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March 17, 2008

Hon. Meenakshi Srinivasan, Chair
Board of Standards and Appeals
40 Rector Street, 9th Floor
New York, New York 10006-1705


Re: BSA Calendar No. 172-07-BZ
121/125 East 85th Street
Block 1514, Lots 10 & 13

Dear Chairperson Srinivsan:

This firm represents the Coalition to Oppose Ramaz Tower (the "Coalition"), an ad hoc group of concerned citizens and neighbors on the Upper East Side deeply troubled by the referenced variance case. The following groups have joined the Coalition and support this submission in opposition to the variances: 120 East 87th Street, LLC; 115 East 86th Street Owners, Inc.; 106 East 85th Street Tenants Corp.; Carnegie Hill Neighbors, Inc.; CIVITAS Citizens, Inc; Defenders of the Historic Upper East Side; 86th Street Merchants/Residents Association.

On behalf of the Coalition, please find the following (i) Statement in Opposition including exhibits; and (ii) BFJ Planning's Land Use Analysis dated January, 2008. We are aware that the referenced case has been indefinitely postponed on the Board's calendar. Nevertheless, we wish to submit our papers at this time, and we will modify the same as necessary.

Very truly yours,


Jeffrey A. Chester

EINBINDER & DUNN, LLP

Hon. Meenakshi Srinivasan

March 17, 2008

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cc Hon. Scott M. Stringer, Borough President
Hon. Daniel Garodnick, Councilmember
Alan Geiger, Department of City Planning
Community Board # 8
Coalition to Oppose Ramaz Tower
Shelly Friedman, Esq., Friedman & Gotbaum, LLP
Ross Moskowitz, Stroock, Stroock & Lavan, LLP
Joanne Seminara, Esq., Kurzman Karelsen & Frank, LLP

Encl.

STATEMENT IN OPPOSITION TO VARIANCES REQUESTED FROM THE
NYC ZONING RESOLUTION

Calendar No. 172-07-BZ

Ramaz School/Residential Tower
121/125 East 85th Street
Block 1514, Lots 10 & 13

On behalf of the *Coalition to Oppose Ramaz Tower*

Jeffrey A. Chester, Esq.
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I. INTRODUCTION

A. **The Coalition to Oppose Ramaz Tower (the "Coalition")** The Coalition consists of cooperative and condominium associations; civic groups and merchant associations; as well as concerned citizens and neighbors on the Upper East Side, which are deeply troubled by the proposed mid-block, 355' high "Ramaz Tower" development. Specifically the Coalition includes: 120 East 87th Street, LLC; 115 East 86th Street Owners, Inc.; 106 East 85th Street Tenants Corp.; Carnegie Hill Neighbors, Inc.; CIVITAS Citizens, Inc; Defenders of the Historic Upper East Side; 86th Street Merchants/Residents Association.

Individual members of the coalition may have different issues with the proposed development, not necessarily shared by all¹. In general, the Coalition would be sympathetic to and supportive of Congregation Kehilath Jeshurun and the Ramaz School's need to modernize and possibly expand both the synagogue and the Ramaz School. **The Coalition, however, is vigorously opposed to the use of the variance process to create a grossly inappropriate *for-profit* residential tower placed on top of a school. It is an abuse of the variance process that will have potentially devastating effects on land use patterns and neighborhood character on the Upper East Side for years to come.**

B. **Background of proposed variance project**

On June 21, 2007, Friedman & Gotbaum, LLP filed a variance application at the NYC Board of Standards & Appeals on behalf of its client, Congregation Kehilath Jeshurun and the Ramaz School (all collectively referred to herein as the "Applicant"). A revised application was subsequently filed on November 2, 2007. The property in question is located at 121-125 East 85th Street (Tax Block 1514, Lots 10 & 13), on the

¹ Individual members of the Coalition may file their own submissions in opposition. The building next door, 111 East 85th Street, has distinct issues based on their proximity and has previously filed opposition papers. See submissions of Stroock Stroock & Lavan dated 11/5/07 and 12/20/07.

north side of the street between Lexington & Park Avenues (hereinafter the "Property"). Recently, the first scheduled Board hearing on the proposed variances was postponed indefinitely at the Applicant's request. Public statements from officials of the Ramaz School and the Applicant's attorney indicate that they intend to pursue the variance, possibly in some modified form².

The Property, consisting of two separate tax lots, is one merged zoning lot for development purposes. The zoning lot is currently developed with two buildings: the existing Congregation Kehilath Jeshurun ("KJ") synagogue and the affiliated Ramaz School³.

The Applicant claims that the existing synagogue and school have a number of "deficiencies", which create "programmatically difficulties" and inefficiencies. The Applicant considers the existing school inadequate in a number of respects (undersized gym, insufficient number of bathrooms, insufficient classroom sizes, insufficient administrative space, insufficient library and specialized programming space, etc.).

The Applicant proposes completely demolishing the existing eight story, 104' high Ramaz School. In the place of the existing school, the Applicant proposes erecting a twenty-eight story, 355' high⁴ building. The bottom 10 floors (and below grade levels) of the proposed building would house the new Ramaz School and some related administrative functions. **Floors 11-28 of the proposed tower, contributing more than 60 % of the height, would house 53 newly constructed residential units - presumably very high-end luxury condominiums.**

² See *The Jewish Week News* 2/20/08. Despite this adjournment, the Coalition has decided to file this Statement in Opposition at this time. Our submission will be modified if and when the Applicant modifies its proposal.

³ The existing Ramaz School is actually two structures but listed as one building on Buildings Department records.

⁴ Including mechanical space and other obstructions.

C. **Summary of the Coalition's Position in Opposition:**

- The proposed tower at 355' (including mechanicals and screen wall), **more than 70% beyond the allowable zoning height**, is grossly inappropriate for a mid-block development on the Upper East Side.
- The proposed variance, if granted, severely undermines contextual mid-block zoning, a vitally important planning concept protecting the Upper East Side, for which several members of the Coalition fiercely fought to establish over 20 years ago.
- The Applicant has completely failed to demonstrate in their papers why they cannot build a new community facility (school and synagogue space) while complying with existing zoning restrictions.
- The Applicant is using its not-for-profit status to conceal what will actually be an **enormously profitable business venture** in residential development.
- The proposed variance, if granted, would create a very dangerous precedent, opening the door for any other community facility (school, religious institution, museum, etc.) to seek a variance to develop a similarly inappropriate for-profit development on top of, or in place of, its existing structure.

