tenant's school growth.

3 I, again, urge the Board of Standards and Appeals to reject the application in its
4 entirety."

5 CHAIR SRINIVASAN: Thank you. Are there anymore
6 speakers? Yes. Please come forward. Ms. Wood.

7 MS. WOOD: My name is Kate Wood, and I wasn't at all
8 sure that I was going to testify today but the Board's apparent and rather astonishing
9 turnaround at yesterday's Executive Session sort of put me in a reflective mood.

10 I thought back to when this application was before the Landmarks Preservation
11 Commission in 2003 and a statement by the late Peter Jennings, a neighbor of the
12 synagogue and someone not prone to hyperbole; his take on the issue was, quote, "That
13 people have lost faith in the process, the governing process, because they believe the fix
14 is in.

15 It's a horrible phrase but many of my neighbors are convinced that it's true", end
16 quote.

17 But, New York is a city of dreamers and neighborhood activism, in particular,
18 requires the suspension of disbelief; the elevation of innocence above cynicism.

19 So, we've all been engaged here over many months in an effort to focus the
20 Board's attention on its statutory task.

21 Has the applicant met its burden?

1 Is the factual basis on which the Board seems poised to grant seven variances? So
2 that this non-profit, religious institution can build five floors of luxury condominiums
3 that have absolutely nothing to do with its mission.

4 Is this basis solid enough to withstand the tide of similar applications rolling
5 steadily towards the beach?

6 Has the applicant overcome Commissioner Ottley-Brown's observation at the
7 November 27th, 2007 hearing - - she said, quote, "It's my opinion that residential use to
8 raise capital funds to correct programmatic deficiencies is not in and of itself a
9 programmatic need and I think that if we open the door here and allow that argument in,
10 we're going to have a hard time turning down every other religious institution that wants
11 to place residential in their backyard in order to finance expansion." End quote.

12 Are we to believe that this approval will not be recognized by those institutions as
13 an open invitation? None of us is that innocent.

14 Tom Robbins, in the April 2nd Village Voice, referred to the Doctoroff (Phonetic)
15 Doctrine. "The more building the better and don't sweat the small stuff.

16 Whether this is five stories or fifty-five stories this isn't small stuff.

17 You're not a panel of platonic philosopher kinds in search of the best of all
18 possible solutions to a land use issue.

19 You have an important but limited role as a safety valve, an escape hatch to allow
20 for the productive use of properties that are truly burdened by zoning.

21 But, having read dozens of your decisions and having through multiple public
22 hearings and Executive Sessions, it is apparent that you have a different view of your
23 role.

1 You're not public guardians. You are development enablers.

2 Innocent that I am, perhaps I'm saying this to tweak your conscience, hoping for
3 one last turnaround, but even I concede that this is a done deal, which is another horrible
4 phrase.

5 I'm merely saying this for the people out there; people who have lost faith in the
6 process - -

7 CHAIR SRINIVASAN: Can you conclude your
8 statement, please.

9 MS. WOOD: - - and hoped that they wouldn't have to
10 fight this battle again and again and again on the West Side, the East Side, in the Village.

11 CHAIR SRINIVASAN: Conclude your statement, please.

12 MS. WOOD: In Brooklyn, in Queens so I'll just say one
13 last thing and that is we have lost faith but we will keep fighting. Thank you very much.

14 CHAIR SRINIVASAN: Thank you, Ms. Wood. Are there
15 anymore speakers on this item? Anymore speakers? Mr. Friedman.

16 MR. FRIEDMAN: Thank you, Madam Chair.

17 We do not have major substantive points to rebut here, having heard none. We
18 have a detailed record in front of you and a number of statements back and forth with the
19 opposition and we're happy to have - - you may close the record and make your decision
20 based on the record before you.

21 I will, however, provide some comment.

22 We do not recognize yesterday's events as a turnaround or look for further
23 turnarounds. That's not what this Board has ever been about.

1 This is a methodical effort to work on an application; to address questions. There
2 is back and forth. Alternates are put forward. Alternates are rejected but, in the main, we
3 have reached at - - and I hope you have reached at the methodical end of your inquiries
4 and that there is a case in front of you now which you are ready to decide and we respect
5 your process and respect the methodical way in which you go about building your
6 decision making record.

7 The record that you have before you is compliant with all CEQRA issues,
8 especially with regard to the shadow studies.

9 It's compliant to the best of our knowledge with your BSA rules and regulations.
10 I do not recall mentioning that Landmarks is the official and last word on zoning.

11 I believe the statement really is that Landmarks is the final word of this
12 administration, an important component of the city's police power to regulate and that is
13 on aesthetic judgments in historic districts and that judgment is to be accorded some very
14 high rate in dealing with the general welfare and the findings of compatibility with the
15 project in its community.

16 With regard to the concern about precedent, the slippery slope that you hear on a
17 weekly basis on every application, we believe we've provided you with what you have
18 required of us and that is to prove that we're requesting is truly unique and that your
19 resolution can truly and fairly reflect the fact that this is not an application that has the
20 kind of precedential (sic) through weight that the opponents wish they could convince
21 you that it had.

