

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

SUBCOMMITTEE ON ZONING AND FRANCHISES

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September 7, 2016
Start: 10:06 a.m.
Recess: 02:21 p.m.

HELD AT: Council Chambers - City Hall

B E F O R E:

DONOVAN J. RICHARDS
Chairperson

COUNCIL MEMBERS:

ANTONIO REYNOSO
DANIEL R. GARODNICK
JUMAANE D. WILLIAMS
RITCHIE J. TORRES
RUBEN WILLS
VINCENT J. GENTILE

A P P E A R A N C E S (CONTINUED)

Vulcan Mutee (sp?)
DBA Wine:34

Gail Porento (sp?)
Shareholder at Murray Hill House
Representing: Self

Patricia Sullivan
Duke of Montrose

Jordan Barowitz
Durst Organization

Carol Rosenthal
Fried, Frank, Harris & Shriver

Richard Lobel
Sheldon Lobel, P.C.

Dan Edgars (sp?)
Greenberg Charter

Valerie Campbell
Counsel
Kramer Levin

Morris Adjmi
Architect

Marcie Kesner
Urban Planner
Kramer Levin

Elliot Neumann
Owner
Acuity Capital Partners

Jeff Braun
Counsel
Kramer Levin

A P P E A R A N C E S (CONTINUED)

Lauren Drogin (sp?)
Labor Counsel
32BJ

Edith Hsu-Chen
Director
Manhattan

Jim Cross
Representative
Borough President Gale Brewer's Office

Matt Gornick (sp?)
Urban Justice Center

Layla Law-Gisiko
CB5

John Murray
CB5

Eric Stern
Chairperson
CB5

Mike Slattery
Vice President for Research
Real Estate Board of New York

Andrea Goldwyn
Representative
New York Landmarks Conservancy

Nancy Goshow
CB5

Monte Saunders (sp?)
32BJ

Samuel Bugatti
Uptown for Bernie

A P P E A R A N C E S (CONTINUED)

Ava Farkas
Executive Director
Metropolitan Council on Housing

Mary Crosby
Metropolitan Council on Housing

Dan Gasper
Resident
32 W. 18th Street Condominium

[gavel]

CHAIRPERSON RICHARDS: Alrighty

[phonetic]. Good morning. I'm Council Member Donovan Richards, Chair of the Subcommittee on Zoning and Franchises and this morning we are joined by Council Member Gentile, Garodnick, Wills, Reynoso, Chair Greenfield, Mendez... did I miss anybody? No, I got everybody. We have 13 items on our agenda today for consideration. We're going to lay over the bar net avenue application until the next regularly scheduled meeting. We will begin with four sidewalk café applications. These first four applications have no issues so we will be opening them up for testimony altogether. I will now open the public hearing on the following sidewalk café applications, Land Use number 460 Polpette, Land Use item 461 Haru, Land Use item 462 Benva Bakery, and Land Use 463 Bills Bar and Burger. Are there any members of the public here to testify on these items? Alrighty everyone was listening? Okay, if not, seeing none we will now close the public hearings on Land Use items number 460 through 463. Today we are also going to lay over land use items number 458 Altus Café until the

2 next meeting. We will now move on to Land Use items
3 435, Wine 34 an application for an undisclosed
4 sidewalk café located at 127 East 34th Street in
5 Council Member Mendez' district. I will now open
6 the public hearing for Land Use Item number 435 and
7 I believe the applicant is here, Bulkin Mutee
8 [phonetic] from Ver34 LLC. If you're here you may
9 come up. No? Did I say your name right? Vulkin
10 [phonetic], Volkin [phonetic], Vulcan. Okay, no?
11 Okay. Sure. Alrighty, we thought you were here.
12 Alrighty. Alright I'll ask you to just say your
13 name and which organization you're representing on
14 the record and then you may begin your testimony.
15 Hit the button. It's going to light up red. There
16 you go.

17 VULCAN MUTEES: Okay. My name is Vulcan
18 Mutee [phonetic]. I'm here for Ver 34 LLC DBA
19 Wine:34 located 127 East 34th Street. Dear
20 honorable council member Donovan Richard Junior,
21 Chair Subcommittee and Zoning and Franchise and
22 Councilwoman Rosie Mendez. ... I sign with the
23 Manhattan Community Board 6 Business Affairs and
24 Street Activities Committee on Tuesday, August
25 25th, 2016. I affirm that I will reduce the size of

2 the sidewalk café design to four tables and eight
3 chairs along the west side of the restaurant
4 frontage from the original design of six tables and
5 12 chairs. As per recommendation of Community Board
6 6 Business Affairs and Street Activities Committee
7 we have agreed to close a sidewalk café at 9:00
8 p.m. from Sunday to Thursday and 10:00 p.m. from
9 Saturday to Sunday. Closing means no barter service
10 after those hours at the sidewalk café and there
11 will be no more order will taken after that hours
12 and the existing guests served their meals will be
13 able to finish their meal exactly where they are.
14 After making substantial investment in the ground
15 floor space of 127 East 34th Street it had been
16 closed vacant for two years. I have improved the
17 both appearance and ambiance of the block. I have
18 also met with the listen to the all neighbors,
19 residents who have appeared before the Department
20 of Consumer Affair public hearing and Manhattan
21 Community Board 6 hearing. I'm committed to
22 minimizing noise and incumbencies to the residents
23 in the area. As an experienced restaurant operator,
24 8 years, I have a spotless record and also I...
25 residents with a family of two children. I'm

2 cautious of maintaining good relations with my
3 neighbors, neighborhood residents. I hope to show
4 the neighbors residents that I am socially cautious
5 and responsible restaurant operator and I have
6 asked the Community Board to monitor my operation
7 for one year and after one year I might go back to
8 restore my own original design with the compliant
9 with the sidewalk café all the city requirements
10 for a small unenclosed sidewalk café. Thank you.

11 CHAIRPERSON RICHARDS: Thank you. We'll
12 go to Council Member Mendez for statement and
13 comments.

14 COUNCIL MEMBER MENDEZ: Thank you. I met
15 with the owner yesterday. He informed me and my
16 office that he was planning as requested by some
17 neighbors and the community board to eliminate two
18 tables and four chairs. Upon review of the letter I
19 do have a constituent here and I am asking for
20 further clarification of the last sentence on the
21 first paragraph that says closing means no further
22 service after those hours at the café. So if you
23 can tell me what those hours means, what closing
24 means, what further service means that would be
25 helpful and we may want to have this amended to

2 reflect a more detailed answer as you give on the
3 record.

4 VULCAN MUTEE: Sure. Which means if
5 guests sitting on the sidewalk café at 9:30 order
6 his appetizers and main course and then his main
7 course served to that person is like 9:45 I know
8 that I'm not going to serve... it's a Friday night.
9 I'm not going to serve her dessert or his desserts,
10 but I cannot really relocate someone having dinner
11 during the service. So like if I have customer
12 finishing their drinks that they going to leave or
13 eating their main course I, like I try to make it,
14 clarify that like I cannot really move any of my
15 guests in the middle of dinner. Oh, 10:00 I have
16 to close my sidewalk café, can I move you inside.
17 These people never going to come back. And they're
18 not going to be happy about... That's basically. But
19 after 10:00 if they order a, can I have another
20 glass of wine, I say I'm so sorry but please I need
21 you to move inside then I will gladly serve you
22 your last glass of wine.

23 COUNCIL MEMBER MENDEZ: I'm sorry. So
24 if, just to clarify, so if your closing is at 10:00
25 p.m....

2 Yeah.

3 COUNCIL MEMBER MENDEZ: People on the
4 sidewalk café will be able to place an order at
5 what time, the latest that you would still bring
6 them food or drinks to the sidewalk?

7 VULCAN MUTEE: Well for me to be able to
8 finish the sidewalk café I can make it work. Like
9 if they are having a dessert after dinner on the
10 way home they having a glass of wine and dessert
11 they want to sit outside café and I can inform them
12 before I sit them I need to move you guys in by
13 10:00.

14 COUNCIL MEMBER MENDEZ: Okay. I just
15 need to know when the last seating is for dinner at
16 the sidewalk café and I need to know when is the
17 last order that you will take from someone seated
18 at the sidewalk café.

19 VULCAN MUTEE: Okay. I mean this, that
20 decision can be made. If I'm going to close the
21 sidewalk café at 10:00 maybe last seating will be
22 at 9:00. If I'm going to close sidewalk café 9:00
23 last seating will be 8:00 so that will give
24 everybody a proper time to do it.

25

2 COUNCIL MEMBER MENDEZ: So an hour prior
3 to the closing time.

4 VULCAN MUTEER: But again it's like a, I
5 operate a restaurant that offers a different
6 variety of desserts and a different variety of the
7 wine. Sometime people after dinner they go home
8 they want a glass of wine. If they come in 9:30,
9 sit down, and just going to have a glass of wine, I
10 will inform them, I say I have to close my sidewalk
11 café 10:00 so I can inform them but if like 10:05
12 they didn't finish their wine like they... one sip I
13 cannot really force people to go inside. If it's a
14 few minutes up or down it's, most of the time
15 especially the type of guest come into my
16 establishment they are very respectful. Everybody
17 lives in the neighborhood. They will understand.
18 But if there's a few minutes here, few minutes
19 there that's why I was already planning doing these
20 hours. That's why my first application I requested
21 a little more in the time to cover the bases.

22 COUNCIL MEMBER MENDEZ: Okay. So an hour
23 before closing you will not sit anyone unless they
24 may be just coming in for a drink, so maybe half an
25 hour before, that's all they're having. And you

2 will not take any more orders past that time, half
3 an hour before?

4 VULCAN MUTEE: Yes. So for full dinner
5 an hour before and desserts and drink 30 minutes
6 before closing time.

7 COUNCIL MEMBER MENDEZ: Okay. 30 minutes
8 before closing time for desserts and drinks only.
9 And one hour before closing time for dinner?

10 VULCAN MUTEE: Yep. Oh like someone
11 comes, hey I'm just going to have an appetizer to
12 go and then as far as they're out of there 10:00
13 they will be okay. And then if everybody
14 understand, if I inform them in advance we will
15 dine in the restaurant. Understand the
16 circumstance in New York City.

17 COUNCIL MEMBER MENDEZ: Okay.

18 CHAIRPERSON RICHARDS: Thank you. Thank
19 you for your testimony. Thank you Council Member
20 Mendez. Just want to acknowledge we were joined by
21 Council Member Mills and we're also joined by
22 Council Member Lander. No other questions from
23 committee members. Okay, thank you for your
24 testimony today.

25 VULCAN MUTEE: Thank you.

2 CHAIRPERSON RICHARDS: Alrighty we have
3 one person here in opposition; Gail Porento [sp?],
4 did I say it right, yes ma'am.

5 GAIL PORENTO: Test.

6 CHAIRPERSON RICHARDS: Alrighty, I'll
7 just ask you to say your name for the record and
8 who you're representing and you may begin.

9 GAIL PORENTO: My name is Gail Porento.
10 I am representing myself. I am a shareholder at the
11 Murry Hill House, 132 East 35th Street. I've lived
12 there since 1994. I'm a neighbor and I've attended
13 the DCA hearing opposing the sidewalk café. I
14 attended Community Board 6 and this is my third
15 time here representing myself. Our Co-Op decided to
16 represent as individuals as opposed to a building.
17 So I have some issues of course. I live on the side
18 that faces 34th and I'm on a low floor. So I'm the
19 one that will be disturbed by the noise, the
20 smells, the odors, the extra traffic and everything
21 else by this establishment. We never had any
22 outdoor cafés. It's a quiet block. I submitted two
23 DCA letters from the Murray Hill Neighborhood
24 Association opposing. I submitted from our
25 neighbors, we have... it's a neighborhood and opus

2 day which is a nunnery and conference center for
3 catholics. They do not drink. They will never
4 patronize this café. We also have the Asheba on the
5 corner, you know in this Lexington 34th where it's
6 located and they will never patronize this. So I
7 think that it's not a great thing for the
8 neighborhood; the extra noise, the extra crime, the
9 extra attraction of you know people. The
10 establishment has a patio in the back that they
11 could serve outside and it's perfectly adequate. I
12 know that they have been open since about December
13 since I live there and I did pass by as it was
14 being built and that was a disruption in itself
15 because they drilled down two stories to dig up all
16 kinds of rodents and all the buildings had
17 problems. It wasn't their fault per say but it was
18 a hair salon for so many years before and they
19 didn't have all that traffic and everything on that
20 street between Lex and Park on 34th kind of closes
21 down. It's a little sleepy block. There's a post
22 office. There's also two very fine outdoor
23 establishments that don't overlook bedrooms and
24 residential. There's one on 34th and Park, the...
25 that set for dogs, outdoor cafes, etcetera. There's

2 one on the other side with the Affinia Hotel has a
3 big space. Also where peoples' bedroom door, you
4 know window is not right underneath it. But in
5 spirit of wanting to compromise I have to disagree
6 with some of the things that were read in that
7 statement. I don't believe that they met with
8 everybody that went to DCA because I was there and
9 one of our board members; Marshal Wise [sp?], he's
10 been in France so I don't know how you were, they
11 were able to discuss with him and get his views.
12 And then the other person went to Community Board 6
13 with me and they can't be here because they work, I
14 don't know that there was a separate conversation
15 of agreement. I think they still feel the same way
16 they did on the 25th of August when we met at
17 Community Board 6. But if we could agree that 9:00
18 means 9:00. I mean it seems like a loophole. I'm
19 not a lawyer but what's to say they sit there with
20 wine, that's where the noise comes from, it's the
21 talking. I don't think the rustling of dishes is
22 going to wake somebody up. But it's the hahaha
23 laughing and screaming and you know all that. So if
24 they're sitting there from 9:00 to... it takes them
25 two hours to finish their dessert and coffee and

2 what they've ordered so I think the compromise for
3 me would be as much as I don't want the café there
4 at all for any reason that they should get, it
5 should be like an airplane, when the flight's over
6 they get out. I mean the tables have to be vacated
7 by those times, 9:00 and 10:00.