II. **THE PROPOSED VARIANCE APPLICATION**

As noted above, the Applicant has proposed demolishing the existing Ramaz School to develop a 28 story, 319' (355' in total), mid-block, mixed-use building (community facility and residential). In order to accomplish the foregoing, the Applicant is seeking numerous and substantial variances from this Board, the most significant of which are summarized below⁵:

⁵ The Applicant's submission to the Buildings Department raised a total of 10 objections, all of which require variances (see Applicant's Revised Statement of Facts pp. 19-20).

- Building Height (in R10A equivalent district): The residential portion of the mixed-use building located in a C5-1A district is subject to mandatory Quality Housing regulations, ZRCNY § 35-011. In the C5-1A district, the bulk regulations of an R10A contextual district apply, ZRCNY § 35-23 (b). The maximum permitted building height in an R10A district is 185 feet, ZRCNY §23-663. The Applicant is seeking to build a 319 foot tall (355 feet including mechanical bulkhead and screen wall) building, which is ***an additional 134 feet*** (more than 70 percent taller) than the permitted maximum in an R10A district.
- Building Height (in C5-1A district): ZRCNY §35-24 mandates that that the maximum permitted building height in a C5-1A district is 210 feet. The Applicant is seeking to build a 319 foot tall (355 feet including mechanical bulkhead and screen wall) building, which is ***an additional 109 feet*** beyond the permitted maximum in a C5-1A district.
- Base Height: ZRCNY §23-663(b) mandates the maximum base height permitted on a narrow street in an R10A district is 125 feet, located within 10 feet of the rear yard line. The Applicant is seeking ***an additional 194 feet*** to construct a 319 foot tall building (355 feet including mechanical bulkhead and screen wall) within 10 feet of the rear yard line.
- Lot Coverage: According to ZRCNY §24-1 1 lot coverage of interior lots in R10A zones must not exceed 70 percent. The Applicant is seeking a lot coverage variance to cover ***approximately 94 percent*** of the site to include the existing synagogue and the proposed new structures.
- Street Wall Setback (in C5-1A district): ZRCNY §35-24(c) indicates a minimum street wall setback of 15 feet from a narrow street (E85th street). The Applicant proposes a setback of 10 feet, which is ***33 percent (5 feet) less*** than required in this district.

III. THE CASE AGAINST THE VARIANCE

A. This variance application is a “Trojan Horse” - a hugely profitable business venture for a private developer - hiding behind a community facility’s not-for-profit status.

The variance application is deeply troubling in many respects, not the least in its brazen disingenuousness. This application is, in essence, a Trojan Horse. Contrary to Applicant’s claims in its submission, this is an application for what will be an enormously profitable residential development for a private developer, masquerading as a minor component to help facilitate a community facility development.

In the Applicant’s inordinately lengthy and densely worded thirty-eight page *Statement of Facts* (“SOF”), the residential component is barely mentioned and not described until page 16, where it receives a **mere one paragraph description**. Conspicuously devoting only a single paragraph in thirty-eight pages to describe the reasons for seventeen of the proposed twenty-eight stories certainly appears to be an intentional attempt to minimize, if not downright conceal, the true nature of this variance application.

The Ramaz residential tower is described, in passing as “*an appropriate and common ‘monetization’ of an existing resource by a religious, cultural and educational institution which has as its sole purpose the correction of programmatic deficiencies...*” (SOF, p. 16). The Coalition takes extreme exception to this self-serving and misleading statement. There is nothing either “appropriate” or “common” about this variance application.

- It is neither *appropriate* nor *common* to build a twenty-eight story tower rising to a total height of 355’ in the middle of the block on a narrow street, **in direct contravention of the contextual zoning rules** that were created to prevent such development.

- It is neither *appropriate* nor *common* to place an additional seventeen stories of high rise luxury condominiums on top of a mid-block community facility building.
- It is neither *appropriate* nor *common* for a religious/educational institution to hide behind its not-for-profit status in a subterfuge to conceal an enormously profitable residential development for a private developer.

Furthermore, in addressing the (b) finding of ZRCNY§ 72-21, the Applicant has the temerity to state that “*KJ’s status as a not-for-profit religious organization renders this finding unnecessary.*” (SOF, p. 30) In the context of this application that is an amazing claim. The residential *for-profit* component of this application constitutes 91,857 square feet of floor area, and the top seventeen floors most valuable floors of a twenty-eight story tower. Nevertheless, the Applicant chooses to hide behind its not-for-profit status.

It strains credulity beyond the breaking point to accept that KJ and the Ramaz School are the ultimate developers of this proposed luxury residential tower. As a synagogue and school, they are not in the business of selling residential condominiums. As a synagogue and school, they have no experience in developing, building and marketing luxury high-rise residential condominiums. The only rational assumption is that they are in some type of undisclosed partnership or business relationship with an experienced private developer. It is this secret private developer who will make a substantial profit, and in turn significantly subsidize the building of the community facility portion.

Generally, there is nothing inherently improper about a not-for-profit institution raising funds for its programmatic mission by selling assets, including real estate.⁶ Of course, that does not mean that the municipality must facilitate that process by contravening its own zoning regulations to substantially increase the value of the not-for-profit's real estate for sale.

If KJ/Ramaz were coming to this Board to seek a variance purely for their religious or educational use, their application would be entitled to great deference. *Diocese of Rochester v. Planning Board of Town of Brighton* 1 N.Y.2d 508, 136 N.E. 2d 827 (1956); *Cornell University v. Bagnardi* 68 N.Y. 2d 583, 503 N.E. 2d (1986). Nevertheless, they can be accorded no special status when seeking to vary zoning restrictions for a profit making venture. There is simply no legal or policy precedent for any municipality to grant a community facility substantial variances so they can make an enormous profit on a separate, unrelated real estate business deal, to finance the expansion of the community facility.

In the instant application, nearly half the floor area and a significant majority of the height of the proposed structure are attributable to a separate business enterprise—the development and sale of luxury condominiums. The development and sale of luxury condominiums has absolutely nothing to do with the history or mission of KJ/Ramaz as a religious/educational/cultural institution. We believe it is extremely difficult, if not impossible, to evaluate this application for a variance without bifurcating the proposed community facility from the proposed for-profit residential tower.

If separated, the Board can rationally evaluate the proposed new community facility on its own merits. The Applicant claims that the existing structures are outmoded, inefficient and create all types of programmatic difficulties. Those claims should be closely evaluated by the Board, giving KJ/Ramaz the special deference they are

⁶ It is interesting to note that the sale or mortgage of a Religious Corporation's real estate requires the approval of the Attorney General and leave of the New York State Supreme Court in order to protect the entity's assets. Religious Corporation Law §12; Not-For-Profit Corporation Law § 511.

due, while seeking to mitigate the impacts of their proposal on surrounding properties, *see, Westchester Reform Temple v Brown* 22 N.Y. 2d 488, 239 N.E. 2d 891 (1968).

