

00001 NOTE THIS IS NOT THE OFFICIAL TRANSCRIPT

1
2 PUBLIC HEARING BEFORE
3 THE BOARD OF STANDARDS AND APPEALS
4
5 6-10 WEST 70TH STREET
6 NEW YORK, NEW YORK
7 CONGREGATION SHEARITH ISRAEL
8 74-07-BZ
9
10 40 Rector Street
11 New York, New York
12
13 June 24, 2008
14 2:21 p.m.
15
16 BEFORE:
17 MEENAKSHI SRINIVASAN, Chair, Commissioner
18 CHRISTOPHER COLLINS, Vice Chair, Commissioner
19 EILEEN MONTANEZ, PE, Commissioner
20 SUSAN HINKSON, RE, Commissioner
21 DARA OTLEY-BROWN, Commissioner
22
23 Reported by:
24 Yaffa Kaplan
25 Job No. 203948

00002

1 Proceedings
2 MR. FRIEDMAN: Good afternoon, Madam 14:21
3 Chair, members of the Commission. Sheldon 14:21
4 Friedman, from Friedman & Gotbaum. I am 14:21
5 joined at the table by counsel in this matter, 14:21
6 Louis Salomon from Proskauer Rose. 14:21
7 Mr. Salomon is also a trustee of Shearith 14:21
8 Israel. 14:21
9 We really have nothing to amplify our 14:21
10 most recent submission. We just want to note 14:21
11 we are here and present. All of our 14:21
12 professionals with regard to this application 14:21
13 are present and prepared to answer your 14:21
14 questions and prepared to hear and to respond 14:21
15 to whatever questions you might have after the 14:21
16 opposition speaks. 14:21
17 THE CHAIRPERSON: All right, we had a 14:21
18 few questions for you during our discussion 14:21
19 yesterday. Would you like to respond to that? 14:21
20 Do you have them or do you -- 14:21
21 MR. FRIEDMAN: I would be happy to 14:21
22 respond to them if you could remind me which 14:21
23 ones were current. We have heard them. 14:21
24 THE CHAIRPERSON: I know that there 14:21
25 were, I think, essentially questions on the 14:21

00003

1 Proceedings
2 financials and just some clarification. 14:21
3 Commissioner Otley-Brown, would you like 14:21
4 to -- 14:21
5 MR. FRIEDMAN: With your permission, I 14:21
6 will ask Jack Freeman to come up and join us. 14:21
7 MS. OTLEY-BROWN: The first question is 14:22
8 could you clarify exactly what floors those 14:22
9 terraces are on, and they don't seem to be 14:22
10 accounted for in the outdoor financials for 14:22
11 the outdoor space. 14:22
12 MR. FREEMAN: They are included in the 14:22
13 financials. 14:22
14 MS. OTLEY-BROWN: They are? 14:22
15 MR. FREEMAN: The outdoor space and the 14:22
16 penthouse are accounted for. 14:22
17 MS. OTLEY-BROWN: No, those rear 14:22
18 terraces, the rear terrace and the cut-out in 14:22
19 the back. 14:22
20 MR. FREEMAN: I think they are in the 14:22
21 price. I will double-check for you, though. 14:22
22 MS. OTLEY-BROWN: You have it for the 14:22
23 penthouse, but you don't have it for floors 14:22
24 that require cut-out terrace, and it's not 14:22
25 clear to me how many of them there are. Just 14:22

00004

1 Proceedings
2 one floor or on floor six? 14:22
3 MR. FREEMAN: I will check with the 14:23
4 architect and we will do what we have to do. 14:23
5 THE CHAIRPERSON: What I understand is 14:23
6 it only occupies one floor because you are not 14:23
7 including balconies on the other floor. 14:23
8 MR. FREEMAN: No. 14:23
9 THE CHAIRPERSON: It's just a cut-out 14:23
10 when once you set back your building on the 14:23
11 sixth, seven and eighth floors. 14:23
12 MR. FREEMAN: Right. 14:23
13 THE CHAIRPERSON: And the ninth floor, 14:23
14 so one apartment against the terrace. 14:23
15 MR. FREEMAN: It may have been included 14:23
16 in the pricing, but I don't want to say that. 14:23
17 MS. OTLEY-BROWN: And then the other 14:23
18 question I had concerned the efficiency ratio. 14:23
19 If you can clarify how you calculated the 14:23
20 efficiency ratio because if you look, it shows 14:23
21 three situations, your eighth floor plus 14:23
22 penthouse, the actual penthouse, and your 14:23
23 efficiency ratio for your second example, 14:23
24 eighth floor and no penthouse, is actually 14:23
25 lower than your seven floors plus penthouse. 14:23

00005

1 Proceedings
2 MR. FREEMAN: I will check. The core 14:23
3 size and circulation space affect the 14:23
4 efficiency ratio, so that doesn't change, but 14:23
5 the architect -- 14:24
6 MS. OTLEY-BROWN: Because it doesn't 14:24
7 change, one would think then that the second 14:24
8 alternative should have an even lower 14:24
9 efficiency ratio because that penthouse floor 14:24
10 is actually smaller than your eighth floor and 14:24
11 the eighth floor no penthouse. 14:24
12 MR. FREEMAN: We will check with the 14:24
13 architect. He is the source of that 14:24
14 information and we will, if necessary, correct 14:24
15 it. 14:24
16 THE CHAIRPERSON: Right. And also just 14:24
17 on the issue of efficiency, if you can clarify 14:24
18 to us what you have taken out from your gross 14:24
19 square feet so you have gross residential, and 14:24
20 then you have I think the sellable 14:24
21 residential. 14:24
22 MR. FREEMAN: We will do that. 14:24
23 THE CHAIRPERSON: All right. So if we 14:24
24 understand, the floor is taken out and there 14:24
25 may be other things, the lobby. 14:24

00006

1 Proceedings
2 MR. FREEMAN: There are public areas 14:24
3 that are not sellable areas. 14:24
4 THE CHAIRPERSON: All right, but if 14:24
5 there are other things, like if you are taking 14:24
6 into consideration or removing any space that 14:24
7 is taken up by walls, it should still be 14:24
8 understood that because the efficiencies that 14:24
9 you have are really in the range of 60 to 70 14:25
10 percent. 14:25
11 MR. FREEMAN: It's an inefficient 14:25
12 building, but it's consistent from alternative 14:25
13 to alternative, as I understand it, how it was 14:25
14 calculated. 14:25
15 THE CHAIRPERSON: Right, but the 14:25
16 calculations are pretty straightforward 14:25
17 because they are based on a set of drawings 14:25
18 that we have, which actually identify how much 14:25
19 residential space is occupied by the core and 14:25
20 how much residential space is occupied by the 14:25
21 lobby; so if you do some of those 14:25
22 calculations, they should be consistent. 14:25
23 MR. FREEMAN: We will review it with the 14:25
24 architect. 14:25
25 THE CHAIRPERSON: Okay. Question? Yes, 14:25

00007

1 Proceedings
2 any questions? 14:25
3 MS. OTLEY-BROWN: No, I don't have any 14:25
4 questions. 14:25
5 THE CHAIRPERSON: All right. 14:25
6 Commissioner Montanez. 14:25
7 MS. MONTANEZ: I think basically along 14:25
8 the same lines, you know, what is the sellable 14:25
9 areas versus the built area, and once you come 14:25
10 up in the elevator you have a small hallway, 14:25
11 basically the entire floor. I would think 14:25
12 that should have a high efficiency. 14:25
13 MR. FREEMAN: We will provide you with 14:25
14 some documentation. 14:25
15 MS. MONTANEZ: Okay. 14:25
16 THE CHAIRPERSON: All right. And I 14:25
17 think there was such an issue that was raised 14:25
18 by testimony that was received, which has to 14:26
19 do with the comparables that you have used and 14:26
20 whether the comparables for the other 14:26
21 apartments, which is the basis of your 14:26
22 revenue, revise your revenue that you get per 14:26
23 square foot for the condominiums, whether they 14:26
24 are comparable, does it make the same 14:26
25 assumptions that you have made. 14:26