22 You have asked us to literally walk Central Park West from the 60's to the 90's
23 looking at every possible site that shares the general zoning parameters of this site to look

1 at all the other specifics, the individual landmark, the ability to transfer development
2 rights; the applicability of Chapter 77.

3 Indeed, this is a site which is unique and the totality of the specifics that we've
4 put into the record regarding uniqueness and practical difficulty are inherent in the zoning
5 lot and are not general. We did not come before you to say we're in a landmark district
6 and that's a hardship or we're an individual landmark and that's a hardship.

7 We brought to you a specific project, specifically approved by the Landmarks
8 Commission which has generated some difficulties with utilizing our floor area in an as-
9 of-right manner and that, in combination with several of the other factors which we've
10 put in the record.

11 We think Lands is squarely within your parameters for an approvable project.

12 Lastly, with regard to the quote from Mr. Jennings, I wish he were here because
13 when I heard that quote, he had never appeared either at Landmarks or before the BSA.

14 Everything had been submitted by letter on his behalf.

15 But, I wanted to ask him how a man as busy as him could walk out of his
16 apartment building, which is non-complying, and walk over to his office building, which
17 is also non-complying at ABC and take the opportunity to pass judgment on Shearith
18 Israel's vacant lot.

19 It seemed to me that the concern about the fix being in or what his phrase or
20 whatever the person who wrote that letter's phrase, you know, reflects a deep seated
21 misunderstanding of the process and a deep seated misunderstanding of the role of this
22 Board and not adjudicating and not necessarily protecting neighborhoods and
23 communities but also - - and this is your burden, also to work out the conflicts of

1 protecting institutions who need to expand from a hostile community and that is as much
2 your charge as any other aspect of your responsibilities that has been dictated to you and
3 to all of us, both in the statute in the Zoning Resolution and in judicial opinion.

4 So, with that, I would very much like to thank the Board for its tried and true
5 patience with regard to this application and I'd like to ask that the record be closed.

6 It could simply be left open. We've received some information today that we
7 might want to write a letter on. It would only take us a day or two to get that in. But, we
8 would like to ask that the Board close the record and schedule a date for a hopefully,
9 positive decision.

10 Thank you all very much.

11 CHAIR SRINIVASAN: Thank you, Mr. Friedman. Any
12 questions for the applicant?

13 All right. What we will do is we will close the hearing today and we'll set a
14 schedule.

15 As you know, Mr. Friedman, there were a few questions that the Board raised
16 today. I would just like to add just a few more that should be clarified for us and some of
17 this has to do with the language that's in your papers that, perhaps, the opposition may
18 not understand. I think I have an understanding of it but just the clarify the record; the
19 discussion you had about aligning the street wall. I believe you're really talking about
20 centering it on the landmark, is that right? And, if I'm wrong, then please clarify that to
21 us.

22 But, there was some language about how that formed some kind of hardship or
23 difficulty in your massing of your building.

1 I think for the record, it's worthwhile to discuss the caretaker's apartment and the
2 need to include it within the four floors.

3 I think it would be helpful in the record to also just clarify about the construction
4 estimates.

5 Our understanding is the caretaker's apartment is really accessory to community
6 facility use and should not be in the construction costs for the residential and that is the
7 assumption that I think the Board members have made if you can just clarify that and I
8 think the comment that Commissioner Ottley-Brown made about the programmatic need
9 regarding revenue generation, I think we've already said that many times; that we feel
10 that that in and of itself is not a part of the programmatic need.

11 I know you have it still in your papers. The Board may reject that argument. But,
12 I know that we thought it would be better for the papers to take that out.

13 Is there any other comments? All right. So, we'll set a schedule.

14 And, there's one other comment which actually has to do with your drawings and
15 that had to do with insuring that the facility takes care of garbage and if you could just
16 reflect that on your cellar drawings where you're going to keep the refrigerated, I guess,
17 waste until it's been carted off since it was - - I think if I remember correctly, it's a
18 recommendation or a condition that you said that would mitigate any impacts regarding
19 that. Yes. All right. Anything else? Yes.

20 COMM. MONTANEZ: Just that they will answer the
21 other questions we raised today regarding the financials?

22 CHAIR SRINIVASAN: Yes, absolutely. So, we had
23 identified a few issues for Mr. Freeman and that you'll be responding back to.

1 All right. So, we will set a schedule. All right, Mr. Friedman, we'll give you two
2 weeks until July 8th to respond.

3 We'll allow Mr. Lebow and his crew up to July 29th and, Mr. Friedman, you can
4 respond back by August 12th and we'll set the decision for August 26th.

5 MR. FRIEDMAN: Thank you very much.

6 CHAIR SRINIVASAN: I make a motion to close.

7 MR. COSTANZA: Chair Srinivasan?

8 CHAIR SRINIVASAN: Aye.

9 MR. COSTANZA: Vice-Chair Collins?

10 VICE-CHAIR COLLINS: Aye.

11 MR. COSTANZA: Commissioner Hinkson?

12 COMM. HINKSON: Aye.

13 MR. COSTANZA: Commissioner Montanez?

14 COMM. MONTANEZ: Aye.

15 MR. COSTANZA: Commissioner Ottley-Brown?

16 COMM. OTTLEY-BROWN: Aye.

17 0o0