The Applicant is proposing to develop a new 123, 203 gsf community facility building, (including cellar, sub-cellars, and above grade floors). The proposed new Ramaz School alone would be approximately 42,000 square feet larger than the existing building - a whopping 64% increase (SOF, p.13). Despite this enormous increase in size, they propose serving the same exact number of students. It appears that Ramaz wants to build their own state-of-the art facility. The Applicant has not sufficiently demonstrated exactly why KJ/Ramaz needs such a substantial increase in size for the same student body. Perhaps KJ/Ramaz could resolve many of their "programmatic deficiencies" with a far less grandiose design. If the community facility development could be minimized, it would also minimize several of the proposed variances for the residential development.

The private for-profit business venture that the Applicant, or (more likely) its secret business partner are engaged in should be evaluated separately, on its own merits. If a private for-profit developer came to this Board on its own, attempting to build a grossly inappropriate tower on top of an existing community facility (without hiding behind the community facility's not-for-profit status), and requesting a massive contravention of contextual zoning rules, such an application would be faced with deep suspicion and long odds.

This is exactly why the applicant has presented this application as Trojan Horse- an enormously profitable residential development for a private developer-wrapped in the not-for-profit prayer shawl of a synagogue and religious school. This Board must lift away the intentionally disguising cloak of the not-for-profit community facility, and analyze the proposed for-profit residential tower on its own merits.

B. The proposed “Ramaz Tower” would subvert contextual zoning and neighborhood character on the Upper East Side and vitiate over twenty years of established land use policy.

Far from being “*appropriate*” as claimed by the Applicant, the proposed Ramaz Tower would severely undermine the whole concept of contextual zoning on the Upper East Side. At 28 floors and 355’ in total height, this proposed monstrosity of a tower is taller than almost any mid-block development on the Upper East Side. It is taller than any mid-block development since contextual zoning was enacted on the Upper East Side in the 1980’s.

We have submitted along with this Statement in Opposition, a detailed Planning & Zoning Analysis of the area by Buckhurst, Fish & Jacquemart Planning, dated January, 2008 (hereinafter “BFJ Report”). The BFJ Report notes:

There are two mid-block high rise buildings within the study area. The Savoy, constructed in 1971, is a residential building of 30 stories between Lexington and Park Avenues. Another mid-block residential high rise, constructed in 1972, consists of 38 stories and is located at 115 East 87th Street, between Lexington and Park Avenues. All other tall buildings over 20 stories within the study area are located on corner sites abutting Avenues, reflecting the Manhattan zoning philosophy of locating taller buildings on Avenues and lower buildings mid-block.

It is important to note that the two mid-block tall buildings mentioned above were constructed *prior to the creation of the contextual zoning district* in 1985. As previously mentioned in Section 2.1, the contextual zoning district resulted in a generic zoning recommendation to limit the height and bulk of residential construction in certain *residential* areas, like the Upper East Side, at a time when tower construction threatened to change the character and scale of these neighborhoods. . . (BFJ Report, p.13).

The vital importance of contextual zoning regulations in residential neighborhoods like the Upper East Side cannot be overstated. Prior to the enactment of contextual zones with “A” or “B” suffixes, the Upper East Side was being threatened to

turn into a forest of brick, concrete, and glass high rise towers without regard to scale, light, air and other important amenities which makes the neighborhood livable.

After lengthy study by the Department of City Planning, the initial contextual zones were created to place absolute limits on height and bulk distribution regardless of the underlying FAR. In a 2000 article for *CityLaw*, Norman Marcus, former General Counsel of City Planning, described the reasons for and the importance of these contextual limitations:

Contextual districts were created almost fifteen years ago⁷ after a two-year study by the Department of City Planning. The study resulted in a generic zoning recommendation to limit the height of residential construction in certain residential areas like the Upper East Side, the Upper West Side and Murray Hill/Gramercy Park at a time when sliver development and tower construction threatened to change the character and scale of these neighborhoods, disrupt their contiguous backyards and homogenize residential Manhattan into an indistinguishable high rise haze. In these new contextual districts a specific height limitation was imposed in addition to the FAR limitation. Mid-block sites received the lowest height, with higher but still limited residential buildings allowed along the wider avenues. This “hills and valleys” planning recommendation was based principally on the greater traffic capacities of 100-foot wide avenues as compared with the 60-foot wide east-west streets, the greater distance between buildings across the avenue allowing more light and air potential, and, finally, upon the built character of the avenues as opposed to mid-blocks. (emphasis added) (*City Law* Vol.6, No.1 January, 2000⁸)

In other words, absolute contextual height limitations were adopted for certain residential neighborhoods as official New York City land use policy and law, after careful study pursuant to a well considered plan.

The Property at 121-125 East 85th Street was not part of those original contextual zoning changes (primarily to R8A and R8B). However, four years later in 1989, the City Planning Commission (“CPC”) and Board of Estimate mapped most of the instant

⁷ In 1985 the first R8A and R8B zoning districts were created.

⁸ A full copy of the Norman Marcus article in *CityLaw* has been included with this submission as Exhibit “B”.

Property as a C5-1A contextual zone, as part of a larger zoning map amendment (ULURP # C 880800 ZMM) which rescinded the existing Special Yorkville District. The CPC report accompanying the map amendment reads in pertinent part:

(B)y 1983 the effectiveness of the Yorkville Special District designation had come into question. Several residential buildings had been built or were planned, and there was growing concern that residential towers, the building form that resulted from the application of the special district regulations, were diluting the area's neighborhood character. . . The recent adoption of contextual zoning designations by the City Planning Commission and the Board of Estimate, as well as Quality Housing (ZR 23-90), and Inclusionary Housing (ZR 28-00), provides the Commission with the opportunity to consider replacing the Special Yorkville — East 86th Street with appropriate generic zoning designations, C2-8A and C5-1A, which will encourage compatible street wall development, encourage the provision of low-income housing and simplify the Zoning Resolution.

In considering the proposed rezoning, the Commission evaluated its potential effects in two broad categories: the impact on future development potential and the effect of proposed bulk regulations on future development building form.