00008

1 Proceedings
2 There are some questions whether those 14:26
3 comps are used for as common areas and I know 14:26
4 in the analysis that you have done you have 14:26
5 taken out the common area. 14:26
6 MR. FREEMAN: Well, usually. 14:26
7 THE CHAIRPERSON: If there is a way to 14:26
8 establish -- 14:26
9 MR. FREEMAN: There is no way to do 14:26
10 that. We just go by whatever the available 14:26
11 published information is, and when they say 14:26
12 sellable square footage, we have no idea what 14:26
13 was their gross, what was taken out. There is 14:26
14 no way to back into that. It's that much 14:26
15 sellable. So I would love to be able to 14:26
16 answer the question, but it's based on what 14:26
17 the reported sellable area is. It doesn't 14:26
18 tell you what -- 14:27
19 THE CHAIRPERSON: Right. So you are 14:27
20 saying if there is a transaction that took 14:27
21 place with a thousand square-foot apartment, 14:27
22 the assumption is the thousand square feet is 14:27
23 inside the unit? 14:27
24 MR. FREEMAN: Is the sellable area. I 14:27
25 mean we can try to get a copy of an offering 14:27

00009

1 Proceedings
2 plan, but that's what's identified in the 14:27
3 offering plan as sellable area to a 14:27
4 prospective purchaser. When it's recorded, 14:27
5 that's what shows. So we go by what they say 14:27
6 is sellable, and then we look to our architect 14:27
7 to identify what would be the sellable area. 14:27
8 I think partly with the caveat that these are 14:27
9 very schematic, conceptual plans, so as they 14:27
10 evolve, the sellable area may change a bit in 14:27
11 its sort of overall character. By the time it 14:27
12 gets to the Attorney General, it's met the 14:27
13 standards, but we are not there yet. 14:27
14 THE CHAIRPERSON: Any other questions 14:27
15 for the applicants? 14:27
16 Thank you, Mr. Friedman. Mr. Friedman, 14:27
17 do you have anything to add right now? We 14:28
18 will take testimony. 14:28
19 MR. FRIEDMAN: We are here. 14:28
20 MR. LEBOW: Madam Chair, members of the 14:28
21 Board, as you know, I represent the opposition 14:28
22 to all seven of these variances and I want to 14:28
23 thank you for your patience in permitting an 14:28
24 organized, although somewhat disorganized at 14:28
25 times, opposition to have its say before you. 14:28

00010

1 Proceedings
2 We appreciate the courtesies that you and your 14:28
3 staff have given to us throughout this. If 14:28
4 some of us have strayed a little bit from the 14:28
5 reservation, I hope that you forgive us 14:28
6 because passions run high on the West Side 14:28
7 when it comes to changes in mid-block zoning. 14:28
8 So if any of us have offended you by being too 14:28
9 excessive, I hope you will forgive us. 14:28
10 This I hope is the last chance that I 14:29
11 will have to persuade you in this presentation 14:29
12 that we are going to make today, that none of 14:29
13 these seven variances should be issued, and as 14:29
14 usual, I am going to try, probably 14:29
15 unsuccessfully, to take a little bit of a step 14:29
16 back and look at the whole situation perhaps 14:29
17 from afar, so to speak, and the subsequent 14:29
18 speakers that we have scheduled through your 14:29
19 staff for the rest of this half-hour 14:29
20 presentation will go into the detailed 14:29
21 findings that you must make for each one of 14:29
22 the variances. 14:29
23 I would just like to urge you to please 14:29
24 make specific factual findings for each one of 14:29
25 the statutory findings that you must make in 14:29

00011

1 Proceedings
2 order to justify each one of the variances as 14:29
3 you give. The last thing that Mr. Friedman 14:29
4 and I would like to do is come back here two 14:29
5 years from now and ask you to make further 14:29
6 factual findings. Well, maybe I shouldn't 14:29
7 speak for Mr. Friedman, but it's the last 14:29
8 thing that I would like to do anyway. 14:29
9 Let's turn to these findings one by one. 14:30
10 First for the A Finding, this plot of land is 14:30
11 a perfectly garden variety rectangular spot in 14:30
12 a perfectly garden variety rectangular block. 14:30
13 There are no unusual hardships. There are no 14:30
14 special, strange admissions about it. The 14:30
15 fact that there is a landmark next to it and 14:30
16 that its only zoning line goes down the middle 14:30
17 of it have been repeatedly held not to 14:30
18 present, by themselves, any unusual conditions 14:30
19 that require a variance pursuant to Finding A. 14:30
20 Turning very quickly to accessibility, 14:30
21 there is no doubt that even minor repairs to 14:30
22 the existing structure will grant full and 14:30
23 complete accessibility to the landmark, and 14:30
24 certainly an as-of-right structure can easily 14:30
25 correct any accessibility problems. 14:31

00012

1 Proceedings
2 The main issue that we come to is 14:31
3 whether or not programmatic needs are 14:31
4 satisfied by this nonprofit's application to 14:31
5 you for its variances, and I ask you once 14:31
6 again to look at what programmatic means. 14:31
7 Programmatic means that it must continue or 14:31
8 foster the institution's programs, and needs 14:31
9 means it needs them. That does not include 14:31
10 luxury condominiums. You have never ever held 14:31
11 that luxury condominiums are necessary for 14:31
12 programmatic needs. And this building is half 14:31
13 programmatic needs, arguably, and half luxury 14:31
14 condominiums. 14:31
15 The programmatic needs can easily be put 14:31
16 in an as-of-right structure. We have given 14:32
17 you so much evidence of that that it is 14:32
18 absolutely overwhelmingly clear that if you 14:32
19 take out the half luxury condominiums, that 14:32
20 all of the real programmatic needs can fit 14:32
21 into the other half. And that is not a 14:32
22 surprise because even the applicant wants to 14:32
23 put luxury condominiums in half the building, 14:32
24 and look at these strange programmatic needs. 14:32
25 A day care center? I mean I would have 14:32

00013

1 Proceedings
2 thought that they would have probably wanted 14:32
3 to have a reading room. At least that's more 14:32
4 like a programmatic need. And a rental school 14:32
5 which anybody can go to which pays rent to the 14:32
6 institution, these are pretty marginal 14:32
7 programmatic needs as they are, and they can 14:32
8 easily fit in half the building. So, 14:32
9 therefore, the programmatic needs requirement 14:32
10 does not extend to luxury condominiums. 14:32
11 Turning now to the community. You heard 14:32
12 what the Community Board said. They voted 14:33
13 against all seven of these variances. You 14:33
14 have heard what the narrow community on West 14:33
15 70th Street have said because all those that 14:33
16 we don't represent must have been here 14:33
17 themselves personally throughout one of these 14:33
18 hearings. 14:33
19 The community doesn't want it and you 14:33
20 know why Community Board Number 7 was right? 14:33
21 And as I think you know, I was a Community 14:33
22 Chair, Board Chair before, and we don't always 14:33
23 get it right and you don't always listen to 14:33
24 us, but Community Board 7, by heavens, got 14:33
25 this exactly right. 14:33

00014

1 Proceedings
2 The first thing that came before them 14:33
3 was the landmark application and they looked 14:33
4 and they said does this building, as it is 14:33
5 proposed, is it suitable for this landmark, 14:33
6 does it mess it up, having nothing to do with 14:33
7 zoning, and they were smart enough for once to 14:33
8 look at it and say okay, it doesn't mess up 14:34
9 the building. It's not inappropriate. So 14:34
10 they said to Landmarks, we don't have any 14:34
11 objection if you give us a certificate of 14:34
12 appropriateness. 14:34
13 That has nothing to do with zoning 14:34
14 though because when it came back to C after 14:34
15 Landmarks said what it said, does it fit into 14:34
16 the community from a zoning standpoint, 14:34
17 because that is your job. You don't have 14:34
18 anything to do with appropriateness and 14:34
19 Landmarks doesn't have anything to do with 14:34
20 zoning. So they looked at it after it came 14:34
21 back and said it's too big and it's too fat. 14:34
22 Forget about too ugly because you know what I 14:34
23 think about the aesthetics of this building, 14:34
24 but that's just my opinion. All I know is 14:34
25 that land architects from Denmark and Iceland 14:34