8 CHAIRPERSON RICHARDS: Okay.

9 GAIL PORENTO: Effectively. Because
10 there's room inside.

11 CHAIRPERSON RICHARDS: Well thank you so
12 much for your testimony and I will just say you
13 heard from her so it would be great if you can
14 speak to her on her way out, off of testifying, out
15 of testifying. And I don't know if Council Member
16 Mendez, if you've been working with her office in
17 particular but I would urge you to certainly work
18 with her office. She's a ferocious, ferocious
19 fighter when it comes to protecting quality of life
20 around these sidewalk cafes. She's not on the
21 committee, but I think she should probably be one
22 day because there's no one who has more sidewalk
23 cafes than her in her district that come before
24 this particular committee. So I'll just ask the
25 applicants... [cross-talk]

2 GAIL PORENTO: Thank you. I know...

3 [cross-talk]

4 CHAIRPERSON RICHARDS: ...if you can speak
5 to her...

6 GAIL PORENTO: ...she's fair and... [cross-
7 talk]

8 CHAIRPERSON RICHARDS: ...and then also if
9 you can continue to work with the council member
10 that will be helpful.

11 GAIL PORENTO: Thank you.

12 CHAIRPERSON RICHARDS: Thank you. Any
13 other speakers on this particular application?
14 Seeing none we will now close Land Use item 435,
15 134. And we will move on now to Land Use item
16 number 436, Duke of Montrose, an application for an
17 unenclosed sidewalk café located at 47 5th Avenue
18 on Council Member Lander's district in Brooklyn. I
19 will now open the public hearing for this item. And
20 the applicant I believe is here, Patricia Sullivan
21 representing the Duke of Montrose Incorporated.

22 PATRICIA SULLIVAN: Hi, my name is
23 Patricia Sullivan. I'm here to speak on the Duke of
24 Montrose at 47 5th Avenue in Brooklyn. I'm here
25 with Dennis Bogart. He's the General Manager of the

2 establishment. We met with Council Member Lander's
3 Office on Monday of last week as well as with Craig
4 Hammerman who's the District Manager of Brooklyn
5 Community Board 6. Based on our conversation and
6 based on the recommendations of Craig Hammerman we
7 agreed to reduce the number of tables from 21 to 9
8 which is in accordance with Brooklyn Community
9 Board 6's guidance that the number of tables in a
10 sidewalk café does not exceed half of the number of
11 tables inside of a given establishment. The
12 applicant also agreed to close the sidewalk café at
13 10:00 p.m. Sunday through Thursday and midnight on
14 Saturday and Friday nights on the weekends. In
15 addition, of course, Dennis will be in
16 communication with Community Board and is always
17 willing to hear from the neighbors and the
18 community.

19 CHAIRPERSON RICHARDS: Council Member
20 Lander.

21 COUNCIL MEMBER LANDER: Thank you Chair
22 Richards for this opportunity. Thank you Patricia
23 and Dennis for coming to my office and talking with
24 me and the district manager of the community board
25 and working with them to modify your application in

2 the ways that you just outlined. I know there was
3 some miscommunication sort of earlier in the
4 process and these things might have been worked out
5 at the community board level but I'm glad we were
6 able to resolve them. I appreciate your working
7 with us to reduce the number of tables to comply
8 with the community board policy, to pull them back
9 toward the building to leave a little more room on
10 what's become a very busy sidewalk near the Barkly
11 Center and also to agree to those hours which the
12 community board request. So we'll look forward to
13 coming and having a drink at the Duke of Montrose
14 once those tables get open. So thanks very much for
15 working with us. I support this application and
16 encourage my colleagues to vote aye.

17 CHAIRPERSON RICHARDS: Thank you Council
18 Member Lander. Thank you. Alrighty, anyone else
19 here to testify on this particular application?
20 Alrighty, seeing none we'll close the hearing on
21 Land Use item number 436. We're now going to move
22 onto Land Use item number 436. We're now going to
23 move onto Land Use 459 Le Pinta Mexican Cuisine, an
24 application for an unenclosed sidewalk café at 711
25 West 181st Street in Council Member Rodriguez

1 District and I don't think the applicants are here.
2 But we have a letter in support. If there's anyone
3 here for, to testify on this issue? No? Seeing
4 none... We have a letter of agreement on this
5 particular application between the applicant and
6 community and Council Member Rodriguez. So there's
7 no one here to testify on this particular issue. We
8 will now close the hearing on Land Use item number
9 459. And we will now move on to Land Use item
10 number 437, an application for a zoning text
11 amendment to permit auto repair and preparation use
12 on the site located at 625 West 57th Street in
13 Council Member Rosenthal's district in Manhattan.
14 This application would allow for an automotive
15 showroom to be located on the ground floor of a 31
16 story building located on the site. Council Member
17 Rosenthal supports the approval of this application
18 and I will now officially open the hearing on this
19 Land Use item 437. And I believe the applicants are
20 here with us; Jordan Barowitz and Carol Rosenthal.
21 Alrighty when you're ready to begin state your name
22 for the record and who you're representing.

24 JORDAN BAROWITZ: Just waiting for them
25 to load this slide so..

2 CHAIRPERSON RICHARDS: Oh, Keith is
3 here. [cross-talk] Okay. You're doing the props
4 today? Okay got it.

5 JORDAN BAROWITZ: Good morning Council
6 Members. My name is Jordan Barowitz and I'm with
7 the Durst Organization. We are the owners of 625
8 West 57th Street. I'm joined by Carol Rosenthal;
9 our Land Use Counsel at Free Think and Keith..
10 [cross-talk]

11 CHAIRPERSON RICHARDS: No relation to
12 Council Member Rosenthal? Okay got it.

13 JORDAN BAROWITZ: And my colleague, who
14 you know, Keith Pamansky [phonetic] at the Durst
15 Organization. We're here today to request a zoning
16 text change to allow an auto showroom with their
17 repair facility at our mixed use building at 625
18 West 57th Street. We believe the auto showroom is a
19 good use for the retail space in the building as
20 well as being appropriate for the neighborhood.
21 There's a tradition of car dealerships on the far
22 west side of Manhattan. After the initiation of
23 this action we entered into negotiations and signed
24 a lease for 15 years with landmark cinemas to
25 operate an eight screen movie theatre in the space.

2 None the less we still believe that an auto
3 showroom is a good use for this space and we are
4 pursuing the text change for the future. When we
5 presented before the community board in the spring
6 they made some good suggestions including
7 stipulating that there be no parking on the
8 sidewalks on 58th Street, that the ventilation fans
9 be powerful enough to aerate the garage and not be
10 loud enough as to bother the residents of the
11 building. At City Planning we agreed that we should
12 put these stipulations into any lease we sign with
13 an operator. I'll now turn it over to Carol to walk
14 you through the specifics of the action.

15 CAROL ROSENTHAL: Good morning. Carol
16 Rosenthal from Fried, Frank, Harris, and Shriver.
17 The specific action that we have today, it's a text
18 change to the zoning resolution. It affects only
19 the block where the via is located. And on that
20 block currently automobile showrooms are permitted
21 but not showrooms with repair. So the text change
22 would allow us to have a show room with repair
23 services on site. This gives you the footprint of
24 the, we have a special permit for a large scale
25 covering the entire block. And this is an overlay

2 of what was provided in the special permit and the
3 auto, potential auto showroom to show that there's
4 really no difference between the two. This is the
5 zoning map text that would change as a result of
6 it. As you can tell it's a very small area that it
7 affects up on the block that the Durst own on which
8 via is located. And that's the footprint of the
9 block. You can see where the via is located.
10 There's also the Helena on that block and another
11 building called the Frank which is on the corner at
12 the right hand side of the diagram. So that's it.
13 This kind of text change has been done elsewhere in
14 the vicinity to allow car dealerships to operate
15 there. So we're here to answer any questions.

16 CHAIRPERSON RICHARDS: Great. Thank you
17 so much for your testimony. I just want to state
18 that we have a letter in support on the record from
19 Council Member Rosenthal. So can you just read into
20 the, or just state on the record some of the
21 issues, in particular the community board did bring
22 up on traffic and I think congestion and perhaps
23 any of those particular issues that came up and
24 what are you proposing to do to ensure that traffic
25 flow and everything else..

2 CAROL ROSENTHAL: I can. And I have with
3 me...

4 CHAIRPERSON RICHARDS: And the repair
5 shop is...

6 CAROL ROSENTHAL: For the record I have
7 copies of a community board letter in support. We
8 can submit those. The community board was
9 supportive of the use. They think, they've said
10 that it's consistent with similar uses in the area
11 and would complement the existing automobile
12 related uses in the area. They asked about how we
13 were going to address the ventilation system which
14 is, goes onto that street, on West 58th Street and
15 also they didn't want the sidewalks around there to
16 be used for parking. We pointed out that we are,
17 we're going to have residents in the building who
18 are going to be paying a lot of money for
19 apartments and they're also not going to want these
20 things so that in the event that there were a lease
21 with an operator to do this car facility we would
22 include provisions in there that would make it a
23 requirement of the lease for them to continue to
24 operate in accordance with standards that work to
25 mitigate those issues.

2 CHAIRPERSON RICHARDS: Okay great. And
3 what type of cars are going to be in this
4 particular facility? Do we know yet?

5 CAROL ROSENTHAL: Right now it's only
6 going to be movies of cars because we have a lease
7 for the 15 years.

8 JORDAN BAROWITZ: Yeah so... Yeah we have...

9 CHAIRPERSON RICHARDS: I'm joking.

10 CAROL ROSENTHAL: I know, yeah.

11 JORDAN BAROWITZ: We have a 10 for the...

12 CHAIRPERSON RICHARDS: I saw it
13 yesterday in a diagram, I thought I saw a Porsche..
14 Not that I could afford one but...

15 JORDAN BAROWITZ: One can dream.

16 CHAIRPERSON RICHARDS: wishful thinking.

17 JORDAN BAROWITZ: One can dream.

18 CHAIRPERSON RICHARDS: I want to come
19 and test drive it right now. Alright thank you so
20 much for your testimony.

21 CAROL ROSENTHAL: Thank you.

22 CHAIRPERSON RICHARDS: Anyone else here
23 to testify on this particular issue. Alrighty, if
24 not, seeing none we will now close Land Use item
25 number 437 and we are now going to move onto Land

2 Use item number 439, an application for a zoning
3 map amendment to extend an existing R6B through the
4 center line of Block 659 in queens. The current
5 zoning creates a split lot condition for eight lots
6 on this block and this proposed zoning would align
7 the zoning district boundary with a lot line
8 through the center of the lot. This application is
9 in Council Member Constantinides and he supports
10 approval. I did speak with him this morning. And we
11 will now officially open the application up here
12 and Richard Lobell is here to present, my good
13 friend.

14 RICHARD LOBEL: Thank you Chair. Good
15 morning Council Members. My name again Richard
16 Lobel from the law firm of Sheldon Lobel, P.C. I'm
17 joined by John Billinich [sp?] who is the owner and
18 applicant in this application. This is a very
19 straight forward application. As the chair
20 mentioned it's a rezoning. And you see behind me is
21 a copy of the tax map. In the story rezoning of
22 2010 the city planning commission rezoned blocks or
23 parts of 238 block and in doing so the most
24 convenient method of rezoning is of course to
25 rezone to the center line of the block. So the

1 rezoning occurred and there were many blocks within
2 that rezoning which created a condition as you see
3 on the tax map behind me where the zoning district
4 boundary which although was in the center of the
5 block was standard issue did not reflect the actual
6 tax lots. So we have the block behind me and on
7 38th street there's eight lots which extend 140
8 feet which is beyond the 100 feet of the R6B zoning
9 district. Very simply what this rezoning does, and
10 if she'll allow me to put up the rezoning map,
11 there's an area highlighted in red on the map on
12 the right. The rezoning basically adjusts the
13 zoning district boundary to reflect the tax lot
14 boundary. So the rezoning extends the existing R6B
15 40 feet to the west so that these eight blocks are
16 encompassed by the R6B zoning district. What is
17 the effect of this rezoning? The effect of this
18 rezoning simply is to allow the development site
19 which is owned by John and his partners instead of
20 being able to develop with 20 units we'll be able
21 to develop with 23 units. This merely adds
22 approximately 1600 square feet to this property. No
23 other properties within the rezoning are affected
24 because indeed the other six lots are, five of
25

1 them, or four of them are overbuilt and two of them
2 are burnt in by easements which would prevent any
3 additional development. You may ask why would they
4 go through the time and expense of this rezoning
5 for a mere 1600 feet and three units the answer
6 really is that John and his partners are
7 responsible developers in the community. They've
8 redeveloped and developed many properties within
9 Astoria including several on this block alone. And
10 so they were approached by the former owners of
11 this property, themselves somewhat elderly to say
12 we understand you've done development on this
13 block. We like what you've done. We'd like you to
14 purchase these properties. So the women who lived
15 in these two properties actually had the last two
16 to three years to age out of the properties and to
17 be taken care of by their families while this
18 rezoning wound its way through the system. We're
19 happy to get the support of Community Board 1 as
20 well as the Queens Borough Presidents' Office as
21 well as Council Member Constantinides who was in
22 favor of the action. And we had the opportunity to
23 meet with Council Member Richards as well. We feel
24 that this is a very well supported rezoning and one
25

2 which reflects the desires of the local community.

3 So I'm available as well as John to answer any
4 specific question.

5 CHAIRPERSON RICHARDS: Any questions
6 from my colleague on this? Alrighty. Alrighty. We,
7 it's very unique that we're supporting an up-zoning
8 in a residential area. But as you said I believe
9 you've been a good neighbor and we see no reason to
10 hold this application up. So thank you for coming
11 out and testifying today. Anyone here to testify in
12 opposition. Alrighty, seeing none we're going to
13 close this particular hearing. Thank you for coming
14 out.