* * *

Five tower buildings were constructed within the district boundaries under Yorkville Special District regulations, and three were constructed before the district regulations went into effect⁹. . . This proposal would allow continued protection of the area's traditional scale and character through appropriate generic, rather than special district zoning. (emphasis added)

It is obvious that the CPC carefully studied the necessity of contextual height and bulk limitations for residential neighborhoods like the Upper East Side in general, and for this Property in particular and determined they were vitally important to preserve appropriate neighborhood scale and character. **The contextual zoning was specifically enacted to prevent the very type of development that the Applicant now proposes.**

⁹ Undoubtedly including the Savoy at 11 East 85th Street and 115 East 87th Street.

This instant variance application offers no viable reason to breach the integrity of the contextual zoning regulations enacted to preserve this neighborhood. Mid-block development on narrow streets should be strictly limited to the maximum heights permitted under contextual zoning-in this case, 185' and 210'. To grant this variance and permit the erection of a 355' mid-block tower would fly in the face of CPC's well considered plan and have disastrous consequences for the surrounding properties and the entire Upper East Side.

C. The Applicant has completely failed to establish a case for the five findings necessary for a variance under ZRCNY § 72-21.

In order to be granted a variance from the strict application of the Zoning Resolution an Applicant must be able to prove each and every one of the five findings of ZRCNY §72-21:

72-21 (a) That there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular zoning lot; and that, as a result of such unique physical conditions, practical difficulties or unnecessary hardship arise in complying strictly with the use or bulk provisions of the Resolution; and that the alleged practical difficulties or unnecessary hardship are not due to circumstances created generally by the strict application of such provisions in the neighborhood or district in which the zoning lot is located;

There is absolutely nothing unique about the physical conditions of this lot. The lot is not narrow, shallow or irregularly shaped. The lot has no exceptional topographical or other physical conditions. To the contrary, it is a flat, perfectly shaped rectangular building lot in one of the prime neighborhoods of Manhattan. It is approximately 152' wide and 102' deep with 15,575 square feet of lot area. If cleared, it would be a fabulous as-of-right development lot. Development of the lot in strict conformity of the Zoning Resolution could yield a substantial community facility, an incredibly profitable residential building or a very workable mixed-use development.

The Applicant completely fails to mention anything unique about the physical characteristics of the lot itself, with the possible exception of the lot being split into two zoning districts. However, a zoning lot divided into two separate zoning designations is quite a common condition throughout the City. In fact, it is a very common condition in the immediate neighborhood. BFJ Planning has super-imposed the zoning district boundaries on a recent Sanborn map (Exhibit "A" attached). In so doing we discovered at least nine separate developed lots divided by a zoning district boundary line, just within a 400' radius.

The programmatic deficiencies of the existing school and synagogue house cannot serve as uniqueness, since they are demolishing the existing building. The presence of the existing synagogue and the Applicant's desire to continue to use this structure are cited as an element of uniqueness. The Applicant concedes however, that the structure is not a landmark nor specially protected in any way (SOF, p.1). While the congregation may prefer not to do so for "spiritual" or sentimental reasons, there is no legal or physical impediment to completely clearing this merged zoning lot¹⁰.

Moreover, the Applicant has failed to sufficiently demonstrate why a new development could not be built completely over the existing synagogue or incorporate the existing synagogue into its design. Using all of the as-of-right air space above the existing synagogue could yield significant additional floor area, while keeping within the contextual height limitations. (See BFJ report, Figure 10, p.21 - outlining an as-of-right building against this proposal.) Undoubtedly building on top of the synagogue would involve some engineering challenges and additional costs, but it is far preferable to the proposed alternative.

The applicant has completely failed to demonstrate unique physical conditions of this lot or why such conditions contribute to practical difficulty or unnecessary hardship.

¹⁰ It is extremely doubtful that completely clearing the lot would place any religious artifacts within at risk.

72-21 (b) That because of such physical conditions there is no reasonable possibility that the development of the zoning lot in strict conformity with the provisions of this Resolution will bring a reasonable return, and that the grant of a variance is therefore necessary to enable the owner to realize a reasonable return from such zoning lot; this finding shall not be required for the granting of a variance to a non-profit organization;

In the instant variance proposal, a not-for-profit community facility has chosen to use most of the as-of-right bulk development envelope available.¹¹ After using most of the as-of-right bulk envelope available in to build their state-of-the art community facility, KJ/Ramaz cannot then seek relief from this Board on the basis that there is not enough development envelope remaining to build a profitable residential development. This is an abuse of the variance process and without precedent in the law.

The entire faulty premise that this variance application is based on must be challenged. There is no basis or precedent for a not-for-profit community facility seeking a variance to construct a for-profit residential development¹². There is no basis or precedent for a not-for-profit community facility seeking to contravene well established land use policy to maximize its “profits” or return on investment. This is exactly why not-for-profit community facilities seeking area variances generally do not have to address the (b) finding of ZRCNY §72-21.

However, given the fact that the residential for-profit component of this application constitutes 91,857 square feet of floor area (nearly half), and the top seventeen floors most valuable floors of a twenty-eight story tower, the (b) finding must be addressed. We believe, as noted in II A. above, that the only rational way to analyze it is to separate the for-profit residential component from the community facility.

As noted in the appraisal report by Metropolitan Valuation Services (“MVS”), which accompanies the Stroock submission, the Pauls economic analysis submitted by the Applicant is fundamentally flawed by numerous incorrect assumptions and

¹¹ In conformance with the contextual zoning regulations applicable in a R10A equivalent, and C5-1A zoning district.

¹² As this Board is aware Friedman & Gotbaum, LLP have filed a similar variance application, albeit a far more modest one, for Congregation Shearith Israel on the Upper West Side, Cal. No. 74-07-BZ.

mathematical errors (MVS Report 10/24/07, p.1). MVS estimates the sales price in the build year to be \$2,000 per square foot, as opposed to the Pauls' absurdly low estimate of \$1,135. The Pauls report uses sales from buildings constructed in the 1980's and 1990's as comparables. The *Lucida*, at the northeast corner of 85th and Lexington, is the closest new construction condominium to the project site. The *Lucida* is currently listing units at over \$2000 psf.

Using Pauls own construction cost numbers, MVS estimates the profit to the private developer from an as-of-right development at close to \$25 million-after paying KJ/Ramaz as much as \$28 million for their air rights. \$28 million is more than 75% of their own estimated construction costs to build the school. With the proposed variance, MVS estimates that the Ramaz Tower will yield an enormous \$61million profit to its private developer.

It must also be noted that the relative proportion of community facility floor area to residential floor area was chosen by the Applicant. In this proposal, the Applicant wants to have their proverbial "cake and eat it too". They want to maximize the size of the Ramaz School by developing an additional 42,000 square feet - a 64% increase from the existing School- to serve the exact same number of students. At the same time, they want to maximize the residential for-profit development by building an additional 91,000 square feet of residential floor area on top of the expanded school.