00015

1 Proceedings
2 are not going to be traipsing over to look at 14:34
3 this piece of work. 14:34
4 But in any event, what they said was 14:34
5 from a zoning standpoint it doesn't work, and 14:34
6 they got it exactly right. And my friend 14:34
7 Mr. Friedman often gets these two confused. 14:35
8 When he comes to you and he says that the 14:35
9 Bloomberg administration has approved this, 14:35
10 which is total nonsense, and he implies by 14:35
11 that that Landmarks has been the final word on 14:35
12 zoning, it's totally ridiculous. 14:35
13 Even Community Board 7 got that right 14:35
14 and why did they get it right? Because we 14:35
15 have given you a list of seven or 10 or 12 14:35
16 other examples on Central Park West where 14:35
17 there are cultural institutions and where 14:35
18 behind it there are low-rises and they know 14:35
19 that the Upper West Side of Manhattan today is 14:35
20 probably the most desirable place to live in 14:35
21 New York. Maybe Fifth Avenue or Park Avenue 14:35
22 on parts of it, but Central Park West is 14:35
23 catching up. 14:35
24 And if the trend continues, it is the 14:35
25 most desirable place to live in New York. Why 14:35

00016

1 Proceedings
2 is that? Because of its character. High 14:36
3 buildings on the avenues. Not even talking 14:36
4 about Columbus Avenue, I don't know what 14:36
5 happened there, but just Central Park West for 14:36
6 a while, and brownstones four to six stories, 14:36
7 that is what makes it unique. That's what 14:36
8 makes it valuable and that's why people get 14:36
9 upset about it. And you have never once, 14:36
10 never once departed from mid-block zoning on 14:36
11 the Upper West Side, to depart from this four- 14:36
12 to six-story brownstones. I couldn't find one 14:36
13 single case where you have ever done it 14:36
14 before. 14:36
15 And if you said all right, so the 14:36
16 buildings are on Columbus or Central Park 14:36
17 West, well, because you are again an 14:36
18 institution and religious institution, we will 14:36
19 let you put a high-rise a hundred feet in, 150 14:36
20 feet in, we will move it back just for you, 14:36
21 that's the beginning of the end because that's 14:36
22 not what the zoning law says. 14:36
23 That's not what the character of the 14:37
24 neighborhood is and it will really open a 14:37
25 Pandora's box for you. The rule is that 14:37

00017

1 Proceedings
2 high-rises are on the avenues. Mid-block 14:37
3 zoning is for six-storied brownstones. Of 14:37
4 course there are some anomalies there, which 14:37
5 existed before the Code, but you have 14:37
6 steadfastly said you are not in the business 14:37
7 to perpetuating anomalies. Don't do it here. 14:37
8 THE CHAIRPERSON: Thank you, Mr. Lebow. 14:37
9 Next speaker. 14:37
10 MR. GREER: Madam Chair, I am James 14:37
11 Greer. I was before you before. I will be 14:37
12 very brief. I want to address, as I have been 14:37
13 addressing, the issue of programmatic needs, 14:37
14 particularly for classrooms. I remind the 14:37
15 Board that since November you had a long 14:37
16 series of discussions with the applicant and 14:38
17 its lawyers, requesting detailed information 14:38
18 about the programmatic needs for classroom 14:38
19 space and particularly the relationship 14:38
20 between CSI and its tenant school, Beit Raban. 14:38
21 There has been a lot of paper. There has been 14:38
22 a lot of talk, and with great respect to the 14:38
23 applicant and its lawyers, you still don't 14:38
24 have the answer. 14:38
25 I have been through this and read part 14:38

00018

1 Proceedings
2 of an answer. The answer, which is buried 14:38
3 deeply in the latest environmental impact 14:38
4 report, is that there will be a 165 students 14:38
5 in Beit Raban, in this proposed building if it 14:38
6 gets built. That is in addition to the 60 14:38
7 toddlers that the CSI has as part of its 14:38
8 religious program. 14:38
9 Assuming that, for the sake of argument, 14:38
10 that generates the need for 225 students. 14:38
11 With the best school in the world, even their 14:38
12 elaborate new building will not accommodate 14:39
13 225 students. There are a few footnotes 14:39
14 scattered around, notes on diagrams that are 14:39
15 not before you this time, that say that Beit 14:39
16 Raban and CSI will share as their programs may 14:39
17 require, or words to that effect. No details 14:39
18 to how this is going to work. I respectfully 14:39
19 submit that until you get this clear, you have 14:39
20 no basis for making a finding. 14:39
21 I also do not understand the -- how you 14:39
22 can possibly find that there is any physical 14:39
23 impediment to putting those programmatic 14:39
24 needs, whatever they are, in an as-of-right 14:39
25 building. I have letters which lay this out 14:39

00019

1 Proceedings
2 in great detail. I also have a collection -- 14:39
3 which I will provide the Board today, I also 14:39
4 have a collection of exhibits. Unfortunately, 14:39
5 my wife died very recently. A little bit 14:39
6 behind in my efforts to put those together, 14:39
7 but I should have those to you in the next few 14:39
8 days. I do believe that the programmatic 14:40
9 needs you have asked for have not been spelled 14:40
10 out and that you really should insist on 14:40
11 getting some straight answers. Thank you very 14:40
12 much. 14:40
13 THE CHAIRPERSON: Thank you. Next 14:40
14 speaker. 14:40
15 MR. SUGARMAN: Good afternoon. I have 14:40
16 just distributed a letter that I sent by 14:40
17 e-mail the other day. You may or may not have 14:40
18 it. The Board has skirted, if not ignored, 14:40
19 clearly material issues and facts, I believe, 14:40
20 in all due respect, deliberately declining to 14:40
21 ask questions or otherwise exhibit curiosity 14:40
22 as to material issues and facts. 14:41
23 Consequently, in what looks like an 14:41
24 Article 78 proceeding coming up, the Board's 14:41
25 findings could be questioned as being 14:41

00020

1 Proceedings
2 arbitrary and capricious. We would rather the 14:41
3 Board get it right now. In neglecting its 14:41
4 obligations as we see them, the Board was able 14:41
5 to shape the record to meet the Board's or 14:41
6 someone's desired outcome. 14:41
7 Not only does the Board not ask certain 14:41
8 questions, but it ignores objective and expert 14:41
9 testimony from the opponents. And I will be 14:41
10 specific. Consider Finding A and you all know 14:41
11 that it requires, among other things, 14:41
12 practical difficulties or unnecessary 14:41
13 hardships that arise, which comply strictly 14:41
14 with the provisions of the resolution. 14:41
15 Now, yesterday at the executive session 14:41
16 I heard no discussion of that. And also you 14:42
17 lumped all the variances together. Now, in 14:42
18 this case the applicant has kindly stated in 14:42
19 its last submission that access and 14:42
20 accessibility hardships are the heart of its 14:42
21 application. In fact, it referred to it 30 14:42
22 times in its last submission, and yet the 14:42
23 Board has really never gone into that to 14:42
24 figure out what they are talking about as it 14:42
25 relates to Finding A, which requires that 14:42

00021

1 Proceedings
2 connection between the hardship arises from 14:42
3 the strict compliance with the zoning 14:42
4 resolution. 14:42
5 So here we have an issue that is, 14:42
6 without question, legally relevant, and then 14:42
7 mandatory findings and the applicant says is 14:42
8 the heart of its application. So what do we 14:42
9 have in the record? We keep asking the Board 14:42
10 to ask and get into these issues and, frankly, 14:43
11 I think we are ignored. I don't understand 14:43
12 how this wasn't taken care of months or over a 14:43
13 year ago, where we would not see it 30 times. 14:43
14 30 times in one submission? 14:43
15 So here is the question. Can the 14:43
16 applicant explain how a building strictly 14:43
17 complying with the zoning resolution does not 14:43
18 address the access and accessibility 14:43
19 difficulties, a hardship described by the 14:43
20 applicant as the heart of its application? I 14:43
21 have never heard that question asked. Has the 14:43
22 Chair asked that? No. Has the Vice Chair? 14:43
23 No. Has Commissioner Hinkson so inquired? 14:43
24 No. Neither Commissioner Otley-Brown nor 14:43
25 Commissioner Montanez. 14:43