15 RICHARD LOBEL: Thank you Chair.

16 CHAIRPERSON RICHARDS: Alrighty.
17 Alright. We're getting there. Alrighty we will now
18 move onto a preconsidered land use item, an
19 application for a zoning text amendment to allow
20 indirectly illuminated signs on certain sights
21 within the special graham concourse preservation
22 [sp?] district. This application is in Council
23 Member Cabrera's district. And he has submitted a
24 statement in support of approval so we will now
25 officially open this application up and we'll call

2 Dan Eagers [sp?] up to present the applicant. I
3 just want to acknowledge I believe that Council
4 Member Wills has joined us.

5 DAN EDGARS: Dan Edgars from Greenburg
6 Charter representing the applicant. Good morning
7 Chair Richards and members of the subcommittee.
8 This is an application by 1775 Grand Concourse LLC,
9 the owner of the commercial condominium unit in
10 1775 Grand Concourse seeking an amendment to
11 Section 122-20E of the zoning resolution in order
12 to indirectly illuminate existing signage on the
13 buildings Grand Concourse frontage. The amendment
14 would permit signs with indirect illumination on
15 the Grand Concourse facades of buildings on 11
16 commercial infill sites in the special grand
17 concourse preservation district within Bronx
18 Community Board 5 including the applicant site.
19 Those sites are identified on the board on the left
20 there. Presently per section 122-20E of the zoning
21 resolution flashing or illuminated signs are
22 permitted in the special grand concourse
23 preservation district only in C1 districts... these
24 sites are in an R8 district. Several of these sites
25 already have indirectly illuminated signs. The

2 amendment would not allow more signage than is
3 currently permitted or allow any flashing or
4 directly illuminated signage. The proposed
5 amendment would allow the applicants to indirectly
6 illuminate existing signage showed on the board on
7 the right in connection with the recent retaining
8 of space in the building which has been leased to
9 Inovalon and insurance company Con Edison, Bronx-
10 Lebanon Hospital, Special Citizens Futures
11 Unlimited, a not for profit autism advocacy
12 organization and Safe Horizon, an organization
13 assisting victims of violent crime, particularly
14 domestic violence and child abuse. Indirectly
15 illuminating the signage would help these
16 establishments be recognized more easily as well as
17 promote a sense of safety in the evening hours
18 particularly for the victims' assistance center
19 without increases the size of the signage currently
20 permitted. Thank you for your consideration and I
21 welcome any questions.

22 CHAIRPERSON RICHARDS: Thank you so
23 much. I think this is pretty straight forward. Any
24 questions from my colleagues? Alrighty, seeing
25 none, thank you and I thank you and applaud you for

1 taking steps to ensure safety especially in light
2 of the domestic violence organization that's on
3 site, that you're going to create a safer
4 streetscape for them. So we appreciate that and
5 support the application. Thank you. Thank you.
6 Alrighty anyone here to testify in opposition or on
7 this application? Alrighty, seeing none, we will
8 now close this application. And we are now going
9 to move on I believe to call a vote to approve
10 several items we heard today. So we're going to
11 start with Land Use items number 435 and 436
12 sidewalk cafes, Land Use items number 459 through
13 Land Use item number 463 the sidewalk cafes, Land
14 Use 437 625 West 57th street, a text amendment,
15 Land Use item number 439, 38th Street and 31st
16 Avenue rezoning and preconsidered Land Use item
17 number 1775 Grand Concourse text amendment. I will
18 also couple on this voting motion to file Land Use
19 items number 432 the East House and street
20 rezoning. This application was withdrawn prior to
21 our meeting today. With that being said I'll ask
22 the council to please call the role.

23
24 COMMITTEE CLERK: Chair Richards.
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SUBCOMMITTEE ON ZONING AND FRANCHISES

CHAIRPERSON RICHARDS: I vote aye on
all.

COMMITTEE CLERK: Council Member
Gentile.

COUNCIL MEMBER GENTILE: [off mic
comments]

COMMITTEE CLERK: Council Member
Garodnick.

COUNCIL MEMBER GARODNICK: Aye.

COMMITTEE CLERK: Council Member Wills.

COUNCIL MEMBER WILLS: [off mic
comments]

COMMITTEE CLERK: Council Member
Reynoso.

COUNCIL MEMBER REYNOSO: [off mic
comments]

COMMITTEE CLERK: By a vote of five in
the affirmative, zero in the negative, and zero
abstentions Land Use items 435, 436, 437, 439, 459,
460, 461, 462. 463 Preconsidered Land Used item for
2016 889 and are all approved and referred to the
full land use committee and Land Use item 432 as
filed and referred to the full land use committee.

CHAIRPERSON RICHARDS: Thank you

Counsel. Just want to acknowledge we got through 12 items in less than an hour. It's pretty impressive.

We will now move onto a public hearing on Land Use item number 438, a special permit application

submitted under Section 74-711 of the rezoning

resolution that would facilitate the 17 story with

commercial, residential use, and the Ladies' Mile

historic district in Manhattan. This application

has generated significant attention in the public

review process based primarily on whether or not

the requirements of the mandatory inclusionary

housing programs should be applied as a condition

of the special permit approval. The zoning text as

part of MIH requires that MIH apply when a special

permit approval would allow for a significant

increase in residential floor area on the

development site. While the proposed building in

this application would involve significant

residential floor area there is some debate as to

whether this floor area represents an increase over

what would otherwise be developed on the property.

we hope to explore this question in greater detail

over the course of this public hearing. As a

1 preliminary matter I would also point out that the
2 74 S711 special permit was originally enacted to
3 facilitate and promote the restoration and
4 protection of historic buildings in historic
5 neighborhoods. The applicants here are investing in
6 the restoration and ongoing maintenance of the
7 historic buildings on the site in the design of the
8 new buildings have been approved by LPC as
9 appropriate for the character of this historic
10 district. In exchange they are asking for a series
11 of height setbacks and other waivers of the bulk
12 regulations. While we debate the application of
13 affordable housing requirements for this
14 application we should also recognize the additional
15 purposes that are facilitated by the 74 S711 [sp?]
16 permit. With that being said I will now... the public
17 hearing on Land Use item number 438. Welcome. And
18 we'll ask speakers to please say who they are and
19 who they're representing. I believe we're joined by
20 Morris, I'm not going to mess your... don't want to
21 chop your last name up 42 West 18 Realty Core
22 Valerie Campbell 42 West 18th street, Eliot Neumann
23 West 18th Street develop and also Marcie, Marcie
24 Kesner according to West 18th Street Realty co-Op.
25

1 SUBCOMMITTEE ON ZONING AND FRANCHISES 36
2 We're also joined by Council Member core Johnson
3 who's represents this district. With that being
4 said you now may begin. Or actually we'll go with
5 Council Member Johnson wants to say anything, no?
6 Okay. Alright we'll go to the applicants. You may
7 begin.

8 VALERIE CAMPBELL: Good morning City
9 Council Members. My name is Valarie Campbell I'm
10 Counsel with Kramer Levin and we're land use
11 counsel to the owner of the property. I'm joined by
12 Marcie Kesner Urban Planner at Kramer Levin, the
13 architect Morris Adjmi and the owner Elliot
14 Neumann. We also have additional representatives
15 here, our environmental consultant, another
16 attorney from our office who has prepared the legal
17 memo which I believe you received copies of last
18 night. And they're also available for questions.
19 Just start the overview of the application. This is
20 a section of application. This is a section 74-711
21 Special Permit. This special permit is available
22 for zoning laws in historic districts that include
23 contributing buildings. It provides for
24 modifications for underlying zoning regulations.
25 And in exchange for a commitment on the owner to

1
2 restore and maintain in sound first class condition
3 and perpetuity the historic buildings on the zoning
4 lot. In this instance we are using the bulk waivers
5 for a new building that will be constructed on a
6 parking lot that is part of the zoning lot that is
7 adjacent to the historic buildings. One thing I
8 think that is important to note in this application
9 is that the zoning lot is located in the C64A
10 zoning district which is a R10A equivalent which
11 has a 10FAR abased, 10FAR on this lot that would
12 permit 138,000 square feet of zoning floor area.
13 What is approved. The building that was approved by
14 the Landmarks Commission and by the city planning
15 commission is only 118,831 zoning floor area which
16 is an 8.61FAR. So you will see on the right, well
17 actually on the right there are... the... it shows the
18 historic building on Lot 14, a new building on Lot
19 15 which the façade on West 17th Street, then Lot
20 15 on West 18th Street which is the northern wing
21 on the new building on the parking lot and then the
22 two adjacent historic buildings. So the project
23 really in general includes the façade restoration
24 of the historic buildings located at 40 and 42 West
25 18th Street and 45 West 17th Street and a new mixed

2 use building which will contain 66 apartments. The
3 north wing is 17 stories high. The South Wing is 16
4 stories high. And the wings of the new buildings
5 are connected by a three story base which will be
6 retail. There will have 15,000, almost 16,000
7 square feet of commercial and retail space in the
8 base. And there will be an as of right accessory
9 parking garage in the cellar and sub-cellar which
10 includes 17 spaces. There'll be bicycle parking and
11 the entrance to that garage will be on 17th Street.
12 The next site shows the location. As it said the
13 zoning lot is a through block site on the block
14 that's founded by 5th Avenue, 6th Avenue, West 17th
15 Street, and West 18th Street. The blue portion that
16 you see on the site is where the, the existing
17 parking lot, that's where the new building would be
18 constructed. And Morris Adjmi will take over now
19 and describe the new building and the restoration
20 work.

21 MORRIS ADJMI: Good morning. I'm Morris
22 Adjmi, the architect for the project. On the screen
23 we have an isometric drawing describing the project
24 as well as we have a model. The 18th Street façade
25 is facing you and I can rotate that later if you'd

1 like. As Valerie mentioned the project consists of
2 two basic components. One is a restoration work to
3 two buildings, one through block building which is
4 from 1907, 1908 which you see all the way on the
5 left and the smaller building which was built in
6 1848 and then remodeled in 1898. And we have
7 extensive restoration work proposed for that
8 building which I will describe a little bit more in
9 detail afterwards, and then another building built
10 in two wings on 17th and 18th street with a 30 story
11 base. The next slide shows the existing conditions
12 on the right and the historic tax photo images of
13 the lot and building on the left. The next slide is
14 a, the same for 18th Street on the left or the, is
15 a historic tax photo and then some existing
16 conditioned photos on the right. Landmarks
17 Preservation Commission found both the proposed new
18 buildings as well as the restoration work
19 appropriate. They found the scale of the two
20 buildings consistent with the historic district as
21 well as the specific street scape and the
22 restoration work was deemed to be appropriate in
23 addition to the declaration which will guaranteed
24 that the building will be maintained in perpetuity.
25

2 of the district but made in the new metal mesh
3 which is consistent with the technological changes
4 that occurred in this district during the formulative
5 years. The next image is the 18th Street showing
6 the restoration work to the two existing historic
7 structures as well as the new proposed building
8 which embodies the changes that occurred in the
9 district going from heavy masonry with punched
10 openings to lighter frame construction. And I think
11 Marcy will continue now.

12 MARCY: Good morning. I'm Marcie Kesner
13 with Kramer Levin. I'm going to describe the
14 special permit and the bulk waivers that have been
15 granted by the city planning commission for this
16 building. Just as a reminder here is a enlarged
17 site plan that shows the new building in yellow
18 which is the through block site that is currently a
19 parking lot. There are four bulk waivers that are
20 being, that were part of the special permit. Two
21 offer height and setback. The south wing of the
22 building will have a height of 166 feet but will,
23 which is within the maximum building height but it
24 will not provide the required 15-foot setback and
25 125 feet. So for an additional four stories it will

2 rise directly to the roofline. It will thereby
3 according to the Landmarks Preservation Commission
4 conform with the, the context of the existing loft
5 buildings within the district. The district's north
6 wing will be 170 feet in height without, also
7 without a front setback. The maximum building
8 height for a building that has less than 45 feet of
9 frontage as this site does on 18th street, on a
10 narrow street would be 60 feet. So the waiver which
11 is shown in waiver diagrams on the following slides
12 is for the difference between 60 feet permitted
13 height and the 170 feet requested. There are two
14 waivers that are related to the rear yard. The
15 first is to allow a 50-foot rear yard equivalent
16 rather than the required 60-foot rear yard
17 equivalent above the permitted commercial stories.
18 The second is to allow the location of portions of
19 the buildings that are backing onto each other that
20 have, to have a minimum distance of 50 feet rather
21 than 60 feet between buildings with windows. Both
22 of these rear yard waivers will still provide for
23 light and air in accordance with the state multiple
24 dwelling law. I'll show on the next slides they
25 show the waiver areas within the in section and in

1
2 plan. Again the yellow are the height and set back
3 waivers. To the right is the set, the height waiver
4 for the north wing and... which is everything above
5 60 feet. Red is the rear yard equivalent waiver
6 which adds additional 10 feet to the rear of the
7 south building. The next slide shows another
8 section through the building which shows that the,
9 at the base those places where there are two parts,
10 two buildings fronting... backing onto each other,
11 the window waiver area. In order to be granted a
12 special permit there are three conditions and one
13 finding that has to be made. The conditions are the
14 submission of a Landmarks Preservation Commission
15 report standing that there's a program for
16 continuing maintenance for the stark buildings and
17 that the bulk modification and restorative work are
18 required to contribute to a preservation purpose
19 and those have been submitted as part of the
20 application. The certificate of appropriateness
21 from the Landmarks Preservation Commission stating
22 that the bulk modifications relate harmoniously to
23 the subject landmark buildings in the historic
24 district this was submitted and is expressed very
25 extensively in the Landmark's 2014 certificate of

1 appropriateness and that the maximum number of
2 dwelling units are as required by zoning and that
3 is the case. There is no, no change in that. In
4 order to grant a special permit city planning
5 commission has to find that the requested bulk
6 modification has a minimal adverse effect on
7 structures, open space in the vicinity in terms of
8 scale, location, and access to light and air. Terms
9 of scale if we go to the next slide I think, well
10 in for terms of the rear yard, in terms of light
11 and open air the... even with a 50 foot rear yard
12 equivalent rather than 60 feet which would be
13 required pursuant to zoning you can see in the
14 darker red that the amount of open space between
15 the rears of the buildings on this block are far,
16 is far greater than that anywhere else on the block
17 reflecting the fact that most of the buildings on
18 the block are older buildings and many of them
19 built as manufacturing or commercial structures.
20 Alright the next one. The, in terms of the context
21 of the street, in terms of streetscape and size and
22 bulk of the building it's a little hard to see here
23 but the buildings are within the context of the
24 regular high and low buildings that are typical of
25

2 the historic district and this was felt to be
3 appropriate by landmarks and by the City Planning
4 Commission. In terms of location there's no
5 difference in the location of the building created
6 by these bulk waivers. It's exactly in the same
7 location it would have been otherwise as an as of
8 right basis. Thank you. I think our next speaker
9 is...