It seems logical that the Applicant could still resolve many of their alleged "programmatic deficiencies" and inefficiencies of the existing building, without increasing its size by 64%. Decreasing the size of the proposed community facility by some proportion (e.g., 10,000 or 20,000 square feet) of floor area would yield that much more for-profit residential development. Profit and return on investment would be increased accordingly.

It is abundantly clear that both the Applicant and the undisclosed private development partner could each have what they need and stay within the as-of-right contextual limitations.

72-21 (c) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the zoning lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare;

As discussed extensively in Section II B. above, the Applicants' proposal abrogates over 20 years of land use policy on the Upper East Side, and would do irreparable damage to appropriate scale and neighborhood character. The typical mid-block properties throughout the Upper East Side, particularly the blocks between Lexington and Fifth Avenues, are overwhelmingly built with low scale townhouses and community facility properties.

The larger apartment buildings cited by the Applicant along Park or Lexington Avenues are not relevant and do not lend credence or support to the Applicant's ludicrous claim that the Ramaz Tower is an "*appropriate and sensitive response to the neighborhood context*" (SOF p.38). Nothing could be further from the truth. The mid-block properties in the immediate vicinity are, with two exceptions, less than 20 stories (see, BFJ Report, pp10-17). For graphic illustrations of how inordinately out of context the proposed development is, view the massing models drawn by BFJ Planning (BFJ Report, Figures 9-11).

As noted in the BFJ Report, both of the taller mid-block buildings within a 400' radius were built prior to the enactment of contextual zoning in the neighborhood. Moreover, 111 East 85th Street, the adjacent building to the west is set significantly back from the narrow street on East 85th. Unlike the proposed tower, most of 11 E. 85th Street's massing is pushed back to 86th Street, a wide street.

BFJ has done a shadow analysis and determined that the proposed 355' high tower will impact several nearby buildings, especially in the winter months (BFJ Report pp. 24-32). The Savoy at 11 East 85th Street, 120 East 85th Street, and 115 E. 86th Street will be particularly impacted by shadows cast by the proposed building (BFJ Report p. 29).

In terms of the long range impact on the community and public welfare, the most disturbing aspect of the proposed variance is the very dangerous precedent it would set. As noted in the BFJ Report there are a large number of educational and cultural facilities located on the Upper East Side. If the Board were to grant this grossly inappropriate variance, it would surely open the "floodgates" for any community facility (school, religious institution, museum, etc.) seeking a windfall for their "programmatic activities". One could readily envision a slew of educational and cultural institutions looking to raise millions the "**Ramaz way**": seeking substantial variance(s) for a residential tower either on top of an existing structure or in conjunction with the development of a completely new structure.

BFJ has identified a total of fifty-six schools and cultural institutions on the Upper East Side between 74th and 96th Streets (BFJ report pp.33-38).

A study of these schools has indicated that those located mid-block are an average of 6 stories in height, with the highest mid-block school at 11 stories. The majority of educational buildings are architecturally fitting to the character of the Upper East Side neighborhood and the height of these structures reflects and maintains the Manhattan zoning philosophy of locating taller buildings along the wider avenues and lower mid-block buildings on the narrower streets (BFJ Report p.33)

If this Board were to grant the proposed variance, how could it deny other similarly situated educational and cultural facilities? The low rise character and neighborhood scale of the Upper East Side's lovely side streets would be forever altered, to everyone's detriment.

72-21 (d) That the practical difficulties or unnecessary hardship claimed as a ground for a variance have not been created by the owner or by a predecessor in title; however where all other required findings are made, the purchase of a zoning lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship;

In fact, the owner, KJ/Ramaz, created virtually all the practical difficulties or unnecessary hardship alleged in the application. As stated above in discussing the (a) finding of §72-21, there is nothing inherently unique about the physical characteristics of the lot itself. The Applicant's claimed "practical difficulties" or "unnecessary hardship" all are related to their own desire to keep the existing synagogue intact and build on the remainder of the zoning lot. The Applicant's desire to retain the existing synagogue and their alleged "difficulty" in designing a new building around it (which has not been sufficiently proven by KJ/Ramaz) is a completely self-created hardship.

72-21 (e) That within the intent and purposes of this Resolution the variance, if granted, is the minimum variance necessary to afford relief; and to this end, the Board may permit a lesser variance than that applied for.

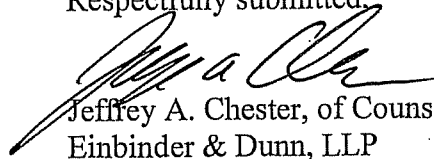
The numerous and substantial variances requested by the Applicant are offensively overreaching. Applicant's claim that a twenty eight story 319' (355' in total) high structure - 70% higher than contextual zoning allows- with 91, 857 square feet of unrelated residential floor area is the *very minimum* necessary to address the synagogue and school's "programmatically difficulties" is farcical.

The applicant has utterly failed to demonstrate why they need any variance whatsoever, let alone this proposed monstrosity. An as-of-right structure, within contextual zoning bulk parameters, would permit Applicant to modernize their school and develop residential floor area to offset costs. An as-of-right contextual development is both feasible and appropriate.

IV. CONCLUSION

For all the reasons stated in this submission, this Board must deny the Applicant the requested variances.