00022

1 Proceedings
2 Has the applicant answered this? No. 14:43
3 Where is the connection of the heart of its 14:44
4 application to this mandatory finding, which 14:44
5 wasn't even referred to yesterday? So I don't 14:44
6 know how the Board is going to make this 14:44
7 Finding A, which is critical particularly as 14:44
8 it applies to the upper building. We have 14:44
9 provided our expert architect, providing 14:44
10 information on that. We have provided 14:44
11 schematics analysis, anything you can possibly 14:44
12 do. And interestingly, for the opposition 14:44
13 testifies, no one questions it. None of the 14:44
14 Commissioners question it. 14:44
15 The applicant doesn't question it, so it 14:44
16 seems to me the answer to the question, there 14:44
17 is no relationship whatsoever between this 14:44
18 hardship and any requested variance. There is 14:44
19 no question and that's what we will base our 14:44
20 Article 78 proceeding on, including the 14:44
21 refusal of the Board to collect the 14:45
22 information on something so material. It 14:45
23 cannot just ignore it. 14:45
24 And in a related matter, at the last 14:45
25 hearing I quoted something from the applicant 14:45

00023

1 Proceedings
2 on this same issue. Again, I think where they 14:45
3 say as a community physical condition, a 14:45
4 development site on the remaining one-third of 14:45
5 the zoning lot, whose feasible development is 14:45
6 hampered by requirements to align its street 14:45
7 wall and east elevation with the existing 14:45
8 synagogue building. You may recall I read 14:45
9 that at the last hearing. 14:45
10 We had a meeting with staff after that. 14:45
11 I asked your entire staff if they could 14:45
12 explain to me what this is all about. I don't 14:45
13 know what they mean. Aligning the street wall 14:45
14 with the existing synagogue building, and this 14:45
15 is a unique physical condition? Have I heard 14:46
16 anything from the applicant? No. Do you 14:46
17 know? Will you repeat this in a finding 14:46
18 without knowing what it means? I would hope 14:46
19 not. 14:46
20 And this is not the only material issue 14:46
21 that I believe the Board has not inquired 14:46
22 into. It hasn't inquired, as far as I know, 14:46
23 why the congregation's programmatic needs 14:46
24 can't also be included on the fifth and sixth 14:46
25 floor. I mean, after all, the caretaker's 14:46

00024

1 Proceedings
2 apartment could be moved up there, giving more 14:46
3 space on the fourth floor. Never a question. 14:46
4 Has it been raised in the opposition's 14:46
5 statements over and over again for the last 16 14:46
6 months? Yes. Have you ever gotten an 14:46
7 explanation? No. 14:46
8 The Board blinds itself to the income, 14:46
9 current and future, from the tenant's school, 14:46
10 Beit Raban. Is that relevant? Well, we see 14:47
11 in the financials that were discussed 14:47
12 yesterday that you are going to have the 14:47
13 hypothetical developer pay for the rights of 14:47
14 the entire building, but you just want to 14:47
15 ignore the fact that they are getting a 14:47
16 million dollars or so a year. Well, the only 14:47
17 hard information we have is an initial filing 14:47
18 that Beit Raban made with the IRS showing 14:47
19 \$480,000 a year and it's doubled in size. You 14:47
20 can check the fact. It's doubled it. But you 14:47
21 haven't inquired. How can you proceed and 14:47
22 make the kind of findings you are going to 14:47
23 make on the feasibility with letting them 14:47
24 charge for six floors with only two floors 14:47
25 being used in Scheme A? 14:47

00025

1 Proceedings
2 I don't understand that. Nor do I think 14:47
3 a court will. And I -- in that regard, I 14:47
4 think a court also will have substantial 14:48
5 questions about the analysis that yesterday I 14:48
6 think I heard the Board suggest it was okay to 14:48
7 charge a hypothetical developer with six 14:48
8 floors of space and only use two. I don't 14:48
9 think that's going to go over. I know some of 14:48
10 the Commissioners had questions about that and 14:48
11 that will be one other item. 14:48
12 We have Marty Levine is tied up in 14:48
13 another proceeding and I hope he might get 14:48
14 here in a few minutes, but if not, I wanted to 14:48
15 point out a couple of things. Last time we 14:48
16 pointed out that the pages were missing in the 14:48
17 construction estimate, so we got them for two 14:48
18 or three of the proposals. Not for Scheme A, 14:48
19 though. And there was sort of, if I may, a 14:48
20 snide remark that someone said, we can look 14:49
21 this over. But we did, and if you recall, 14:49
22 right at the beginning of this proceeding we 14:49
23 looked at these estimates and said what do 14:49
24 they mean by "school"? What do they mean by 14:49
25 "residential"? We asked staff; they don't 14:49

00026

1 Proceedings
2 know. 14:49
3 But what this disclosed now, that every 14:49
4 single residential construction estimate, they 14:49
5 are including as a condominium the two-bedroom 14:49
6 apartment on the fourth floor, because the 14:49
7 construction estimated that this residential 14:49
8 wasn't going to be a condominium. That is 14:49
9 perhaps a million dollar error in every 14:49
10 single -- every single feasibility study. And 14:49
11 we just found out because that could have been 14:49
12 answered a year and a half ago. And we still 14:49
13 don't know what the assumptions are for the 14:49
14 allocations. 14:49
15 Another little minor thing that showed 14:49
16 up in the last large submission in May was, 14:50
17 unbelievably, if you recall the purpose behind 14:50
18 or the reason for the second-floor extension, 14:50
19 the rear extension, was the toddler program, 14:50
20 which suddenly appeared out of nowhere, 14:50
21 because in everything else in the beginning of 14:50
22 this proceeding and in large Landmarks, it was 14:50
23 offices. 14:50
24 Well, they can't keep their story 14:50
25 straight because go look at pages 30, 31 of 14:50

00027

1 Proceedings
2 the May 13th application and guess what? Now 14:50
3 they are going to be putting offices back on 14:50
4 the second floor. So one day it's toddlers, 14:50
5 the next day it's offices. They have a table 14:50
6 there that came from a year and a half ago and 14:50
7 why? This isn't a mistake. The story isn't 14:50
8 being told straight. It's hard to keep 14:50
9 everything straight and that's what happened 14:50
10 again. In fact, it's happened hundreds of 14:51
11 times. 14:51
12 The last thing -- so I mean that's 14:51
13 pretty incorrect. How are you going to make a 14:51
14 finding on the second floor? Do they have a 14:51
15 programmatic need for 60 toddlers when right 14:51
16 now they only have five toddlers, two hours a 14:51
17 day two days a week, and they are going to 14:51
18 have 60 toddlers on this one floor. This is 14:51
19 bizarre. And I don't know how you can buy 14:51
20 that. 14:51
21 I know you have to give deference to the 14:51
22 synagogue or you feel you do, but deference 14:51
23 doesn't mean accepting anything they say when 14:51
24 it so conflicts with everything else they are 14:51
25 saying. They can't keep the story straight. 14:51

00028

1 Proceedings
2 So do you have any, Marty -- oh, okay. I am 14:51
3 done with my part of the presentation. Do you 14:52
4 have any questions? 14:52
5 THE CHAIRPERSON: Any questions for 14:52
6 Mr. Sugarman? Okay, thank you. The next 14:52
7 speaker. 14:52
8 MR. PRINCE: I am going to distribute my 14:52
9 statement and an attachment, if I may. Thank 14:52
10 you. Thank you and just really topline my 14:52
11 remarks. 14:52
12 THE CHAIRPERSON: Can you state your 14:52
13 name for the record. 14:52
14 MR. PRINCE: My name is Ron Prince and I 14:52
15 have spoken before this Board and I am part of 14:52
16 a committee formed by the Board of 18 West 14:52
17 70th Street, and, obviously, we are very 14:52
18 disappointed in the direction things are 14:52
19 taking here. 14:52
20 The thing that we really want to go on 14:52
21 record to say is that the applicant has said 14:52
22 in its recent filings, that has mentioned its 14:52
23 concern to blocking the windows on 91 Central 14:52
24 Park West, and I guess we would like to 14:53
25 applaud their half-sensitivity to blocking 14:53