10 VALERIE CAMPBELL: No, actually I'm not
11 speaking.

12 MARCY: Go back to Valerie.

13 VALERIE CAMPBELL: Again, I wanted to
14 address the issue of the applicability...

15 CHAIRPERSON RICHARDS: Can you just make
16 sure you're speaking into the mic.

17 VALERIE CAMPBELL: Sorry, is this
18 better?

19 CHAIRPERSON RICHARDS: And identify
20 yourself again.

21 VALERIE CAMBBELL: Valerie...

22 CHAIRPERSON RICHARDS: Yes.

23 VALERIE CAMPBELL: ...Campbell...

24 CHAIRPERSON RICHARDS: Yes.

25

1
2 VALERIE CAMPBELL: ...Kramer Levin. I
3 think it's fair to say that a lot of the
4 controversy of this application has not really
5 centered around the findings of a 74 7/11 special
6 permit. We believe that this application is
7 consistent with the purpose of the 74 7/11 special
8 permit and satisfies all of the required findings.
9 It will restore two historic buildings and improve
10 a parking lot with an architecturally distinguished
11 new building that is appropriate to the historic
12 district. The restoration calls for an excess of
13 four million dollars. As I mentioned earlier we
14 have prepared a legal memorandum addressing the
15 issue of whether the project should be required to
16 provide mandatory inclusionary housing pursuant to
17 zoning resolution section 7432. As the first
18 special permit application I think to come forward
19 after the enactment of MIH we have been caught in a
20 somewhat unfortunate situation because there
21 appears to be a significant disagreement as to
22 whether Section 7432 applies. We believe however
23 that the administrative record and the legislative
24 history of MIH makes it clear that the significant
25 increase in residential floor area is not meant to

1 apply to a special permit action such as this
2 because here we're not increasing the residential
3 capacity on the zoning lot. We are below the
4 permissible FAR on the zoning lot and only allowed
5 to use a portion of it. We are not building on top
6 of the historic buildings. And the waivers that
7 we're asking merely allow us to utilize a portion
8 of the available floor area in historically
9 appropriate way on the zoning lot. The next slide
10 shows none the less we recognize that there have
11 been questions really with the comparison, the as
12 of right alternative that was analyzed in the EAS
13 and proposed scenario so we have shown that this is
14 the EAS scenario on the right. The proposed
15 scenario shows the bulk waivers. There is, there is
16 residential floor area in the area where the bulk
17 waivers is. And I think, you know I can't read the
18 total there. We have an increase of about 20..
19 [cross-talk] 22,000. It's not an increase, it's
20 really just residential floor area that's located
21 within the bulk waivers which is equivalent to
22 about 11 dwelling units. Some of the area on the
23 south wing of the building doesn't really give you
24 any additional dwelling units. It just gives you
25

1 somewhat larger apartments on, on those floors. So
2 we are, we do maintain that MIH does not apply.
3 However, we also, the ownership does recognize that
4 affordable housing is an important policy goal and
5 is willing to make a contribution based on a
6 voluntary contribution based on the amount of floor
7 area that's located in the bulk waivers. I will see
8 the table to Elliot Neumann who can discuss what
9 that proposal...

11 ELLIOT NEUMANN: Good morning, Elliot
12 Neumann Acuity Capital Partners. We are the
13 applicant for this special permit under 74 711. I
14 believe I've been given this chair at the end of
15 the table because of all the grief we've caused
16 with this application. As you've heard in detail
17 and both today and leading up to this meeting we're
18 requesting waivers related to the construction of a
19 new building on the parking lot located between
20 17th and 18th streets. We are proposing to restore
21 three historic facades on the adjoining lots. We
22 had the option of constructing an as of right
23 building not requiring the requested waivers and
24 relief and instead we chose to submit under 74 711
25 whereby in return for the waivers we undertake to

1 restore three facades. This restoration comes at an
2 expensive, approximately 4 million dollars, plus an
3 additional \$750,000 to establish a long term façade
4 maintenance fund. We would not have this 7... 4.75-
5 million-dollar requirement had we built an as of
6 right building. Though Landmarks Preservation
7 Commission would still have been required to
8 approve the contemplated façades of an as of right
9 building. In contemplating the issue of MIH a
10 dilemma we are caught in but not of our own making
11 we relied upon multiple conversations and
12 assurances from city planning that MIH was not
13 applicable. In fact, this application had began
14 more than three years ago prior to any discussion
15 of MIH. At the same time, we recognize the need for
16 affordable housing, the need to give back to
17 community, and are therefore willing to contribute
18 a significant portion of the net profit attributed
19 to the floor area gained via the waivers received.
20 In attempting a baseline for a voluntary
21 contribution to affordable housing our project,
22 first we looked at our project and noted that we
23 gained a total of 11 whole units via this
24 application. The remaining gains are achieved
25

2 through setback relief and thus in fractions of
3 units due to the restrictive nature of the lot.
4 None the less we embrace the full 22,883 square
5 feet gained in contemplation of our contribution.
6 In contemplating our voluntary contribution to
7 affordable housing we look to option 1 of the MIH
8 program as enacted by the city council to guide our
9 discussion. It is expensive to deliver these 22,000
10 square feet and change to the restorative costs
11 associated with the facades under 74,711. At the
12 same time, we are delighted to give back to our
13 community in the form of preserving and building
14 affordable housing. We look forward to continuing
15 this conversation and thank you for your time
16 today.

17 CHAIRPERSON RICHARDS: Well thank you so
18 much for your testimony. I'm going to go to Council
19 Member Johnson first and then come back.

20 COUNCIL MEMBER JOHNSON: Thank you for
21 your presentation this morning. I don't have any
22 questions on the layout or design of the project or
23 the waivers themselves. I think it's all very
24 straight forward. And if this was not caught up in
25 some controversy related to if MIH was applicable I

1 think this would be a pretty straight forward 74
2 711 application that we would work through in a
3 pretty reasonable way. So my real question has to
4 do with some of the issues that were raised around
5 the applicability of MIH. So last night I received
6 a legal memo from Kremer Levin, 12 pages long. And
7 it... Valarie can you answer questions on this?

9 VALERIE CAMPBELL: Yes. And I also... My
10 colleague Jeff Braun who took the lead in preparing
11 that memo is also here. So he can also answer
12 questions on the memo.

13 COUNCIL MEMBER JOHNSON: So you know for
14 a layman who's not a lawyer it's... it has a lot of
15 footnotes and it sites a lot of supreme court cases
16 in different appellate court cases on why MIH is
17 not applicable here for a variety of reasons. It
18 looks at the legislative history, at what the
19 council was debating at the time, the plain
20 language reading of the statute and how it would be
21 interpreted at the time, and a host of other
22 things. But one of the things, and you know it
23 seems like a pretty well done memo but again I'm
24 not a, I'm not an attorney. But one of the things I
25 find actually quite galling about the memo is that

2 the very first section about legal analysis
3 basically to... this is me paraphrasing, it basically
4 says that unlike variances special permits are a
5 property owner's right. Special permits require no
6 demonstration of exceptional circumstances or
7 hardship to justify relief from zoning regulations.
8 A property owner is entitled to a special permit if
9 it demonstrates that it satisfies the conditions
10 that are specified in the zoning statute.
11 Therefore, the relevant municipal zoning agency
12 must grant the special permit unless they can
13 demonstrate the statutorily based reason for
14 denying it. It goes on and it says that basically
15 the applicant has a right to it and that should be
16 granted a special permit. So if that's the case,
17 why are you even here? If you're going to send me a
18 legal memo stating that you have an absolute right
19 to a special permit why are you before the city
20 council?

21 VALERIE CAMPBELL: We have... I don't
22 think that that was the intent of that...

23 COUNCIL MEMBER JOHNSON: That's what
24 this says.

2 VALERIE CAMPBELL: The... the, the section
3 we obviously have to make all of the required
4 findings for the 74 711 special permit. We believe
5 that we have made them.

6 COUNCIL MEMBER JOHNSON: So then if you
7 made the findings you should get the permit?

8 VALERIE CAMPBELL: If we made the
9 findings we should get the permit? I, and have gone
10 through the uniform land use review procedure which
11 includes review by the city council, I think that
12 yes we would, we would state that we are entitled
13 to the special permit if we make the findings for
14 the special permit.

15 COUNCIL MEMBER JOHNSON: So just want to
16 you know let you know that I believe Liska versus
17 the City Council of the City of New York was
18 footnoted in this legal memo...

19 VALERIE CAMPBELL: Yes.

20 COUNCIL MEMBER JOHNSON: ...in multiple
21 places. And as part of the concurrence in Liska
22 part of the decision states that quote having
23 reserved to itself the power to grant or deny a
24 special permit, what the court found, without
25 enunciating standards got the exercise of its

1 discretion. The city council is not bound by the
2 specific permit standards of the New York City
3 zoning resolution but as broader review powers. It
4 may consider policy issues when making a
5 determination. That's what Liska said. Doesn't say
6 this in your legal memo. So today I was happy to
7 have a conversation about the plusses and minuses
8 of this project, about potentially finding a way
9 forward, but to send a legal memo which in many
10 ways tries to cut the legs out from the city
11 council when it comes to dealing with special
12 permits I think is a much sort of bigger issue. And
13 for the gentleman, forgive me I don't remember your
14 name, who wrote the memo I mean I just think that
15 coming here today to make an argument reasonably
16 and I think there's one to make and it's a
17 conversation I've been willing to have the whole
18 time with you all about why in the circumstance MIH
19 may not be applicable but to send a legal memo to
20 the City Council the night before the hearing and
21 to make some type of argument that basically
22 special permits should be routinely granted in a 12
23 page memo I just found to be pretty offensive. And
24 I want to understand why it was done.
25

1
2 JEFF BRAUN: First of all Council Member
3 to the extent that you found the memo offensive
4 galling or to the extent any other members of the
5 council might feel that way we certainly never
6 intend to cause that kind of a response or view on
7 the council members. We sent that memo because we
8 believe that it accurately sets forth the
9 applicable law and that the council's roll is very
10 limited in terms of the review of this type of a
11 special permit which is not to say that my client
12 is unwilling to discuss issues with members of the
13 council but ultimately it's my responsibility as a
14 lawyer for my client to set forth what I believe to
15 be the correct legal position. And I think the case
16 law in general is very clear that in order to get a
17 special permit an applicant must, an applicant's
18 obligation is to show that that it meets specific
19 findings that are set forth in the relevant zoning
20 ordinance. And in this particular case the
21 commission, the City Planning Commission which has
22 the initial jurisdiction to approve this type of an
23 application made a determination that all the
24 statutory requirements were satisfied. And we think
25 that the evidence in the record fully supports that

1
2 determination and that particular determination
3 that the specified findings are satisfied can't
4 really be disputed in a reasonable way. Now with
5 respect to the Liska case it's our view, and this
6 is our analysis and other people might take a
7 different view but it's our view that the Liska
8 case doesn't really apply here because in this
9 particular special permit, unlike the one that was
10 involved in the Liska case, the findings that are
11 required to be made in order to get the special
12 permit are quite narrow and specific and are set
13 out in the statute and do not involve a broader
14 sort of discretionary and policy considerations of
15 the sort that were entailed in the very different
16 type of special permit that was involved in the
17 Liska case. And so for that reason it's our view
18 that the language in the Liska case that Council
19 Member that you relied upon doesn't really apply to
20 this case, doesn't really govern this case and
21 again that our client has persuaded the commission
22 that the specific findings that are set out in a
23 statute are satisfied in this case. The evidence
24 overwhelmingly supports the reason... [cross-talk]

2 COUNCIL MEMBER JOHNSON: So can you give
3 me, can you give me, could you give me an example
4 of when policy decisions that the city council may
5 want to take into consideration, would be
6 applicable under a special permit? More
7 specifically a 74 711 application.

8 JEFF BRAUN: I don't know that they
9 would necessarily in a 74...

10 COUNCIL MEMBER JOHNSON: So then why
11 does he...

12 JEFF BRAUN: ...711... [cross-talk]

13 COUNCIL MEMBER JOHNSON: So then why
14 under the charter does it even come to the city
15 council

16 VALERIE CAMPBELL: I, on the A74 711
17 application I think the city planning commission
18 has been clear and has taken the position that it
19 would apply in the 74 711 pursuant to 74 32...

20 COUNCIL MEMBER JOHNSON: Yeah, but why
21 does it come to the council? If you believe that
22 you have the right to it, if you have met the
23 findings, and the commission has set you met the
24 findings which they have.