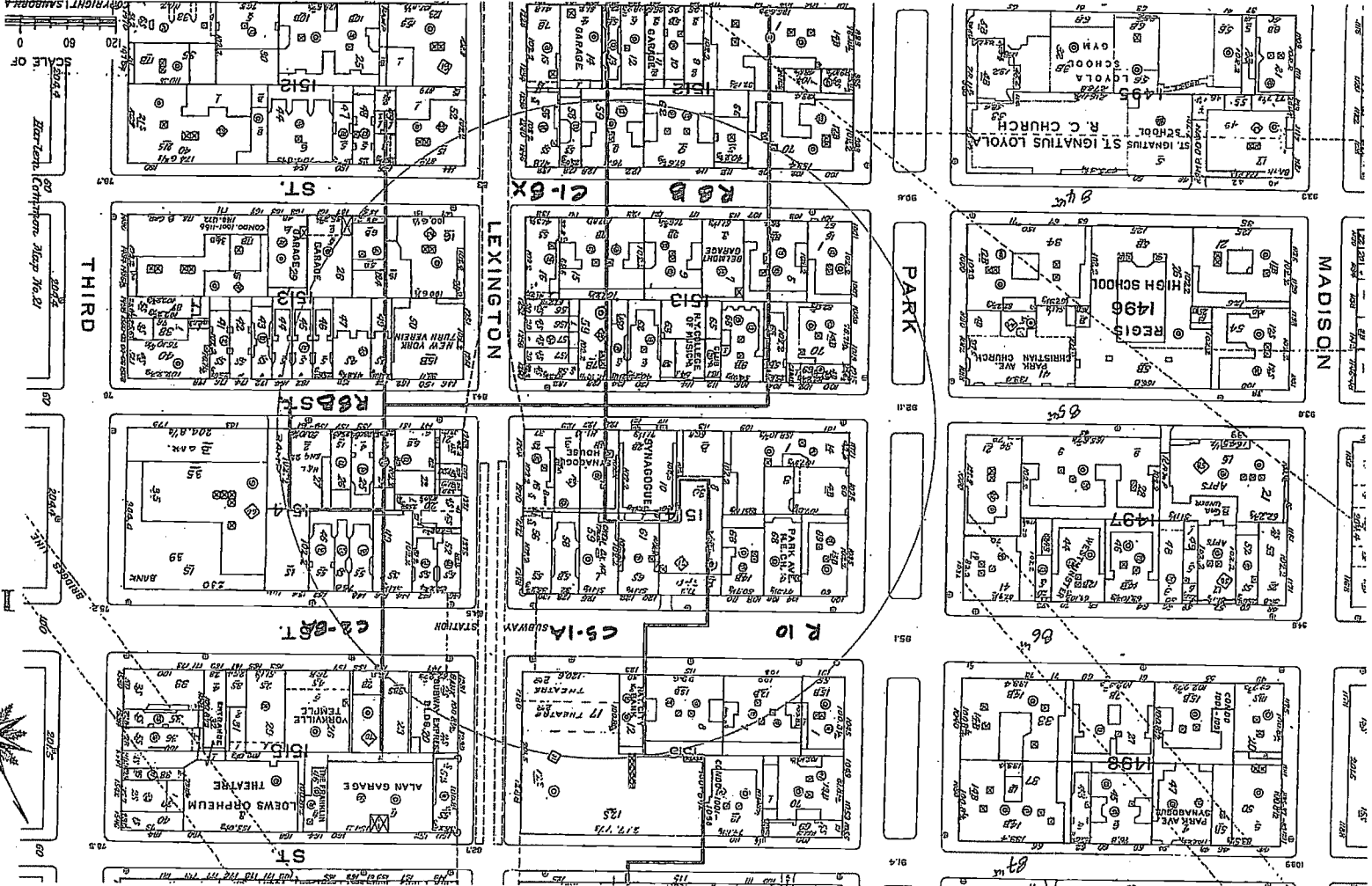
Respectfully submitted,



Jeffrey A. Chester, of Counsel
Einbinder & Dunn, LLP
104 West 40th Street
New York, NY 10018

EXHIBIT A

Sanborn Land Use Map with zoning district designation super-imposed



MADISON

PARK

LEXINGTON

THIRD

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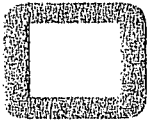
EXHIBIT B

CityLaw article by Norman Marcus, Esq.

PLANNING AND ZONING

East 76th Street: Anatomy of a Rezoning

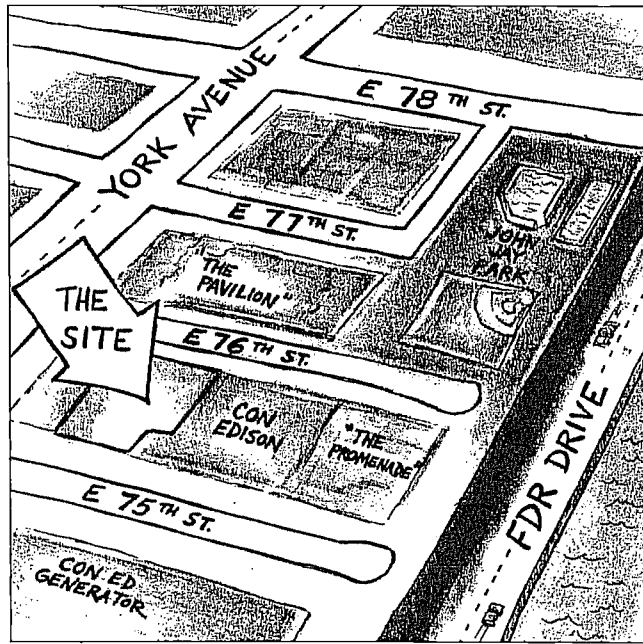
By Norman Marcus*



In December 7, 1999 the City Council, for the first time, asserted its affirmative legislative land use powers when it voted to modify the City Planning Commission's zoning recommendation with respect to an Upper East Side building site. The Council's action involved a zoning application by the owner of 506 East 76th Street, a large, mid-block site located within a manufacturing district. The owner asked to have its site rezoned as residential in order to take advantage of the changing characteristics of the area. Everyone concerned agreed that residential development would be appropriate, but disagreed on the height and bulk of the residential buildings that should be allowed. The developer wanted the maximum 31-story tower. The City Planning Department and Commission instead recommended zoning that allowed only a 13-story height. The Community wanted a still lower and less bulky building. The dispute went to the City Council which, for the first time, used its 1989 charter power to pass a zoning amendment different from that recommended by the Planning Commission, and in doing so demonstrated its ability to balance site specific considerations with broader land use imperatives.

THE ZONING CONTEXT

The specific mid-block site that triggered the rezoning involved back-to-back lots with frontage on East 75th Street and East 76th (continued on page 3)



CURRENT DEVELOPMENTS
CONFLICTS OF INTEREST

Advisory Opinions

OUTSIDE ACTIVITIES

MOONLIGHTING RULES RE-EXAMINED

In two recent opinions, the Conflict of Interest Board has re-examined permissible outside activities of City employees, ruling that, if the activity is one for which the employee might reasonably have been assigned to perform on-the-job, the employee may not do it for compensation, even on his own time. The Board's analysis focused on the Charter section that provides no public employee may be paid for performing any official duty, other than by the City. The first of the opinions concerned an employee seeking to write and edit a book (continued on page 6)

■ No more room in teenager group homes	9
■ Hurdles for City Pre-K program	11
■ Wheel chair access at Yankee Stadium	15
■ Sex shops: City wins & loses	16
■ Firefighter fatalities and burns	18, 22, 23
■ Buried in potter's field	22

Rezoning

(cont'd from page 1)

Street, between York Avenue and the FDR Drive. A garage, laundry and bakery occupied the site. East 76th Street is the dividing line between a residential zoning district to the north and a manufacturing zoning district to the south. The site itself lay entirely in the manufacturing district and was classified M1-4.