00029

1 Proceedings
2 windows. But I guess when you are on 70th 14:53
3 Street, and not Central Park West, your 14:53
4 windows don't matter as much as if you are on 14:53
5 Central Park West. 14:53
6 So you will see in this statement some 14:53
7 remarks related specifically to the reality 14:53
8 that all through this process, that the 14:53
9 congregation's submissions have failed to take 14:53
10 into account in their environmental 14:53
11 assessments the effect that their proposed 14:53
12 building would have on the windows of 18 West 14:53
13 70th Street. That continues for the most 14:53
14 recent May filing and it's simply disgraceful 14:53
15 that that would be tolerated. 14:53
16 The second attachment you will see 14:53
17 relates to the shadow study. This is a set of 14:53
18 photographs I submitted before. Given the 14:53
19 shadow study, I thought it has bearing again, 14:53
20 and the synagogue's shadow study that says 14:53
21 whatever shadows are produced, I believe the 14:54
22 language is "only incremental." Of course 14:54
23 it's preposterous to think where there is a 14:54
24 vacant lot and then there is a 14:54
25 100-whatever-foot-story floor building, that 14:54

00030

1 Proceedings
2 there will not be a new shadow. And I hope 14:54
3 that study documents for you that the study, 14:54
4 like everything filed, is a sham. 14:54
5 Finally, we want to say that we are 14:54
6 sorry the Board is inclined to accept CSI's 14:54
7 claim. We think it's time for you to find 14:54
8 your voice and commitment to the Zoning Law 14:54
9 and reject this application now. Thank you. 14:54
10 THE CHAIRPERSON: Thank you. Our next 14:54
11 speaker. 14:54
12 MS. NIAL: Good afternoon, members of 14:54
13 the Board, Madam Chairman. My name is Susan 14:54
14 Nial, and I think you have received a number 14:54
15 of letters from me, and I am here as counsel 14:54
16 representing the opposition, but on a pro bono 14:54
17 basis. 14:55
18 And I want to talk a little bit about 14:55
19 some conceptual items that I think have been 14:55
20 missing in the discussion of this case. In 14:55
21 fact, I think they have been misinterpreted in 14:55
22 a large sense. The Chairman has made a lot of 14:55
23 good comments about how important public 14:55
24 participation is in this process and how 14:55
25 important this Board is to the protection of 14:55

00031

1 Proceedings
2 neighborhoods and the protection and the 14:55
3 quality of life in the City and the 14:55
4 enforcement of the zoning regulations. 14:55
5 Clearly, you balance the interests of 14:55
6 developers and the interests of the 14:55
7 neighborhoods, but in that balance, that 14:55
8 balance has to look for preserving 14:55
9 neighborhoods. 14:55
10 In this case, I think the variances 14:55
11 being asked for have been shown almost beyond 14:55
12 a reasonable doubt to have been destructive. 14:55
13 Professor Sklar has written you a letter 14:55
14 regarding contextual zoning, a concept which 14:56
15 has been very important in protecting 14:56
16 neighborhoods in this City. A concept and, in 14:56
17 this particular case, contextual zoning and 14:56
18 mid-block zoning was considered and 14:56
19 democratically enacted. And I suggest to you 14:56
20 that granting these variances as they now 14:56
21 stand before you would destroy that whole idea 14:56
22 of contextual zoning and, in fact, do very 14:56
23 grave damage to a legitimate considered system 14:56
24 of regulation of land use. 14:56
25 There has been a lot of discussion about 14:56

00032

1 Proceedings
2 deference and how religious institutions 14:56
3 deserve deference and there have been a lot of 14:56
4 law review articles and newspaper articles 14:56
5 written about land use and religious 14:56
6 institutions. The concept of deference to 14:56
7 religious institutions when they wanted to 14:56
8 build a church, build a synagogue, have some 14:57
9 parking space so that their congregants can 14:57
10 come and worship, was one thing; but we have 14:57
11 seen a dramatic change in the way that 14:57
12 religious institutions wish to use their land, 14:57
13 the way nonprofit institutions wish to use 14:57
14 their land. This is a perfect example of that 14:57
15 change. 14:57
16 That change is they use their land not 14:57
17 for congregational purposes, religious 14:57
18 exercise purposes, which is the thing to which 14:57
19 deference must be given, but rather they use 14:57
20 it to make a profit. Now, maybe you have a 14:57
21 different definition of profit than I might, 14:57
22 so we will call it money, so that we won't run 14:57
23 up against some professional definitions. 14:57
24 In this case, money has always been at 14:57
25 the bottom, at the center, and at the top of 14:57

00033

1 Proceedings
2 why these variances have been asked for. And 14:58
3 you yourselves have voiced concern about that 14:58
4 being the issue. Your decisions passed have 14:58
5 said that that kind of, quote, "programmatic 14:58
6 need," getting revenue to fund your 14:58
7 congregants' exercise, is not an appropriate 14:58
8 programmatic need. I was stunned when I heard 14:58
9 a Commissioner suggest that in fact, the 14:58
10 record should be changed here and that 14:58
11 information regarding that request for funding 14:58
12 as a result of these variances should be taken 14:58
13 out of the applicant's statement of support. 14:58
14 I put it to you that that is not an 14:58
15 appropriate programmatic need and that that is 14:58
16 really the reason that these variances are 14:58
17 being asked for. So I would ask you to 14:58
18 consider your obligation to the community. 14:58
19 Not just this small community of 70 West, but 14:59
20 rather the larger community, because there, 14:59
21 again, there is a misconception of the 14:59
22 importance of precedent. While you may argue 14:59
23 in some of your rulings that they are limited 14:59
24 to the facts, that will not happen here. If 14:59
25 you accept, as you have said in some of your 14:59

00034

1 Proceedings
2 prior rulings, that revenue generation by the 14:59
3 building of luxury condominiums is an 14:59
4 appropriate basis for granting 14:59
5 neighborhood-destroying variances, you will 14:59
6 without question open the floodgates. You 14:59
7 will without question generate strife and 14:59
8 concern as to why some will be allowed to use 14:59
9 that as a programmatic need to support 14:59
10 variances, while others were not. 15:00
11 If you allow a complete deference to 15:00
12 everything that's been said by this applicant 15:00
13 because they are a religious institution, 15:00
14 whether it was regarding the number of 15:00
15 classrooms they need, whether it was regarding 15:00
16 accessibility, et cetera, without probing 15:00
17 those representations, there again they are 15:00
18 being treated differently. Not just 15:00
19 differently from other for-profit developers, 15:00
20 which they surely are, but they will also be 15:00
21 treated differently than previous nonprofit 15:00
22 and religious applicants that you have had 15:00
23 before you in the past, where you have looked 15:00
24 at how many classrooms they needed, where you 15:00
25 have looked at the size of those classrooms, 15:00

00035

1 Proceedings
2 and where you have said to them you don't need 15:00
3 this, you don't need that, you will take that 15:00
4 out and you will not use that. 15:00
5 So I ask you to consider seriously your 15:01
6 obligation to the community and 70 West, your 15:01
7 obligation to the zoning resolution, and your 15:01
8 obligation to maintain the kind of 15:01
9 neighborhood control over and City, control 15:01
10 over development, and not to open the flood 15:01
11 gates, which will surely happen if you grant 15:01
12 these variances. Thank you. 15:01
13 THE CHAIRPERSON: Mr. Lebow, is that the 15:01
14 conclusion of your presentation? 15:01
15 MR. LEBOW: Almost, except for me. Our 15:01
16 last speaker. Mark Lebow for the opponents. 15:01
17 Our last speaker was supposed to be 15:02
18 Martin Levine, who is from Metropolitan 15:02
19 Valuation Services Real Estate Consulting and 15:02
20 Appraisal, and, as you recall, the applicant 15:02
21 submitted a report by Freeman Frazier last 15:02
22 week which contained a number of financial 15:02
23 conclusions, especially about economic 15:02
24 hardship, a rather dubious detour to begin 15:02
25 with, and this would have been his response. 15:02