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SUBCOMMITTEE ON ZONING AND FRANCHISES

VALERIE CAMPBELL: You, you... [cross-talk]

COUNCIL MEMBER JOHNSON: So why does it come to the council?

VALERIE CAMPBELL: The council... the council...

COUNCIL MEMBER JOHNSON: There are some special permits and there are some ULERP actions that don't come to the city council that the commission approves when the findings are met and it doesn't come to the city council.

VALERIE CAMPBELL: I think that the council is clear to look at the record and make a determination that the findings have not been met.

COUNCIL MEMBER JOHNSON: And is the council in your view able to take in other policy considerations when looking at the applicability or whether or not it's proper to grant a special permit or can it only look at the findings being met?

VALERIE CAMPBELL: I think in the first instance that the council should be looking at the findings.

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COUNCIL MEMBER JOHNSON: But only or first instance?

VALERIE CAMPBELL: I would have to say that I think that's where the council starts. When the findings here are, you know they're very specific. So you know I think that that is what the council should be reviewing. I would like to say that you know it was certainly not our... The memo is... obviously sets forth our legal analysis is not binding on anyone. It was submitted really in response to the memo from the urban justice center. And regarding the applicability of MIH and that is the primary intent of the memo to really go through that analysis on MIH.

COUNCIL MEMBER JOHNSON: Again this special permit I find to be pretty straightforward. I think the bulk waivers and the height waivers, and the moving around of the allowed floor area is a pretty straight forward application. 74 711s happen all the time in landmark districts. I have one of the most heavily landmark districts in the city especially in Ladies' Mile we've been seeing. A number of 74 711 applications, a lot of them on parking lots like this particular application in

1
2 different areas all throughout Ladies' Mile. So
3 this isn't a unique application when it comes to
4 that. But to come here today and if you're saying
5 it wasn't your intent I'll take it as an answer but
6 let the record be clear that the applicant is
7 stating that their legal memo is not an attempt to
8 curtail the council's powers or make an argument
9 that the city council should be limited when it
10 comes to dealing with special permit applications
11 we have a charter mandated role in the ULERP
12 process that we look at a variety of things. And
13 sometimes policy decisions come into that separate
14 and apart from the findings that happens in ULERP
15 applications all the time. If we're talking today
16 just about MIH the incremental increase floor area
17 is approximately 23,000 square feet, just under
18 23,000 square feet.

19 VALERIE CAMPBELL: Yes.

20 COUNCIL MEMBER JOHNSON: So if MIH and
21 city... MIH does not apply here. But if the borough
22 president and the community board and state senator
23 Krueger and others believe that even though we are
24 not sitting precedent because city planning has
25 already deemed that it does not apply so it's out

1 of scope for me to try to apply MIH. I can't do
2 that without a scope. So I could potentially
3 negotiate with your client, with the applicant, on
4 coming up with a remedy in this one particular
5 instance which is not precedent setting because
6 again City Planning said it doesn't apply. Is your
7 suggestion that we calculate sort of a quasi MIH
8 calculation off of that 23,000 incremental square
9 feet of FAR. And so we would take 25 percent of
10 23,000 square feet, is that sort of what was talked
11 about.
12

13 VALERIE CAMPBELL: That is basically you
14 know what we have proposed.

15 COUNCIL MEMBER JOHNSON: And that ends
16 up being four and a half thousand.. 5,000?

17 VALERIE CAMPBELL: 5,000 square feet.

18 COUNCIL MEMBER JOHNSON: 5,000, five and
19 half thousand square feet. So five and a half
20 thousand square feet ends up being how many units
21 are you approximating?

22 VALERIE CAMPBELL: Five or 6,000, I...
23 yeah 5.5.

24 COUNCIL MEMBER JOHNSON: Five and a half
25 units. And so if we were looking again at MIH even

1 though it didn't apply here by city planning's
2 definition five and a half units. We would then say
3 that for buildings that were under a certain number
4 on site was excluded. So if you were under a
5 certain number of units you don't have to build on
6 site. HPD and city planning are in the promise of
7 promulgating rules related to an affordable housing
8 fund done community board by community guard where
9 the money would stay in that particular community
10 district. And so in that instance we would take, we
11 would come up with a calculation on what five and
12 half units, or five units, or six units, whatever
13 we rounded up or rounded down to, whatever that
14 number ends up being and that potentially would be
15 a reasonable way to still have the applicant in the
16 spirit of trying to help towards affordable housing
17 in a local neighborhood and not do on site because
18 they would have been exempt under MIH anyway. That
19 would be a potential way to participate and to
20 give. Is that all accurate?

22 VALERIE CAMPBELL: Yes, that is
23 accurate.

24

25

2 COUNCIL MEMBER JOHNSON: And is that
3 what the applicant is stating they're willing to do
4 today?

5 VALERIE CAMPBELL: I think Elliot you
6 know set forth what his proposal is right now.
7 Obviously we do not have the HPD regulations. We
8 don't know what their calculous would be. We
9 proposed a calculous which is based on 25 percent
10 of the profits attributable to that..

11 COUNCIL MEMBER JOHNSON: And you're
12 willing to do that because the council has some
13 power here in deciding this special permit?

14 VALERIE CAMPBELL: We have... We are
15 willing to do that because we understand that this
16 is an important issue for the council, the
17 community board and this is something that the
18 developer is willing to do.

19 COUNCIL MEMBER JOHNSON: Okay, I may
20 have some more questions, but I want to turn it
21 back over to the chairs of the respective Land Use
22 Committees.

23 CHAIRPERSON RICHARDS: Thank you Council
24 Member Johnson for your leadership on this
25 important issue which is a very important issue

2 obviously we negotiated MIH with the administration
3 because there is a huge need for affordable housing
4 in this city. Now... And I'll get back to some of
5 what Council Member Johnson's speaking about in a
6 minute. Out of all the scenarios presented if we
7 were not to approve the waiver which one were you
8 most likely to utilize?

9 VALERIE CAMPBELL: Well, could we go to
10 the bulk wave, the one before. So the waiver on
11 the... development shown on the left is the one
12 that's the most similar to the current proposal. It
13 keeps the existing building as commercial and does
14 not build on any of the historic buildings and
15 conforms with all of the bulk waivers. So that
16 scenario, that as of right scenario which we
17 developed in the EAS led to the 22,000 increment in
18 residential. But frankly if... the next one, if we
19 don't get the special permit there, there is
20 probably, there are other scenarios which are
21 really, probably more likely. There are, there is
22 an as of right bulk envelope which is shown in the
23 middle where you can confer the existing structure,
24 structures. We have a, you could in theory come

2 back for a new special permit that asks for the
3 same bulk waivers but for a hotel so that...

4 CHAIRPERSON RICHARDS: For a hotel?

5 VALERIE CAMPBELL: Yeah, for a hotel. It
6 could actually require lots of waivers. It would
7 provide no residential housing whatsoever. OR the
8 other alternative which I'm not sure, do we have a...
9 there is a purely commercial alternative which
10 would in fact, would allow you, you could develop
11 the whole midblock and you could get close to 10FAR
12 with a purely commercial building.

13 CHAIRPERSON RICHARDS: But you're saying
14 you would have to come to the council for...

15 VALERIE CAMPBELL: Oh, not for that...

16 CHAIRPERSON RICHARDS: Not in that case?

17 VALERIE CAMPBELL: ...for that commercial
18 option, now we would not.

19 CHAIRPERSON RICHARDS: Right. But you're
20 here for the special waiver for which reason?

21 VALERIE CAMPBELL: We are... you know when
22 this contract started it seemed like a good use for
23 the owner and for the neighborhood that sort of was
24 in existing trends, was a mixed use building which
25 provided more commercial space, base but

2 residential, above, in order to get a reasonable
3 amount of residential floor area and to get a
4 building that landmarks is more likely to approve
5 and not to build on top of the historic structures
6 at that time the decision was made to go for the
7 74-711 special permit.

8 CHAIRPERSON RICHARDS: And the million
9 dollar question here is as of right, the as of
10 right scenario that you represented, that is
11 represented, is it actually realistic?

12 VALERIE CAMPBELL: That as of right
13 scenario... can you go back? Yeah, we think that it
14 is realistic. It conforms with the zoning. You know
15 there might be some discussion with landmarks about
16 the dormers and the configurations that we believe
17 that that could get... And but if we were really
18 doing it we would probably try to add some floor
19 area on top of the historic buildings.

20 CHAIRPERSON RICHARDS: Say that again.
21 Can you...

22 VALERIE CAMPBELL: We would probably try
23 to add some floor area on the top of the historic
24 buildings.

2 CHAIRPERSON RICHARDS: On top of the
3 historic buildings?

4 VALERIE CAMPBELL: Yeah. [cross-talk] To
5 try to get closer to the 10FAR that's permitted.

6 CHAIRPERSON RICHARDS: And let's just go
7 back to the historic district conversation. How
8 much are you putting into maintenance in
9 particular...

10 VALERIE CAMPBELL: Well the..

11 CHAIRPERSON RICHARDS: ...within the two
12 buildings?

13 VALERIE CAMPBELL: The 74-711 requires
14 really two components...

15 CHAIRPERSON RICHARDS: Can you just
16 speak a little clearer into the mic?

17 VALERIE CAMPBELL: I'm sorry.

18 CHAIRPERSON RICHARDS: No problem.

19 VALERIE CAMPBELL: The 74-711 requires
20 initial restoration work. That work is tied to the
21 significance of occupancy for the new building. We
22 estimate that that work is going to cost about four
23 million dollars. In addition, once that work is
24 completed the owner has, has to enter into a deed
25 restriction that's binding on future owners of the

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2 property to inspect the buildings, the historic
3 buildings every five years to do any work necessary
4 to keep them in sound first class condition. And
5 that commitment you know goes in perpetuity and
6 we're estimating the cost of sort of funding that
7 commitment at \$750,000. Both the four million and
8 the 750 million dollars is not worth that would be
9 required. Hmm? Yes, sorry 750,000. But both the
10 four million and the \$750,000 are not expenses that
11 you would be required to bear if you, absent of 74-
12 711 special permit.

13 CHAIRPERSON RICHARDS: And so who
14 recommended you do this work if you're saying that
15 it wasn't...

16 VALERIE CAMPBELL: Oh it is... it... one of
17 the requirements for the permit is that the
18 Landmarks Commission issue a report finding you
19 know the restoration work and the continuing
20 maintenance contribute to a preservation purpose.
21 It's...

22 CHAIRPERSON RICHARDS: So you're not
23 doing it voluntarily. That's...

24 VALERIE CAMPBELL: Well it's, it's...
25 [cross-talk] I mean I'm sure that... [cross-talk]

2 CHAIRPERSON RICHARDS: I meant because
3 you put it out there as a...

4 VALERIE CAMPBELL: Yeah.

5 CHAIRPERSON RICHARDS: Right but it's...

6 VALERIE CAMPBELL: No, it...

7 CHAIRPERSON RICHARDS: ...a requirement.

8 So you said for ongoing maintenance, how much? So
9 every five years you said?

10 VALERIE CAMPBELL: Every five years you
11 have to have an architect with expertise in
12 historic preservation and inspect historic
13 buildings. And any work that is identified on to
14 keep the building in sound first class condition
15 which is a higher standard than is required under
16 the landmarks law must be done.

17 CHAIRPERSON RICHARDS: So the big, the
18 million-dollar question here is are you getting
19 more, you know even with these... with the bulk
20 waivers? Is this a significant increase? Would you
21 be getting obviously what you're getting without
22 the special waiver? And I agree with Corey on
23 receiving the memo last night because if you were
24 trying to negotiate in good faith it was
25 unnecessary for that to come before us last night.

2 So what was the thinking of sending that legal memo
3 to us? Because we would call that shots fired. You
4 know and if we were negotiating in good faith and
5 trying to work with all parties to come up with an
6 agreement that would work for all what was the
7 purpose of the memo?

8 VALERIE CAMPBELL: The purpose of the
9 memo and again you know that we have been meeting
10 with council members. We are certainly attempting
11 to negotiate in good faith. The purpose of the
12 memo, it is not a, it's obvious susceptible with
13 our condition really in response to the memo..

14 CHAIRPERSON RICHARDS: You don't think
15 that was a little heavy handed? Then to come to a
16 hearing you know the next day in which you know the
17 council has the ability no matter what your memo
18 says that... down the application. We can do that.
19 That's within our power.

20 VALERIE CAMPBELL: No, we... we...

21 CHAIRPERSON RICHARDS: Right?

22 VALERIE CAMPBELL: ...we understand that
23 but there was a very substantial memo that was
24 submitted by the Urban Justice Center which is
25 part..

2 CHAIRPERSON RICHARDS: But we're not the
3 Urban Justice Center.

4 VALERIE CAMPBELL: No I... But we felt
5 that... We really did feel that we needed to respond
6 to that memo. And so that was our attempt to
7 respond to the memo.

8 CHAIRPERSON RICHARDS: And the memo was
9 addressed to?

10 VALERIE CAMPBELL: It was addressed to
11 the city council members and to the borough
12 president and...

13 CHAIRPERSON RICHARDS: And not the Urban
14 Justice Center. We didn't see...

15 VALERIE CAMPBELL: We're happy to
16 provide them with a copy.

17 CHAIRPERSON RICHARDS: Right.

18 VALERIE CAMPBELL: They didn't send us a
19 copy of their memo either.

20 CHAIRPERSON RICHARDS: Right. So you
21 mentioned voluntary commitment. And so have you
22 been in any talks with any agencies in particular.
23 You kept mentioning the voluntary commitment you
24 would adhere to on a...