An M district permits only manufacturing and commercial uses, while an R district permits residential and community facility uses, but no commercial or manufacturing uses. The City's zoning code generally limits a building's allowable height and bulk through use of a formula, called the floor area ratio or FAR, which is a multiple of the lot area. The FAR varies by district and, depending on a developer's design and allocation of space, may result within the FAR maximum in taller, skinnier buildings or lower bulkier buildings. A building's actual height is directly capped by zoning only in what are called contextual districts.

Contextual districts were created almost fifteen years ago after a two-year study by the Department of City Planning. The study resulted in a generic zoning recommendation to limit the height of residential construction in certain residential areas like the Upper East Side, the Upper West Side and Murray Hill/Gramercy Park at a time when sliver development and tower construction threatened to change the character and scale of these neighborhoods, disrupt their contiguous backyards and homogenize residential Manhattan into an indistinguishable high rise haze. In these new contextual districts a specific height limitation was imposed in addition to the FAR limitation. Mid-block sites received the lowest height, with higher but still limited residential buildings allowed along the wider avenues. This "hills and valleys" planning recommendation was based principally on the greater traffic capacities of 100-foot wide avenues as compared with the 60-foot wide east-west streets, the greater distance between buildings across the avenue allowing more light and air potential, and, finally, upon the built character of the avenues as opposed to mid-blocks.

The City Planning Commission called the mid-block contextual district "R8B" and limited height within the district to eight stories or 75 feet. It called the higher avenue classification contextual, "R8A" and allowed 13-stories or 120 feet, half again more development than the lower R8B mid-block districts.

In 1985 when the R8B mid-block zones were mapped across broad swaths of residential areas in the City, boundaries were fixed at the outer edges of predominantly residential communities. Care was taken by the Planning Commission not to rezone manufacturing areas in order to avoid destabilizing blue collar job and business locations these zones supported.

Comparison of Zoning Options

Bulk of development measured by Floor Area Ratio (FAR)	6	6	4
Height	No limit (owner sought 31-stories)	120 feet 13- stories	75 feet 8 stories
Use	Residential/ community	Residential/ community	Residential/ community
Planning Policy	High-rise residential application to the site would have rejected mid-block policy	Would make new mid-block policy	Contextual for mid-block sites would be extended one block south from existing R8B district
Visual/Preservation Impact	Shadows on park; out of scale with historic buildings	Shadows; out of scale	No shadows and in scale

THE ISSUE

The owner of the East 75th/76th Street mid-block site asked the City to rezone the site from manufacturing M1-4 to residential R8, the maximum development option available that would have resulted in a 31-story residential tower. The community opposed that request, asking instead for the lowest option, an R8B mid-block limit that would have resulted in less bulk and an eight-story height.

The City Planning Commission attempted to split the difference. It opted for a new mid-block policy that would have applied to the R8A avenue limit with its greater bulk and 13-story potential to the mid-block site.

When the East 75th/76th Street mid-block developer applied for the rezoning, the Planning Department, following the state mandate that zoning changes must be preceded by a hard look at possible significant land use impacts arising therefrom, required that an environmental impact statement (EIS) be prepared. The first step called for a scoping session to determine the contents of the EIS, which provided an opportunity for the public to participate. An EIS typically analyzes impacts on traffic and air quality, light and air, and adequacy of neighborhood schools, transportation and other services. Importantly, it requires an analysis of less impacting alternatives, and in the event of significant impacts, mitigation measures to reduce or cushion impacts.

A coalition of civic organizations (CIVITAS, the East Side Rezoning Alliance, Friends of the Upper East Side Historic Districts and the East 79th Street Neighborhood Association) retained Buckhorst, Fish and Jacquemart, a planning firm to participate in the Planning Department's scoping session and to request that the EIS include consideration of the lower R8B mid-block alternative as well as the R8A

avenue alternative urged by the Planning Department. This request to broaden the environmental inquiry proved critical in the satisfactory resolution of what became a test of the Charter's capacity to respond to land use change in the context of larger City planning policies affecting mid-block building envelopes.

THE CURRENT LAND USES

In 1997 the City's dynamic seemed to point to a land use shift on the mid-block south of 76th Street from manufacturing to residential. While it had seemed compelling fifteen years earlier when the Planning Commission designated East 76th Street as the divide between residential and manufacturing districts, the urban dynamic had changed. The site was ripe for residential redevelopment, but at what scale and density? R8? R8A? R8B?

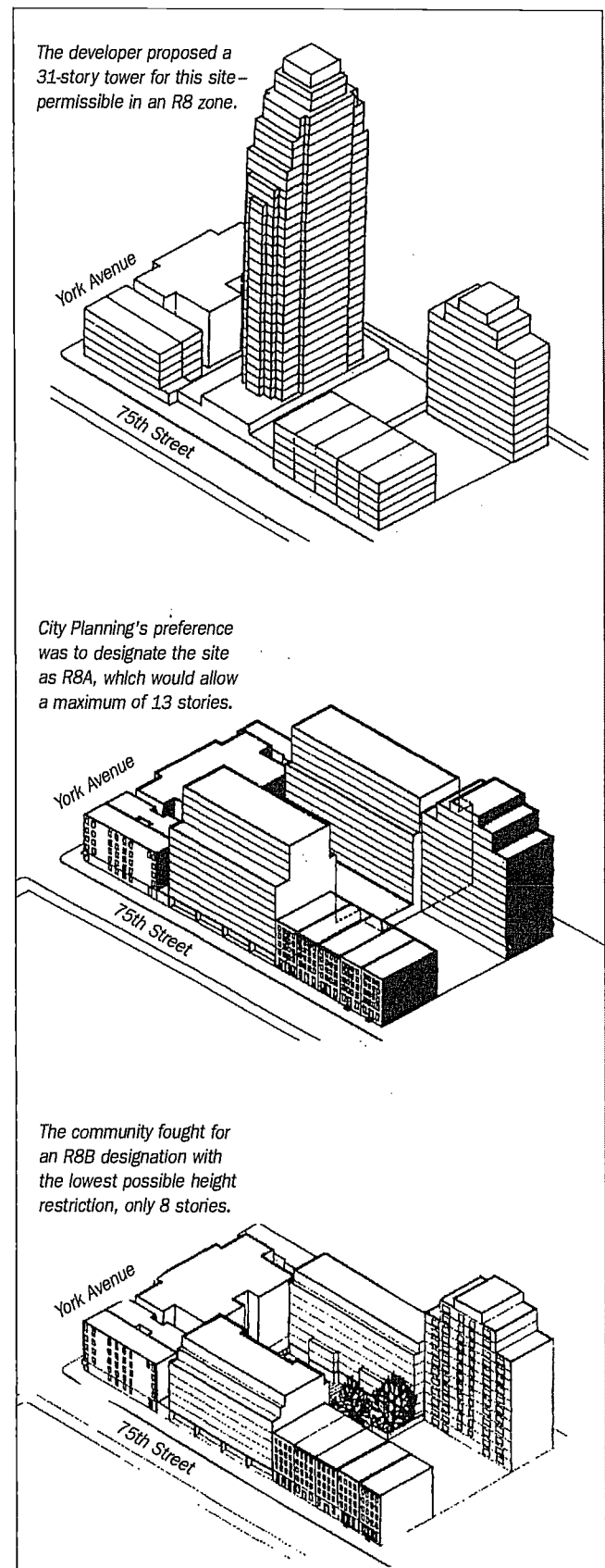
The City's planners took as their focus the immediate snapshot of buildings to the north and south of East 76th Street from York Avenue to the East River. On the north side of East 76th Street, starting at York Avenue stood the huge Pavilion, a 35- to 18-story residential development built under the pre-1961 zoning rules, and non-complying under both the 1961 R10 avenue zoning rules and under the R8B mid-block rules. The balance of the north side of 76th Street was landscaping for the Pavilion which blended eastward into John Jay Park, a two-block historic City park that extended from 76th Street up to 78th Street. Landmark buildings surrounded the north and west sides of the park. On the south side of East 76th Street, in addition to the development site, stood a non-complying 14-story residential cooperative adjacent to the site, a two-story Con Edison substation, an older six-story residential development adjoining York Avenue and, at the FDR Drive end of the block, the 33-story Promenade mixed use residential condominium that included the five-story Town School. Within the same block, but facing East 75th Street at mid-block just east of the site were five brownstones non-conforming under M1-4 zoning.