00036

1 Proceedings
2 I ask that you take it in lieu of his 15:02
3 speaking today, and I would only like to read 15:02
4 one paragraph from what he says. And he is an 15:02
5 MAI, a Member of the Appraisal Institute, and 15:02
6 does point out that Mr. Freeman's CV does not 15:02
7 indicate that he is a member of any recognized 15:02
8 real estate appraisal organization, or 15:02
9 possesses any valuation licenses. 15:02
10 Mr. Levine, so I shall just conclude 15:02
11 with reading his paragraph, one paragraph. 15:02
12 "Inconsistencies run amok in the Freeman 15:03
13 Frazier reports from the land value, the 15:03
14 construction costs, soft costs, sellable area 15:03
15 measurement, profit calculation. Justifying 15:03
16 their inconsistencies, sometimes they cite 15:03
17 BSA's submission practice, which they do not 15:03
18 document, but only assert. Most of the time 15:03
19 they ignore the BSA's own directives to submit 15:03
20 documentation." 15:03
21 That concludes the presentation by the 15:03
22 opposition, but I am here to answer any 15:03
23 questions that you may pose to me or, 15:03
24 derivatively, to anyone else. 15:03
25 THE CHAIRPERSON: Are there any 15:03

00037

1 Proceedings
2 questions? Not at this time. Thank you. 15:03
3 I know there are members of the public 15:03
4 here to speak. Each person will be given 15:03
5 three minutes. Are there people here to speak 15:03
6 on this item? 15:03
7 MR. LEBOW: I believe there are some 15:04
8 public officials also. 15:04
9 THE CHAIRPERSON: Okay, yes, 15:04
10 representing public officials. 15:04
11 MR. VAN SIMSON: Good afternoon. My 15:04
12 name is Ernie Van Simson. I live on 77th 15:04
13 Street between Central Park West and Columbus, 15:04
14 so I am no way adjacent to the premises in 15:04
15 question. I am here really to express the 15:04
16 concerns and even fears of the wider West Side 15:04
17 community as to what's going to happen here 15:04
18 after you make your decision. We really 15:04
19 understand -- we the community understand 15:04
20 first principles as being that the idea of 15:04
21 zoning laws is to give a predictable defense 15:04
22 to homeowners against the unreasonable 15:04
23 incursions of real estate developers and other 15:04
24 specialty interests. And we understand that 15:04
25 the idea of a variance is to remove those 15:04

00038

1 Proceedings
2 predictable defenses in the event that some 15:04
3 special community interest has been 15:05
4 demonstrated without any question. 15:05
5 We don't see that here. Very simply, 15:05
6 you would have to say that all the arguments 15:05
7 on either side, which I would hardly be able 15:05
8 to repeat, give you a tie. And I think in 15:05
9 this case, I think the tie ought to go to the 15:05
10 citizens. We would implore you, and now I am 15:05
11 talking for our community up on 70th Street 15:05
12 and beyond, we would implore you not to set 15:05
13 off a land rush which would impact the entire 15:05
14 West Side, and our quality of life really, to 15:05
15 serve the interests of a single synogogue. 15:05
16 Thank you. 15:05
17 THE CHAIRPERSON: Thank you. The next 15:05
18 speaker. 15:05
19 MR. CHAUSOW: I will be brief this time. 15:05
20 I work for State Senator Tom Duane and, 15:06
21 unfortunately, the Senator is in Albany today. 15:06
22 It's the last day of his session, but he is 15:06
23 unable to attend. 15:06
24 "I represent New York State's 29th 15:06
25 Senatorial District, which includes the Upper 15:06

00039

1 Proceedings
2 West Side, where Congregation Shearith 15:06
3 Israel's site for its building at 6-10 West 15:06
4 70th Street is located. 15:06
5 "I have spoken against CSI's application 15:06
6 at each of the three previous hearings before 15:06
7 the Board of Standards and Appeals and I am 15:06
8 disappointed that this application is being 15:06
9 heard yet again. CSI's latest submissions do 15:06
10 not modify any of the requested variances, all 15:06
11 of which are in direct contradiction with the 15:06
12 letter and spirit of the zoning resolution and 15:06
13 the interests of the community. Therefore, my 15:06
14 objections to the original application still 15:06
15 stand. 15:06
16 "In the interest of brevity, I will 15:06
17 refer you back to my previous testimony. 15:06
18 However, I feel compelled to repeat that none 15:06
19 of the variances requested satisfy all of the 15:06
20 criteria required by Section 72-21 of the 15:06
21 zoning resolution. Granting these variances, 15:07
22 in light of the application's failings, would 15:07
23 violate the zoning resolution and, thus, I 15:07
24 strongly urge the BSA to deny CSI these 15:07
25 variances. Thank you." 15:07

00040

1 Proceedings
2 THE CHAIRPERSON: Thank you. The next 15:07
3 speaker. 15:07
4 MS. BLUMKIN: My name is Linda Blumkin. 15:07
5 I reside at 11 East 85th Street, and I am here 15:07
6 as a concerned citizen concerned about the 15:07
7 issues presented by this application for our 15:07
8 entire City, not just this block and not just 15:07
9 the West Side. 15:07
10 What we have here is what would seem to 15:07
11 a lay person, or to a lawyer like myself, who 15:07
12 is not a real estate specialist, to be a very 15:07
13 simple situation. You have an institution 15:07
14 that has more than enough space to build an 15:07
15 as-of-right building that will more than 15:07
16 adequately address its programmatic needs. 15:07
17 Why that is not the end of the inquiry and why 15:07
18 this proceeding has been going on for so many 15:08
19 years totally escapes me. 15:08
20 We are not talking now about variances 15:08
21 to fit in more classrooms or more rabbis or 15:08
22 more social halls or more anything else having 15:08
23 to do with this synogogue. Instead, we are 15:08
24 talking about luxury condos and penthouses and 15:08
25 terraces and Central Park views from luxury 15:08

00041

1 Proceedings
2 condos and penthouses and terraces. I simply 15:08
3 cannot begin to understand why this kind of a 15:08
4 proceeding is being entertained here, and to 15:08
5 warn that this kind of a proceeding, if 15:08
6 entertained here, has implications for the 15:08
7 entire City because there are many other 15:08
8 institutions that are blessed with more than 15:08
9 enough space for their programmatic needs as 15:08
10 well. 15:08
11 I was present at a hearing some months 15:08
12 ago where the rabbi spoke and concluded his 15:09
13 remarks by talking happily about how his 15:09
14 congregation was growing, how it attracted 15:09
15 more families, how he saw nothing but growth 15:09
16 in its future and God bless them. That would 15:09
17 be a wonderful thing for them to see, and then 15:09
18 the rabbi said to you, in words or substance, 15:09
19 and, you know, I may well be back before this 15:09
20 panel in a few years to ask for more 15:09
21 variances. 15:09
22 But let's look at the situation. What 15:09
23 this synagogue and this rabbi have done is 15:09
24 sell their birth right, their potential for 15:09
25 future expansion, by instead of building a 15:09

00042

1 Proceedings
2 structure that now accommodates their 15:09
3 programmatic needs, that can be built with a 15:09
4 potential belayerings on, you know, one, two 15:09
5 or three additional stories in the future to 15:09
6 hold more classrooms for more children and 15:09
7 more programs, instead is deciding to cash in 15:10
8 now and sell its expansion space to the 15:10
9 highest bidder. So that instead of future 15:10
10 classrooms, you are going to have condos. 15:10
11 And when the rabbi comes back to you in 15:10
12 a few more years for expansion space, 15:10
13 presumably what he will be talking about is 15:10
14 tearing down the parsonage, so building 15:10
15 something there that will require more 15:10
16 variances or something else. This is not what 15:10
17 the zoning laws were designed to do. It's 15:10
18 simply wrong. Thank you. 15:10
19 THE CHAIRPERSON: Thank you. The next 15:10
20 speaker. 15:10
21 MR. FERNANDEZ: My name is Ken 15:10
22 Fernandez. I will be reading testimony on 15:10
23 behalf of Assembly Member Richard Gottfried. 15:10
24 "My name is Richard N. Gottfried and I 15:10
25 am the Assembly Member representing the 75th 15:10