25

2 VALERIE CAMPBELL: We... we have, at this
3 point we have been discussing this with Council
4 Member Johnson. We would... we don't know right now
5 whether the affordable housing fund would be set up
6 in a way that would allow it to accept voluntary
7 contributions. If it was then that would I think be
8 everyone's first choice on if it was not set up in
9 a way that allows us to accept voluntary
10 contributions. Our intent would be to work with
11 Council Member Johnson and the city Council Staff
12 to find a recipient that would promote affordable
13 housing within the community district.

14 CHAIRPERSON RICHARDS: So can you just
15 go back to slide 17 for a second? Alrighty so the
16 dotted area... so this is the increase here I'm
17 assuming, right? In here?

18 VALERIE CAMPBELL: Right.

19 CHAIRPERSON RICHARDS: Okay.

20 VALERIE CAMPBELL: There's a... so the
21 yellow at... at the left is floor area that is
22 located within a required front set back. The red
23 area is the reduction in the rear yard. And the
24 yellow area to the right is the floor area that is
25 located above 60 feet.

2 CHAIRPERSON RICHARDS: So without the
3 special waiver...

4 VALERIE CAMPBELL: That floor area...

5 CHAIRPERSON RICHARDS: That would not...

6 VALERIE CAMPBELL: Yeah, that would...

7 CHAIRPERSON RICHARDS: ...exist.

8 VALERIE CAMPBELL: ...would not exist.

9 CHAIRPERSON RICHARDS: So what was the
10 thinking? Why couldn't you move the floor area
11 around differently?

12 VALERIE CAMPBELL: Well you're, you're
13 very constrained on this zoning law because you
14 have the two historic buildings. In general
15 Landmarks severely limits the amount of floor area
16 you can do on a rooftop addition. There is also you
17 know a height limit which we do not exceed,
18 generally 185 feet on 17th Street. So the idea was
19 to really to have the bulk of the buildings massed
20 in a way that's very characteristic of the historic
21 district. Most buildings in the historic district
22 do not have front setbacks. They have a street
23 wall. There are many, many examples both historic
24 and new of tall narrow buildings in the historic
25 district. And with respect to the rear yard that

2 reflects the fact that this block is somewhat
3 narrow and also we are providing a much more
4 generous rear yard than any of the buildings have
5 on the block.

6 CHAIRPERSON RICHARDS: Alright. So I'm
7 going to come back to you but you know I just want
8 to say that you know we at the council take our job
9 very seriously and we understand we're going to
10 have a lot of questions for the commission and in
11 particular city planning as they, as they come up
12 because I think a little bit more conversation
13 needs to be had with them in particular on this
14 issue. But I would just urge you to you know if
15 we're going to negotiate in good faith to not be so
16 heavy handed in dealing with the city council.

17 VALERIE CAMPBELL: As I said I am... we
18 really regret that was the impact of the memo. It
19 was really meant to explain the situation of what
20 our position was with respect to MIH. So...

21 CHAIRPERSON RICHARDS: Okay. I'm going
22 to go to Chair Greenfield.

23 COUNCIL MEMBER GREENFIELD: Thank you
24 Mr. Chairman. Thank you Council Member Johnson.
25 First I want to actually want to acknowledge that

1 Council Member Johnson's role and think that the
2 council member is in fact doing the best he can to
3 try to reach a good faith compromise in this
4 particular situation. I commend him for that. And I
5 would note that this is in fact one of the, one of
6 the times that I'm grateful for having had a
7 Yeshiva education because this is really a
8 fascinating Tolmud question on how we define
9 Section 74-32 specifically the phrase would allow a
10 significant increase in residential floor area. I
11 want to also thank the Manhattan Borough President.
12 I think that she brought an interesting question to
13 our attention and certainly it's worth discussing
14 and trying to understand how it applies but I would
15 say specifically how it applies to this fact
16 pattern right. I think that's sort of the key issue
17 over here is that I think the borough president's
18 point is a good point. I think it's a valid point.
19 I think it's worth discussing and I think the
20 question really is how does it apply to this fact
21 pattern if I may be a little professorial as
22 someone who teaches an adjunct at Brooklyn law
23 school. So just to chat about the memo quickly, I
24 thought the memo was actually well written. I
25

1
2 enjoyed it. I certainly would concur it with other
3 folks that I would have appreciated more time to
4 read it. We all did get it late last night and we
5 do have other things that we have to do as council
6 members. But I did, I did read it. And I will say
7 though to Council Member Johnson's point that I, I
8 actually, I think the first point that you made in
9 the memo I think is actually moot. And the reason
10 why I think the memo is moot in terms of the
11 entitlement to their requested special permit is
12 because the entitlement over here in terms of the
13 special permit really is based on the question that
14 the council is analyzing which is does the MIH
15 apply or not right? So I'm even willing to accept
16 the hypothetical perhaps, and I'm not, not for the
17 record but just as in hypothetical the city
18 planning commission send this to us with MIH
19 attached right which with in fact requiring the
20 affordable housing and then you were coming to us
21 and saying you're just going to vote this down for
22 no reason and you're getting your MIH. Well then I
23 think you might have a fair argument. I think that
24 the first point that you're making in your legal
25 analysis is really moot because the first question

1
2 comes down to the second point which you analyzed
3 which is does MIH apply or not. And so because of
4 that fact, because of the fact that in this case
5 city planning sent it to us without MIH I do think
6 it's clear that we have the discretion and the
7 ability to make that decision in our pure oversight
8 role which is we're debating whether or not city
9 planning in fact made the right decision when they
10 excluded MIH. Is that a fair difference of opinion
11 on your legal memo?

12 VALERIE CAMPBELL: Yes.

13 COUNCIL MEMBER GREENFIELD: What's that?

14 VALERIE CAMPBELL: Yes.

15 COUNCIL MEMBER GREENFIELD: You would
16 agree with that. Okay, that's fair. So now that
17 we've settled that let's actually get down to the
18 discussion of, discussion of the MIH. I just, I
19 just want to... I think it's important for the record
20 just to understand your argument just so we all
21 know what's, what's happening over here. So... and
22 when I say we all, doesn't mean all of us up here
23 because obviously Council Member Johnson is an
24 expert, Chair Richards is an expert, and I'm an
25 expert but for the folks who are watching at home I

1 always think it's helpful to sort of have an
2 understanding for transparency purposes in terms of
3 actually what's going on. So the basic, the basic
4 question that we're determining is based on the
5 fact that we passed the mandatory inclusionary
6 housing law. And that requires that when there is
7 an increase in residential floor area that there
8 also be affordable housing. It's a debate that
9 we're having over here today and this was in fact
10 spurred by the borough president who I thank again
11 for pointing that out. The debate is whether this
12 particular fact pattern. This scenario in fact
13 would allow for significant increase in residential
14 floor areas. The borough president has basically
15 made the contention which is that based on this
16 special permit there's going to be roughly 23,000
17 extra residential floor area that you can build
18 right based on the special permit, the permission
19 that you're getting from the city planning but
20 you're saying that that 23,000 square feet should
21 not count right? And it should not in fact be
22 considered to be an increase in residential floor
23 area. Can you just summarize, and as Council Member
24 Johnson pointed out it was a very well written 12
25

2 page memo. So can you just summarize let's say in
3 90 seconds or less your arguments about why you
4 think it is that that this particular section of
5 significant increased residential floor area should
6 not apply to your fact pattern, your specific
7 project?

8 JEFF BRAUN: Council Member may I
9 respond to that on behalf of the applicant?

10 COUNCIL MEMBER GREENFIELD: I hope that
11 you would. That was a question. I'm hoping for a
12 response.

13 JEFF BRAUN: Well I thought it was
14 directed at my colleagues so I... [cross-talk]

15 COUNCIL MEMBER GREENFIELD: Well, no,
16 anyone... [cross-talk]

17 JEFF BRAUN: ...diligent... [cross-talk]

18 COUNCIL MEMBER GREENFIELD: We're very
19 democratic here. Anybody can choose to respond to
20 our questions.

21 JEFF BRAUN: Thank you.

22 COUNCIL MEMBER GREENFIELD: If you
23 respond poorly though then you'll be chastised...
24 [cross-talk] I'm teasing, I'm teasing, yes.

25

2 JEFF BRAUN: Thank you. The issue is
3 when the statutory provision talks about increase
4 in floor area the increase in floor area as
5 compared to what. Now I believe city planning's
6 position is that the statutory language is clear,
7 our view is it's really not clear. It doesn't
8 really spell out what the delta is, what's your...
9 what the...

10 COUNCIL MEMBER GREENFIELD: Good news.
11 We agree with you.

12 JEFF BRAUN: Okay.

13 COUNCIL MEMBER GREENFIELD: We in the
14 council agree with you that it's not... [cross-talk]

15 JEFF BRAUN: Okay.

16 COUNCIL MEMBER GREENFIELD: ...clear which
17 is why we're having this hearing.

18 JEFF BRAUN: And... [cross-talk]

19 COUNCIL MEMBER GREENFIELD: Try to
20 clarify... [cross-talk]

21 JEFF BRAUN: And certainly under...
22 [cross-talk]

23 COUNCIL MEMBER GREENFIELD: Yes.

24 MALE: ...under principals of statutory
25 interpretation if a statute on its face is not

1 clear one looks to other sources particularly
2 legislative history. Now when you look at the
3 legislative history of the particular provision in
4 our view the foremost example or the foremost
5 component of the legislative history is the report
6 of the city planning commission that it adopted
7 when it approved the MIH legislation. And the
8 language of the city planning, the city planning
9 commission report addresses this particular issue
10 very exquisitely and clearly and says that MIH will
11 not apply to special permits that do not have the
12 effect of increasing the amount of FAR that on the
13 face of the zoning resolution is allowed at the
14 site. That's what the city planning commission said
15 and... [cross-talk]

17 COUNCIL MEMBER GREENFIELD: So let's
18 pause, let's pause for a moment.

19 JEFF BRAUN: Yes, Sir.

20 COUNCIL MEMBER GREENFIELD: Because I
21 think actually I think also at least from my
22 perspective I'm going to disagree with you on this
23 as well, right? So we agree on the first point
24 which is the legislation is unclear. I think this
25 is not exactly clear for this fact pattern and I

1 think the reason is that it's one thing if for
2 example was as Council Member Johnson pointed out
3 if this was an empty parking lot, right, if it was
4 an empty parking lot and then you had the certain
5 max FAR and it was clear what you could build on
6 the empty parking lot I think that's sort of one
7 scenario. And it could be for example as Council
8 Member Johnson pointed out an empty parking lot in
9 the historic district. I think the challenge over
10 here, and I think the challenge over here, and I
11 think this is why it's confusing and that's
12 actually what I'm asking you to address. This is
13 not trickery, just so you understand. I really just
14 want to have the record reflect that. The challenge
15 over here is that there are specific buildings on
16 this lot and due to that fact that there are limits
17 on how much of the FAR you can actually use. So
18 even though technically you can go, I believe the
19 number's 10FAR right, there are practical limits to
20 how much the FAR can use and I think that's what's
21 confusing. So that particularly. So I want to move
22 away from the hypothetical legal argument that you
23 may or may not have to argue in three years in
24 front of the court of appeals and I want to go to
25

2 the more practical explanation. So can you explain
3 just so everybody understands what your position
4 why it is that you don't think that in your
5 particular fact pattern that this, that this
6 section of the zoning resolution should apply.
7 That's what I'm asking.

8 JEFF BRAUN: Because there's a FAR
9 that's allowable at this site under the zoning
10 resolution. And the particular special permit that
11 we're seeking does not increase the amount of FAR
12 that the zoning resolution allows on the zoning
13 lot. There are situations where a special permit
14 might allow, when I say FAR I really mean
15 residential FAR. There's no increase in the amount
16 of residential FAR at the zoning resolution allows
17 at this site. There would be, there could be other
18 situations for example...

19 COUNCIL MEMBER GREENFIELD: So let's
20 just... I'm sorry I... [cross-talk] I just want to be
21 clear for the record. So what you're saying is you
22 can build, without this special permit you can
23 build on your own the same amount of residential
24 FAR. Is that what you're saying? Is that the crux
25 of your argument?

1 VALERIE CAMPBELL: We... we could do that...

2 JEFF BRAUN: Yes.

3 VALERIE CAMPBELL: And essentially to
4 get there what you would end up doing is converting
5 the existing buildings to residential use.
6

7 COUNCIL MEMBER GREENFIELD: Okay so
8 that's, so that's your argument. So now how do you
9 respond to the borough president's argument? Once
10 again I just want to put it out there just so that
11 we can all be on the same page regarding the EAS
12 analysis.

13 VALERIE CAMPBELL: The EAS analysis.
14 First off you always try to be conservative when
15 you pick your as of right scenario because you want
16 to really overstate the impact so that you can be
17 sure that you would analyze it correctly. The EAS
18 scenario actually also over... had a... there was a
19 waiver that now is not required because of ZQA, a
20 rear setback. So it, there was an over... that was
21 not accounted for in the... the EAS. But we could
22 have you know any number of EAS as of right
23 scenarios which would have involved a different mix
24 of commercial and residential which could've
25 involved a commercial. But you know you essentially

2 have to pick you know one reasonable worst case
3 scenario. You try to be conservative and that was
4 our intent. I can say..

5 COUNCIL MEMBER GREENFIELD: Okay so what
6 you're saying is it's not... it's just for this
7 particular, it's for this particular proposal. You
8 have a particular EAS analysis but that doesn't
9 necessarily stop you from doing something else. And
10 what you're specifically stating is that you could,
11 you could use the entire area for residential that
12 would practically mean and I guess this is perhaps
13 a portion of the debate. That would practically
14 mean that you have less commercial space right? So
15 that's basically what you're saying. So once again
16 these are all fair arguments right? Because we're
17 arguing something that's hyper technical legal
18 argument which is that if you look at the language
19 specifically to your point which is that it's
20 increase in residential floor area. So your
21 argument would be that this does not have an
22 increase in residential floor area.