Across the street on the south side of 75th Street stood a massive Con Edison generator with a tall smoke stack.

THE RECORD AND DECISION

If this photograph were all, the choice among R8, R8A and R8B was not an obvious one. Just as trees often obscure the outline and extent of the forest, this snapshot obscured the City's larger plan for residential development along its famous gridiron blocks in Manhattan. The community coalition felt that the plan, codified in the 1985's contextual zoning actions creating and mapping the R8B mid-block districts, invited its extension below 76th Street.

The renderings below depict the western end of this block. The eastern end of the block includes the Con Edison substation and a 33-story residential building. Both 75th and 76th street dead end with no access to the FDR Drive.



The hills and valleys plan called for high-rise buildings on the avenues and low rise on the mid-blocks, a prescription which has led to the highest land values in the City's history and to quality of life values which provide diverse choices to citizens who enjoy different life styles. The two block snapshot approach with two large buildings exceeding R8B mid-block limits obscured the essential truth that once the 76th/75th Street mid-block became residential, it should become subject to the larger logic of the hills and valleys plan for Manhattan's gridiron.

As consideration of the issues matured, Manhattan Community Board 8, in which the site was located, became persuaded of the planning integrity of extending the contextual zoning plan south to 75th Street. It joined the community coalition and filed a completed ULURP application of its own to rezone the development site to lower mid-block R8B. The Planning Department required the community board to file an additional environmental assessment and await the conclusion of the developer's rezoning application.

ULURP rules applicable to rezoning call for a 60-day review by the affected community board, a 30-day review by the borough president, a 60-day review by the City Planning Commission and a 50-day review by the City Council. If the Planning Commission rejects a zoning change, it dies. However, if it approves a rezoning, the City Council may act on the original request, the Commission's modified version, or on its own modification so long as the Planning Commission determines that such modification be within the scope of the original application and the EIS analysis, and would not require a re-referral under ULURP.

The ULURP actors voted as follows: Community Board 8 disapproved the developer's R8 application 24-10; the Borough President disapproved the R8 application, but called for a compromise; and the Planning Commission approved the application, but as modified to an R8A avenue height. This brought the issue to the City Council which for the first time approved a zoning change different from the one that had passed the Planning Commission. The City Council upon receiving written assurance from the applicant that it was willing to proceed under R8B mid-block rules voted to approve the application, but only as modified to R8B.

What were the Council's critical determinants in going against the Planning Commission's R8A decision? First, in the blocks north of East 76th Street lay an historic community consisting of two six-story landmark clusters which framed John Jay Park: the Cherokee Apartments on East 77th and 78th Streets and City and Suburban Houses on East 78th and 79th Streets built in the early 1900's as the City's first sub-

sided model worker tenements with adjacent school, park, bath house and swimming pool. This was an early planned community recognized by historic preservation laws. The impact of shadow-inducing high rise walls on the crucial south (sun-blocking) face of this historic enclave was considered significant.

Second, in the blocks to the south, the Con Edison complex between East 74th Street and 75th Street was perceived as less permanent than once believed. The public utility, which had just announced its intention of auctioning an even more substantial complex below 42nd Street between First Avenue and the East River, could well do the same with its East 76th Street facility. It appeared that the utility now could more efficiently serve its customers by purchasing out-of-city power than by producing it locally.

This meant that a massive mid-block land use shift from manufacturing to residential might be in the offing in the pocket between of 72nd Street and 76th Street. Should the City Planning Commission require these future residential redevelopment areas to follow the hills and valleys plan, or follow ad hoc site-by-site determinations dictated by the result on this first application? What if Con Edison later applied for the higher R8 or R8A on its substation or generator sites? The Planning Commission could hardly resist once it had already opted for R8A on the East 76th site. "Spot zoning" people would say. The pejorative "spot zoning" has been applied by courts to rezoning of property under single ownership to benefit the landowner rather than "in accordance with a well-considered plan." In order to gird this developer's application against such a characterization, the Planning Department helped shape the proposed rezoning to embrace the non-complying Pavilion site north of 76th Street.

Avoidance of spot zoning became the third critical determinant in the City Council's historic action since the development site would now be zoned similarly to the blocks to the north. Thus ten years after it replaced the Board of Estimate as the City's land use legislature, the City Council demonstrated it could act responsibly in making sensitive land use determinations.

* Norman Marcus, Of Counsel to Swidler Berlin Shereff Friedman, LLP, was formerly General Counsel to the New York Department of City Planning/City Planning Commission from 1963-1985. He represented Manhattan Community Board No. 8, CIVITAS, Friends of the Upper East Side, the East 79th Street Neighborhood Association and the East Side Rezoning Alliance in this matter.