00043

1 Proceedings
2 Assembly District, which includes Congregation 15:10
3 Shearith Israel and the site of the proposed 15:10
4 new building. I regret that the legislative 15:11
5 session in Albany prevents me from appearing 15:11
6 at today's hearing. 15:11
7 "Congregation Shearith Israel has 15:11
8 applied to the Board of Standards and Appeals 15:11
9 for seven zoning variances that will allow it 15:11
10 to construct a new community house with five 15:11
11 residential units on the upper floors. If the 15:11
12 BSA approves these variances, the new 15:11
13 buildings would harm its neighbors, the 15:11
14 neighborhood, and advance a dangerous trend of 15:11
15 land use. Hundred of pages of new submissions 15:11
16 and responses have been exchanged since these 15:11
17 proceedings began in November. However, the 15:11
18 underlying issues have not changed. 15:11
19 "I have previously testified that the 15:11
20 application falls drastically short of 15:11
21 conditions required under the five findings 15:11
22 required for the variances under the zoning 15:11
23 resolution. The applicant has still failed to 15:11
24 prove otherwise. Repeatedly the community has 15:11
25 shown that an as-of-right building can 15:11

00044

1 Proceedings
2 spatially accommodate the applicant's 15:11
3 programmatic needs. The applicant can 15:11
4 rearrange its floor plan to meet these 15:11
5 programmatic needs, or even locate some of 15:11
6 them to the parsonage on Central Park West. 15:11
7 "I and other opponents have previously 15:11
8 demonstrated that the height and setback 15:11
9 variances are intended solely to accommodate 15:11
10 the construction of residential units and are 15:12
11 not related to the congregation's programmatic 15:12
12 needs. I also remain concerned that the true 15:12
13 motive for the rear yard variances may be to 15:12
14 accommodate revenue generated by the tenant 15:12
15 school's growth. I again urge the Board of 15:12
16 Standards and Appeals to reject the 15:12
17 application in its entirety." 15:12
18 THE CHAIRPERSON: Thank you. Are there 15:12
19 any other speakers? Thank you. 15:12
20 MS. WOOD: My name is Kate Wood and I 15:12
21 wasn't at all sure that I was going to testify 15:12
22 today, but the Board's apparent and rather 15:12
23 astonishing turnaround at yesterday's 15:12
24 executive session put me in a reflective mood. 15:12
25 I thought back to when this application was 15:12

00045

1 Proceedings
2 before the Landmarks Preservation Commission 15:12
3 in 2003 and a statement by the late Peter 15:12
4 Jennings, a neighbor of the synagogue and 15:12
5 someone not prone to hyperbole. His take on 15:12
6 the issue was, quote, "That people have lost 15:12
7 faith in the process, the governing process 15:12
8 because they believe the fix is in. It's a 15:12
9 horrible phrase, but many of my neighbors are 15:12
10 convinced that it's true," end quote. 15:13
11 But New York is a city of dreamers. And 15:13
12 neighborhood activism in particular requires a 15:13
13 suspension of disbelief, the elevation of 15:13
14 innocence above cynicism. So we have all been 15:13
15 engaged here for many months in an effort to 15:13
16 focus this Board's attention on has the 15:13
17 applicant met its burden. Is the factual 15:13
18 basis on which the Board seems poised to grant 15:13
19 seven variances so that this nonprofit 15:13
20 religious institution can build five floors of 15:13
21 luxury condominiums, that have absolutely 15:13
22 nothing to do with its mission, is this basis 15:13
23 solid enough to withstand the tide of similar 15:13
24 applications rolling steadily toward the 15:13
25 beach? 15:13

00046

1 Proceedings
2 Has the applicant overcome Commissioner 15:13
3 Otley-Brown's observation at the November 7th 15:13
4 hearing. She said, quote, "It's my opinion 15:13
5 that residential use to raise capital funds to 15:13
6 correct programmatic deficiencies is not, in 15:13
7 and of itself, a programmatic need, and I 15:13
8 think if we open the door here and allow that 15:14
9 argument in, we are going to have a hard time 15:14
10 turning down every other religious institution 15:14
11 that wants to place residential in their 15:14
12 backyard in order to finance expansion," end 15:14
13 quote. 15:14
14 Are we to believe that this approval 15:14
15 will not be recognized by those institutions 15:14
16 as an open invitation? None of us is that 15:14
17 innocent. 15:14
18 Tom Robbins, in the April 2nd Village 15:14
19 Voice referred to the Doctoroff doctrine: The 15:14
20 more building the better, and don't sweat the 15:14
21 small stuff. Whether it's five stories or 55 15:14
22 stories, this isn't small stuff. You are not 15:14
23 a panel of platonic philosopher kings in 15:14
24 search of the best possible solutions to a 15:14
25 land use issue. You have an important, but 15:14

00047

1 Proceedings
2 limited, role as really a safety valve, an 15:14
3 escape hatch to allow for the productive use 15:14
4 of properties that are truly burdened by 15:14
5 zoning. 15:14
6 But having read dozens of your decisions 15:14
7 and having sat through a multitude of public 15:14
8 hearings and executive sessions, it is 15:15
9 apparent that you have a different view of 15:15
10 your role. You are not public guardians. You 15:15
11 are development enablers. Innocent that I am 15:15
12 perhaps, I am saying this to tweak your 15:15
13 consideration, hoping for one last turnaround, 15:15
14 but even, as I say, even I can see that that 15:15
15 is a done deal, which is another horrible 15:15
16 phrase. 15:15
17 I am really saying this for the people 15:15
18 out there. People who have lost faith in the 15:15
19 process and hope that they won't have to fight 15:15
20 this battle again and again and again on the 15:15
21 West Side, the East Side, in the Village, in 15:15
22 Brooklyn, in Queens. So I will just say one 15:15
23 last thing and that is we have lost faith, but 15:15
24 we will keep fighting. Thank you very much. 15:15
25 THE CHAIRPERSON: Thank you, Ms. Wood. 15:15

00048

1 Proceedings
2 Are there any more speakers on this item? Any 15:15
3 more speakers? Okay, Mr. Friedman. 15:15
4 MR. FRIEDMAN: Thank you, Madam Chair. 15:16
5 We do not have major substantive points to 15:16
6 rebut here. We have a detailed record in 15:16
7 front of you and a number of statements back 15:16
8 and forth that the opposition had. We would 15:16
9 hope to have you close your record and make 15:16
10 your decision based on the record before you. 15:16
11 I will, however, provide some comment. 15:16
12 We do not recognize yesterday's events as a 15:16
13 turnaround or look for further turnarounds. 15:16
14 That's not what this Board has ever been 15:16
15 about. This is a methodical effort to work on 15:16
16 an application, to address questions. There 15:16
17 is back and forth. Alternates are put 15:16
18 forward. Alternates are rejected. But in the 15:16
19 main, you know, we have reached and I hope, 15:16
20 unfortunately, reached a methodical end of 15:16
21 your inquiries, and that there is a case in 15:16
22 front of you now which we are ready to decide 15:17
23 and we respect your process and respect your 15:17
24 methodical way in which you go about building 15:17
25 your decision-making record. 15:17

00049

1 Proceedings
2 The record that you have before you is 15:17
3 compliant with all issues, especially with 15:17
4 regard to the shadow studies. It's compliant, 15:17
5 to the best of our knowledge, with your BSA 15:17
6 rules and regulations. 15:17
7 I didn't -- do not recall mentioning 15:17
8 that Landmarks is the official and last word 15:17
9 on zoning. I believe the statement really 15:17
10 asks that Landmarks is the final word of this 15:17
11 administration on important components under 15:17
12 the City's police power to regulate, and that 15:17
13 is on aesthetic judgment in historic 15:17
14 districts, and that judgment is to be accorded 15:17
15 some very high weight in dealing with the 15:17
16 general welfare and the finding of 15:17
17 compatibility with the project in its 15:17
18 community. 15:17
19 With regard to the concern about 15:18
20 precedent, the slippery slope that you hear on 15:18
21 a weekly basis in every application, we 15:18
22 believe we have provided you with what you 15:18
23 have required of us and that is to prove the 15:18
24 local request is truly unique, and that your 15:18
25 resolution can truly and fairly reflect the 15:18