23 VALERIE CAMPBELL: I mean it is not...
24 because our argument is that in fact we are below

2 the permitted residential floor area for the zoning
3 law. We believe that that...

4 COUNCIL MEMBER GREENFIELD: Yeah, but
5 even putting aside a zoning lot right, if you could
6 build as of right... two different pieces of the
7 argument, right? So that's one piece of the...
8 [cross-talk] argument is a zoning lot argument.

9 VALERIE CAMPBELL: Yes.

10 COUNCIL MEMBER GREENFIELD: We're
11 disputing that argument. And then you're saying
12 that even putting aside the zoning lot argument you
13 could still build the same residential but that
14 would require you take away some commercial, so
15 that's your argument?

16 VALERIE CAMPBELL: Yes.

17 COUNCIL MEMBER GREENFIELD: Good. I
18 think this is helpful. My only point is that I'm
19 trying to sort of frame that I think that there are
20 reasonable sides to both arguments, both sides of
21 the argument over here and at least from our
22 perspective it's not a clear cut case in terms of
23 what exactly should be done and how it should be
24 done. And I just think it's important to point out
25 that there is a reasonable debate and that is in

1 fact why we're having the hearing which is why we
2 think it's helpful to have this hearing, is to
3 hopefully clarify this debate. And for better or
4 for worse we'll say that unfortunately perhaps
5 we'll say that you folks are the guinea pigs
6 because you're the first ones to come out of the
7 gate on this particular issue. But I certainly
8 think that for the future it's helpful to try to
9 clarify the standards for the council and city
10 planning commission to agree or perhaps to agree to
11 disagree on when this would apply and when this
12 would not apply. And I think it's helpful but the
13 point that I will make is that I think that in your
14 particular case we want to focus on your specific
15 fact pattern to make sure that we're applying it
16 correctly to you. So thank you for helping us set
17 the record straight.

18
19 CHAIRPERSON RICHARDS: Thank you Mr.
20 Chairman. And just a question. So as of right how
21 many units are you projecting? How many units would
22 you have projected and then obviously with the
23 waiver...

24

25

2 VALERIE CAMPBELL: Well as of right on
3 the scenario that we analyzed in the EAS I believe
4 we had 44 or 40... 40 or 44 units, it depends...

5 CHAIRPERSON RICHARDS: As of right, you
6 said?

7 VALERIE CAMPBELL: Yes.

8 CHAIRPERSON RICHARDS: Okay, 44 units.

9 VALERIE CAMPBELL: In the EAS scenario.

10 CHAIRPERSON RICHARDS: In the EAS, mm-
11 hmm.

12 VALERIE CAMPBELL: And our current or
13 the proposed scenario has 66.

14 CHAIRPERSON RICHARDS: And the proposed
15 scenarios 60...

16 VALERIE CAMPBELL: Six dwelling.

17 CHAIRPERSON RICHARDS: 66 dwelling
18 units. So from 44 to 66 dwelling units.

19 VALERIE CAMPBELL: Yes.

20 CHAIRPERSON RICHARDS: And would you say
21 that's an increase in units?

22 VALERIE CAMPBELL: Well certainly when...
23 it's an increase when you compare it to the as of
24 right DAS scenario. It is not an increase when you
25 look at what's permitted.

2 CHAIRPERSON RICHARDS: Yeah, alright.
3 Council Member Johnson.

4 COUNCIL MEMBER JOHNSON: So I wanted to
5 ask a few more things. So as it relates to acuties
6 other properties around the city there has been
7 some past conflict and controversy related to
8 interactions with workers who interested in joining
9 a union, 32BJ. The building service workers union
10 in the city. I wanted to hear what.. I know you've
11 met with 32BJ and you've had conversations about
12 this building. I would like to be updated on where
13 things stand in that regard.

14 LAUREN DROGIN: Good morning. I'm Lauren
15 [coughs] excuse me, Lauren Drogin Labor Counsel.
16 There have been discussions with council for Local
17 32BJ and on this particular project what we have
18 committed to is agreement to sign a neutrality
19 agreement if and when the project is built and
20 workers are hired, building service workers are
21 hired and they present authorization cards to the
22 employer. There will be a neutral card check
23 conducted by a third party and to the extent that a
24 majority of the building service workers want to be
25 represented by 32BJ the union will be recognized as

2 the collective bargaining represented for those
3 employees and contract negotiations will take
4 place.

5 CHAIRPERSON RICHARDS: How many expected
6 workers do you expect to be hired to service this
7 building?

8 LAUREN DROGIN: At the moment my
9 understanding is two.

10 CHAIRPERSON RICHARDS: So what if it's a
11 one to one vote?

12 LAUREN DROGIN: I'm sorry?

13 CHAIRPERSON RICHARDS: What if it's a
14 one to one vote?

15 LAUREN DROGIN: Well the, the point sir
16 is that there would not be a vote. If the union
17 succeeded in obtaining two authorization cards and
18 the mutual third party found them to be signed
19 without duress or coercion there's no vote at the
20 national league relations board. The union would
21 simply be recognized as the bargaining
22 representative. If the union is unable to obtain to
23 cards then it would never proceed to a card check
24 procedure.

2 CHAIRPERSON RICHARDS: Applicants who
3 would be applying for a job are not going to be
4 asked about their opinions related to unions?

5 LAUREN DROGIN: That would be illegal.

6 CHAIRPERSON RICHARDS: So that's not
7 going to happen?

8 LAUREN DROGIN: I'm sorry?

9 CHAIRPERSON RICHARDS: So it's not going
10 to happen?

11 LAUREN DROGIN: Well it's kind of hard
12 to see around that corner. There's no project.

13 CHAIRPERSON RICHARDS: Okay I'm
14 operating under the assumption that there will be a
15 project.

16 LAUREN DROGIN: Great.

17 CHAIRPERSON RICHARDS: And so if there's
18 a project questions like that are not going to be
19 asked to try to weed out potential folks that may
20 want to join a union?

21 LAUREN DROGIN: Absolutely not.

22 CHAIRPERSON RICHARDS: Okay. So there
23 are other buildings where 32BJ has been in conflict
24 with the applicant most notably up in the West 90s
25 on the upper West Side. It's not part of my

2 district but I know that that building, that acuity
3 took over I believe in foreclosure, was that the
4 case? Acuity took that building over in
5 foreclosure. And so 32BJ currently does not
6 represent the workers in that building. Before
7 acuity took over and before it went into
8 foreclosure with the previous owner did 32BJ
9 represent the employees previously on that site?

10 LAUREN DROGIN: They did, yes. And there
11 was a collective bargaining agreement in place for
12 those employees. It expired and in 2011 there was
13 an issue raised by the employees while negotiations
14 were going on as to whether or not the employees
15 still wished to be represented by local 32BJ. There
16 were discussions held with the union at that point
17 in time. And Local 32BJ voluntarily disclaimed
18 interest in that bargaining unit. I believe it was
19 three or four employees. What we have pointed out
20 to the union in its opposition is that the building
21 has not moved since 2011 and they were free today
22 as they had been over the last five years to go
23 back and approach the employees and to obtain
24 authorization cards. From those employees and to
25 ask the employer to recognize them as the

2 collective bargaining representative for those
3 employees I also want to point out that the
4 superintendent at that building has... one of the
5 original employees. I believe he's been there for
6 over 20 years. He was one of the people that
7 apparently did not want to be represented by the
8 union at that time. If his view has changed no one
9 is stopping the union from approaching any of these
10 employees.

11 CHAIRPERSON RICHARDS: How many, how
12 many workers are working in that building?

13 LAUREN DROGIN: I believe it's three. It
14 could be four. I believe it's three. Three building
15 service workers. It is three. It's a superintendent
16 and two porters. And I would point out that the
17 superintendent and both porters have rent free
18 apartments.

19 CHAIRPERSON RICHARDS: Have what?

20 LAUREN DROGIN: Rent free apartments.

21 CHAIRPERSON RICHARDS: Yeah.

22 LAUREN DROGIN: ...their employment.

23 CHAIRPERSON RICHARDS: So as of today
24 acuity would be willing to similarly have a neutral
25 third party card check done at the site if 32BJ

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2 wanted to organize those workers and if those
3 workers wanted to make a decision to join a union,
4 to join 32BJ the applicant would not be opposed or
5 do anything to interfere with that.

6 LAUREN DROGIN: This is one of the finer
7 points that I have been discussing with the union's
8 counsel. What the union is requesting is
9 neutrality. And what I have suggested is simply
10 present the cards to a neutral third party where I
11 suppose disagreeing over whether or not the word
12 neutrality actually means anything. And this is
13 literally we were on the phone before this hearing
14 began trying to iron out this issues. But again I
15 point out with or without any agreements the union
16 is free to obtain authorization cards from these
17 employees today and make that same request.

18 CHAIRPERSON RICHARDS: So your offer to
19 32BJ is what with regard to this building, just to
20 enunciate it so I totally understand. It's to be
21 neutral and have a third party check the cards of
22 the workers?

23 LAUREN DROGIN: It was not to give them
24 what they are calling neutrality. It was however,
25 and this is what was discussed, potentially to

2 simply agree that if they presented authorization
3 cards to a neutral third party that there would be
4 voluntary recognition. That we would not, for
5 example, force the union to an election before the
6 national labor relations board. I should point out
7 that that was part of a larger package which also
8 included support for this project as well as some
9 finer points as to how this was..

10 CHAIRPERSON RICHARDS: So why not agree
11 to neutrality?

12 LAUREN DROGIN: Why what?

13 CHAIRPERSON RICHARDS: Why not agree to
14 neutrality?

15 LAUREN DROGIN: I'm not suggesting that
16 we won't. I'm suggesting that as we're getting down
17 to brass tax this is..

18 CHAIRPERSON RICHARDS: So why not today
19 agree to neutrality. It's important for me and the
20 council that we look at acuity's entire record with
21 regard to its buildings in the city, to be able to
22 understand what, what in fact may happen moving
23 forward.

24

25

1 LAUREN DROGIN: It's obviously not my
2
3 decision to make but we'll continue to speak with
4 the union's counsel.

5 CHAIRPERSON RICHARDS: So you continue
6 to negotiate?

7 LAUREN DROGIN: Absolutely.

8 CHAIRPERSON RICHARDS: Okay.

9 LAUREN DROGIN: Point thing out if I may
10 that if again they can accomplish the same thing
11 today by speaking with the employees.

12 CHAIRPERSON RICHARDS: Okay. I think
13 that's all the questions I have. I know there are a
14 lot of people that are here to testify today; the
15 community board, the borough president's office,
16 different advocacy organizations from the Landmarks
17 Community and the affordable housing community,
18 32BJ and other interested community members are
19 here to testify. I would ask that the applicant and
20 his team stay and listen to that testimony and be
21 able to be responsive, not to come back up and
22 respond but to be able to answer potential
23 questions that may arise in writing over the course
24 of the next week to things that may come up where
25 there may be a disagreement and where it may need

2 some clarity on your side to understand it and
3 that's all the questions that I have. Thank you
4 very much.

5 VALERIE CAMPBELL: Thank you very much.

6 CHAIRPERSON RICHARDS: Thank you so much
7 for spending so much time with us today. Very
8 exciting application and we're going to continue
9 discussion. Oh, wait, hold on. I think we have more
10 questions. We're going to go to... we're joined by
11 Council Member Torres, going to go to Council
12 Member Williams for a question.

13 COUNCIL MEMBER WILLIAMS: Thank you so
14 much Mr. Chair. And thank you Council Member
15 Johnson for all your work on the issue. I know some
16 of my questions have been... so I apologize. I know
17 it was late. I did get a briefing yesterday though.
18 But I'm still not 100 percent clear so I had a
19 couple questions. Sorry for repetitiveness... the
20 repeating of this. So I just want to understand.
21 You believe with the residential units as of right
22 on, as of right bulk envelope you can get 73,738
23 square feet? Is that right?

24 VALERIE CAMPBELL: Seven...

25

1
2 COUNCIL MEMBER WILLIAMS: Not the... yes,
3 as of right. This, yeah that one in the middle.

4 VALERIE CAMPBELL: The... yes the answer...
5 bulk envelope... yes, it is shown in the center which
6 has the 72 dwelling units and the 73 that involves
7 the conversion of some of the existing buildings to
8 residential use. But yes we think that that is...

9 COUNCIL MEMBER WILLIAMS: Why don't you
10 just do this?

11 VALERIE CAMPBELL: Why... well we would
12 lose commercial floor area there are in the
13 existing buildings. There is an existing building
14 of commercial establishment the Adorama camera
15 establishment that is doing very good business
16 employs how many people Elliot? 500 employees. It's
17 pretty vital. I know my son is a filmmaker. He goes
18 there to rent equipment so I don't think he would
19 like to convert a thriving establishment,
20 commercial establishment to residential.

21 COUNCIL MEMBER WILLIAMS: I'm sorry. Say
22 that again. You're not doing this because you want
23 to save some of the commercial space? That's what
24 you're saying?

1
2 VALERIE CAMPBELL: Well I'm saying that
3 there, there is, this site is very much underbuilt
4 now as what is permitted under the zoning
5 resolution. There is a vacant parking lot which is
6 an obvious site for new development. We have
7 proposed a scenario which would add some additional
8 commercial space and residential apartments. But
9 what we are saying is you know if you're looking at
10 what you could do as of right..