00050

1 Proceedings
2 fact that this is not an application that has 15:18
3 the kind of precedential throw weight that the 15:18
4 opponents wish they could convince you that it 15:18
5 had. 15:18
6 But you have asked us to literally walk 15:18
7 Central Park West from the 60s to the 90s 15:18
8 looking at every possible site that shares the 15:18
9 general zoning parameters of this -- of this 15:18
10 site. To look at all the other specifics, the 15:18
11 individual landmarks, the ability to transfer 15:18
12 development rights, the applicability of 15:18
13 especially Chapter 77, indeed this is a site 15:18
14 which is unique, and the totality of specifics 15:18
15 that we put into the record regarding 15:19
16 uniqueness and practical difficulty are 15:19
17 inherent in the zoning log and are not 15:19
18 general. 15:19
19 We did not come before you to say we are 15:19
20 in a landmark district and that's a hardship, 15:19
21 or we are an individual landmark and that's a 15:19
22 hardship. We brought to you a specific 15:19
23 project, specifically approved by the 15:19
24 Landmarks Commission, which has generated some 15:19
25 difficulties with utilizing our floor area in 15:19

00051

1 Proceedings
2 an as-of-right manner, and that, in 15:19
3 combination with several other factors which 15:19
4 we put in the record, but we think Landmarks 15:19
5 is squarely in your parameters for an approval 15:19
6 project. 15:19
7 And lastly, with regard to the quote 15:19
8 from Mr. Jennings, I wish he were here because 15:19
9 when I heard that quote, he had never appeared 15:19
10 either at Landmarks or before the BSA. 15:19
11 Everything that we have submitted by letter on 15:19
12 his behalf, but I wanted to ask him how a man 15:19
13 as busy as him could walk out of his apartment 15:20
14 building, which is noncompliant, and walk over 15:20
15 to his office building, which is also 15:20
16 noncompliant, at ABC, and take the opportunity 15:20
17 to pass judgment on Shearith Israel's vacant 15:20
18 lot. 15:20
19 It seems to me that the concern about 15:20
20 the fix being in, or whatever his phrase or 15:20
21 whatever the person who wrote that letter's 15:20
22 phrase, reflects a deep-seated 15:20
23 misunderstanding of the process, and a 15:20
24 deep-seated misunderstanding of the role of 15:20
25 this Board. Not in adjudicating and not 15:20

00052

1 Proceedings
2 necessarily in protecting neighborhoods and 15:20
3 communities, but also, and this is your 15:20
4 burden, also to work out the conflicts of 15:20
5 protecting institutions who need to expand 15:20
6 from a hostile community. And that is as much 15:20
7 your charge as any other aspect of your 15:20
8 responsibilities, as had been dictated to you 15:20
9 and to all of us both in the statute and in 15:21
10 the zoning resolution and in judicial opinion. 15:21
11 And so with that, I would like to very 15:21
12 much thank the Board for its tried and true 15:21
13 patience, which are hard, to this application, 15:21
14 and I would like to ask that the record be 15:21
15 closed. It can be left open, we received some 15:21
16 information today that we might want to write 15:21
17 a letter on. It will only take us a day or 15:21
18 two to get that in, but we would like to ask 15:21
19 the Board to close the record and schedule a 15:21
20 date for a possible decision. Thank you very 15:21
21 much. 15:21
22 THE CHAIRPERSON: Thank you, 15:21
23 Mr. Friedman. Any questions for the 15:21
24 applicant? 15:21
25 What we will do is we will close the 15:21

00053

1 Proceedings
2 hearing today and we will set a schedule. As 15:21
3 you know, Mr. Friedman, there were a few 15:21
4 questions the Board raised today. I would 15:21
5 like to add just a few more to be clarified 15:21
6 for us, and some of this has to do with 15:21
7 language that is in your papers that perhaps 15:21
8 the opposition may not understand. I think I 15:22
9 have an understanding of it, but just to 15:22
10 clarify the record, the discussion you had 15:22
11 about aligning the street wall, I believe you 15:22
12 are really talking about centering it on the 15:22
13 landmark, is that right? And if I am wrong, 15:22
14 then please clarify that to us. But there was 15:22
15 some language about how that forms some kind 15:22
16 of hardship or difficulty in your measuring of 15:22
17 your building. 15:22
18 I think, for the record, it's worthwhile 15:22
19 to discuss the caretaker's apartment and the 15:22
20 need to include it within the four floors. I 15:22
21 think it would be helpful in the record to 15:22
22 also just clarify about the construction 15:22
23 estimates. Our understanding is the 15:22
24 caretaker's apartment is really an accessory 15:22
25 to community facility use, and should not be 15:22

00054

1 Proceedings
2 in the construction costs for the residence, 15:22
3 and that is the assumption that I think the 15:23
4 Board members have made. 15:23
5 If you can just clarify that and I think 15:23
6 this -- the comment that Commissioner 15:23
7 Otley-Brown made about the programmatic need, 15:23
8 regarding revenue generation, I recall we said 15:23
9 that many times, that we feel that in of 15:23
10 itself is not a part of programmatic need. I 15:23
11 know you still have it in your papers. The 15:23
12 Board may reject that argument, but I think 15:23
13 it -- I know it would be better for the papers 15:23
14 to take that out. 15:23
15 Are there any other comments? Okay, all 15:23
16 right. So we will set a schedule. And there 15:23
17 is one other comment which actually has to do 15:23
18 with your drawings, and that had to do with 15:23
19 ensuring that the facility takes care of 15:23
20 garbage, and if you can just reflect that on 15:23
21 your drawings, where you are going to keep the 15:23
22 refrigerated, I guess, waste till -- since it 15:23
23 was, I think, if I remember correctly, it's a 15:24
24 recommendation or condition that you said that 15:24
25 would mitigate any impact. Yes. All right? 15:24

00055

1 Proceedings
2 Anything else? Yes. 15:24
3 MS. MONTANEZ: Just that they will 15:24
4 answer the other questions we raised today 15:24
5 regarding the financials. 15:24
6 THE CHAIRPERSON: Absolutely. So we 15:24
7 identified a few issues for Mr. Friedman that 15:24
8 he will be responding to, so we will set a 15:24
9 schedule. All right, Mr. Friedman, we will 15:24
10 give you two weeks, until July 8th, to 15:24
11 respond. We will allow Mr. Lebow and his crew 15:24
12 up to July 29th. And, Mr. Friedman, you can 15:24
13 respond back by August 12th. And we will set 15:24
14 a decision for August 26th. 15:24
15 MR. FRIEDMAN: Thank you very much. 15:25
16 THE CHAIRPERSON: Make a motion. 15:25
17 THE HEARING CLERK: Chair, Commissioner 15:25
18 Srinivasan.
19 THE CHAIRPERSON: Aye.
20 THE HEARING CLERK: Vice Chair,
21 Commissioner Collins.
22 MR. COLLINS: Aye.
23 THE HEARING CLERK: Commissioner 15:25
24 Hinkson. 15:25
25 MS. HINKSON: Aye. 15:25

00056

1 Proceedings
2 THE HEARING CLERK: Commissioner 15:25
3 Montanez. 15:25
4 MS. MONTANEZ: Aye. 15:25
5 THE HEARING CLERK: Commissioner 15:25
6 Otley-Brown. 15:25
7 MS. OTLEY-BROWN: Aye. 15:25
8 (Time noted: 3:25 p.m.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

00057

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF QUEENS)

I, YAFFA KAPLAN, a Notary Public within
and for the State of New York, do hereby
certify that the foregoing record of
proceedings is a full and correct transcript
of the stenographic notes taken by me therein.

IN WITNESS THEREOF, I have hereunto set
my hand this 30th day of June, 2008.

YAFFA KAPLAN