11 COUNCIL MEMBER WILLIAMS: So what I'm
12 trying to get at is there's things that you can do
13 as of right theoretically and what you can do
14 practically. I don't know from what I understand
15 that this middle piece is a practical use that you
16 can do right now. That's what I believe. And I
17 don't know that you're convincing that practically
18 speaking you can actually do it. I believe that
19 practically speaking you can do the scenario on...
20 first on the page before that which is as of right
21 with the EAS scenario. I believe that's what you
22 can probably practically do right now. And then
23 your proposed scenario actually does increase the
24 residential. So I know why you're saying you can do
25 that because it makes it seem as if you have all of

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2 that to build on. But I don't believe practically
3 speaking you do which will then lead to what some
4 of us are saying. Although you have it
5 theoretically you don't practically have it which
6 means you don't have it. It's okay if I say you
7 have 100 dollars but you can only spend 50 you
8 really probably only have 50. And so that's why
9 it's important to me to hear the explanation which
10 I don't really think sounds very real. And I also
11 don't believe that you're here because
12 altruistically you want to do something. I think
13 that you want to try to get money out of the
14 project. In order to do that you have to build
15 higher. And so those two things are important to me
16 because one practically speaking I don't think you
17 can build more. I think that you get more out of
18 the proposed scenario, even residentially. We can
19 argue about what significant means but I think over
20 20,000 residential square feet is significant. And
21 then the second part of that I had just
22 fundamentally believed if you were going to build
23 something that you would not be able to normally
24 build and go higher because it gives you more
25 funding, you get more profit from it, you owe

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2 something back to the community. So in my opinion
3 MIH or not if you're going to do that you should
4 give something back to the community and in my
5 opinion it should be in a form of affordable
6 housing. That is why we have offered to make a
7 voluntary contribution to an affordable housing
8 fund. And that contribution is based on the 22,000
9 square feet residential floor area that is located
10 in a waiver space.

11 COUNCIL MEMBER WILLIAMS: What's
12 important to me and of course it's not my district,
13 it's Council Member Johnson. I know he's doing a
14 good job in negotiating this but most of the
15 housing that we're going to get is probably going
16 to be from projects like this. And so we have to
17 look at projects like this and not pretend they're
18 just one offs and they're just slivers. And we
19 should try to get as much on-site housing as
20 possible because that's what people need... And so
21 putting it offsite and pulling stuff from the funds
22 sometimes are good but they haven't resulted in the
23 past, the type of affordable housing that we need.
24 So I believe personally that every project we look
25 at we have to look at it with a eye of how do we

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2 get affordable housing in it. And there are two
3 scenarios here. One is I person... be the MA... I mean
4 MIH does kick in because maybe you said some stuff
5 beforehand that I wasn't here but the explanation
6 you gave me does not prove that you actually
7 practically speaking can get all of those
8 residential units in. The second part is MIH or no
9 MIH I believe there should be onsite residential
10 housing, affordable housing units, income targeting
11 units if you were going to in exchange get higher
12 buildings in your project. I don't know if you want
13 to respond to any of that. If not I have no further
14 questions.

15 VALERIE CAMPBELL: No we, we appreciate
16 your position. At this point we are you know
17 proposing a contribution. There are obviously sort
18 of scale issues with providing on-site housing and
19 we think that it is most efficient to contribute to
20 a fund.

21 COUNCIL MEMBER WILLIAMS: I appreciate
22 that. But just for the record there is no further
23 response in the practical ability to get that as of
24 right bulk envelope. Thank you very much Mr. Chair
25 and thank you for all your testimony.

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2 VALERIE CAMPBELL: Thank you.

3 CHAIRPERSON RICHARDS: Thank you all for
4 coming. We look forward to continuing the
5 conversation as we move forward. I urge you to
6 continue to work with Council Member Johnson as we
7 move along in this application process. Alrighty.
8 We're now going to go to... yes you can take that.
9 It's very nice by the way. So we're going to go to
10 the first panel. Oh, okay. Okay. We're going to
11 call... Oh actually we're going to hear from city
12 planning. I was so anxious to hear from Edith Chens
13 [sp?] Hsu-Chen[sp?] Director of the Manhattan
14 office. How are you?

15 EDITH HSU-CHEN: Hi, how are you doing.
16 Good afternoon. Good afternoon Chair Greenfield.
17 Oh, he left, Chair Richards and Council Members of
18 the subcommittee. My name is Edith Hsu-Chen. I am
19 the Director of the Manhattan Office at the
20 Department of City Planning. Thank you for the
21 opportunity to testify in support of the
22 application for a special permit submitted by 42
23 West 18th Realty. The special permit is to allow
24 for minor building configuration changes for a
25 proposed mixed use development known as Adorama. As

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2 you know the special permit application was
3 approved by the City Planning Commission on August
4 15th. During the public review of this application
5 we heard several speakers including the honorable
6 Manhattan Borough President and Community Board 5
7 state that the Mandatory Inclusionary Housing
8 Program should be applied to this development and
9 that the special permit application should be
10 denied unless the project becomes subject to MIH. I
11 am here to explain why we cannot apply MIH to this
12 case. Affordable housing as we all know is a
13 guiding mission in this administration. Just
14 earlier this year we worked closely and intensely
15 with the city council to establish the most
16 comprehensive and aggressive mandatory inclusionary
17 housing program of any major city in the United
18 States. Because of MIH New York City now has 1,800
19 permanent affordable units in the pipeline to be
20 constructed throughout the city. We cannot risk all
21 those units, the many more to come, and indeed the
22 entire MIH program by reaching beyond legal bounds
23 for a handful of units. We have and will continue
24 to methodically apply MIH to private applications
25 where there is an increase in permitted residential

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2 floor area. The proposed development that we're
3 talking about today does not act for that. In
4 considering whether MIH should apply we must ask
5 whether a project is seeking additional residential
6 floor area beyond what the zoning district permits.
7 In the Adorama proposal I mentioned the applicant
8 is not asking for that. In fact, this proposal
9 results in a development that is smaller than what
10 could be built without any approvals from the City
11 Planning Commission or the City Counsel. As of
12 right the applicant can build 1,000 38,000 square
13 feet of floor area or 10FAR. This is all
14 residential. But instead the applicant is building
15 only 1,018... excuse me, 118,000 square feet of
16 residential floor area. Or eight point... excuse me,
17 that's residential and commercial which is only
18 8.6FAR. So that's 20,000 square feet, or about 15
19 percent less than what the developer can build
20 without the special permit. So what is the
21 applicant asking for in this special permit? The
22 special permit allows for both changes so that the
23 new development can better match the character of
24 the historic district. The request is basically for
25 two sets of relatively minor adjustments to the

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2 bulk rule. First, the applicant requires that the
3 new building be allowed to rise without having to
4 provide a setback or a deep ledge at the equivalent
5 of about 15 stories. The proposal is for the
6 building to go up to the equivalent of 16 or 17
7 stories without a setback. The CPC approved this
8 request to enable the building to better match the
9 17, 18, and 20 storied street walls of its
10 neighbors. In a historic district our aim, one of
11 our aims, is to facilitate the creation of a
12 consistent street wall. It's worth noting here that
13 the applicant is not seeking to exceed the maximum
14 building height which is equivalent to about 18
15 stories. Second, the applicant is requesting a
16 shorter rear yard or in other words a smaller space
17 in midblock between the backs of the buildings that
18 are fronting on 17th and 18th street. The commission
19 approved the request to provide a 50-foot rear yard
20 instead of the normally required 60-foot rear yard.
21 While a typical Manhattan block is 200 feet deep
22 this particular block is only 184 feet, 184 feet
23 deep. This shallower block depth makes compliance
24 with the full 60 feet more difficult. The
25 commission also considered that a 50-foot rear yard

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2 is significantly larger than most rear yards in the
3 Ladies' Mile historic district 420 and 30-foot rear
4 yards prevail. It's critical to stress that the
5 special permit also results in the repair
6 restoration of continued maintenance of the two
7 historic buildings that are on the shared lot. The
8 City Planning Commission approved this application
9 based on planning rational. To sum up this special
10 permit application does not allow for more density,
11 floor area, apartment units, or overall building
12 height. The proposal here is for a smaller building
13 that can be built without the special permit. There
14 simply is not a valid reason, or excuse me, a valid
15 opportunity to impose MIH through this special
16 permit. Attempts to exceed the balance of mandatory
17 inclusionary housing programs to endanger the many,
18 many thousands of permanent affordable housing
19 units that we have all worked so hard to make real.
20 Thank you.

21 CHAIRPERSON RICHARDS: Thank you for
22 your testimony. So first question I have for you...
23 So the commission, you was correct on this issue.
24 Why doesn't the text mention the floor area
25 permitted by the applicable floor area ratio?

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2 EDITH HSU-CHEN: The... A CPC report

3 actually is explicit in discussing when the MIH
4 program would apply to cases of special permits.
5 And the CPC report does state, I'm reading directly
6 from it, that the commission anticipated applying
7 the MIH programs to special permits that increase
8 residential capacity. The program is not expected
9 to be applied in conjunction with special permit
10 applications that re, that would reconfigure
11 residential floor area that is already permitted
12 under zoning without increasing the amount of floor
13 area permitted. Under this policy for instance a
14 special permit that facilitates a transfer floor
15 area from one zoning law to another without
16 increasing FAR would not be subject to an MIH
17 requirement while a special permit that converts
18 non-residential floor area to residential floor
19 area would be.

20 CHAIRPERSON RICHARDS: So the question I
21 have, and maybe you could take this back as well to
22 the commission is why didn't we drive a harder
23 bargain on the residential side if we're, if our
24 objective here is to build out more affordable
25 housing why was the Commission's thought process to

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2 allow them to build out more commercial development
3 rather than push for a little bit more on the
4 residential side.

5 EDITH HSU-CHEN: I think we all know
6 that we strongly support affordable housing, this
7 administration. We champion the delivery of
8 affordable housing in New York City across the city
9 in all neighborhoods. And we look for affordable
10 housing opportunities wherever we can. In the MIH
11 program as we were developing it we were as
12 aggressive as possible. We pushed the boundaries
13 and we got what we believed is the maximum solid
14 proposal and we want to make sure that we don't
15 trigger the possibility of endangering this program
16 that as I mentioned earlier is already delivering
17 18 hundred units. Those are in the pipeline and we
18 have many more to come. I just want to reiterate we
19 pushed as aggressively as we could and we now have
20 the most aggressive and comprehensive and ambitious
21 program in the United States.

22 CHAIRPERSON RICHARDS: Well we're aware
23 of it. We helped make it happen.

24 EDITH HSU-CHEN: That's right. Thank
25 you.

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2 CHAIRPERSON RICHARDS: But the, the big
3 question here is... So as of right this particular,
4 these particular developers would have had about a
5 5.34FAR, correct? On the residential side 73,738
6 square feet. And then, and with the commission
7 approved, the proposed scenario, the reduction went
8 down to 68,997 square feet, 4.93FAR. The question I
9 have is why didn't we push harder on the
10 residential side which would have triggered MIH if
11 this is truly the goal of, of the amend and of city
12 planning to push for more affordable housing why
13 did, why did we approve such a project when we
14 could have got more out on the as of right side?

15 EDITH HSU-CHEN: Well I think there are
16 two parts to your question Chair Donovan. Number
17 one, the applicability of MIH, we did as I stated
18 earlier we pushed as far as we could and we are
19 applying in every single instance and if there is..

20 CHAIRPERSON RICHARDS: But you don't
21 have to push. You can say yay or nay. And you said
22 yay.

23 EDITH HSU-CHEN: We said, in this, in
24 this case in Adorama there was no opportunity, no
25 valid opportunity to apply MIH because there is no

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2 increase. They're not seeking an increase in the
3 permitted residential density that's allowed by the
4 underlying district. Today they can build 138,000
5 square feet of residential floor area. They could
6 have that much residential floor area.

7 CHAIRPERSON RICHARDS: No, without the
8 historic buildings on the site they could build...

9 EDITH HSU-CHEN: With the historic
10 buildings they could convert, they could propose to
11 convert them to residential use which would be
12 allowed as of right in the under... by...

13 CHAIRPERSON RICHARDS: Right.

14 EDITH HSU-CHEN: ...underlying... [cross-
15 talk]

16 CHAIRPERSON RICHARDS: But they didn't
17 do that here.

18 EDITH HSU-CHEN: They did not do that
19 but they could do that and they could do that
20 without city council approval, without city
21 planning commission approval. They have that right
22 as a matter of right.

23 CHAIRPERSON RICHARDS: Let's go to the
24 affordable housing fund. So when is the council
25 going to... when are we going to hear from HPD and

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2 city planning on where we're at in particular
3 because I think now you know we're having a
4 conversation and I know Council Member Johnson is
5 working in particular with the developers and
6 having conversations but there's no... As well
7 intentioned as they may be in having a commitment
8 to putting some money into a fund there is no fund
9 at this moment. So when do... when can the council
10 expect to hear more on where we're at with the
11 affordable housing fund?

12 EDITH HSU-CHEN: The administration is
13 working very actively right now on, on developing
14 the rules for the fund. I defer the timing and the
15 schedule to others who are working directly on
16 that.

17 CHAIRPERSON RICHARDS: And do we... and we
18 don't have a timeline yet...

19 EDITH HSU-CHEN: I personally do not.

20 CHAIRPERSON RICHARDS: Do we anticipate
21 the end of the year or... Because this is not going
22 to be the first time that we obviously have a case
23 like this that comes before us so we're very
24 interested in knowing when... or... And you don't have
25

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2 to have the answer today but if that can be sent
3 back to the committee that would be helpful to us.

4 EDITH HSU-CHEN: Of course, yes.

5 CHAIRPERSON RICHARDS: Alrighty. And are
6 there any situations where zoning regulations other
7 than the permitted floor area ratio practically
8 limit the amount of residential floor area that can
9 be developed on the property?

10 EDITH HSU-CHEN: Are you...

11 CHAIRPERSON RICHARDS: Are there any
12 other examples...

13 EDITH HSU-CHEN: Are there any other
14 cases...

15 CHAIRPERSON RICHARDS: Situations where
16 zoning regulations other than a permitted floor
17 area ratio practically limit the amount of
18 residential floor area that can be developed on a
19 property?

20 EDITH HSU-CHEN: Sure. There are... In
21 addition to density requirements you mentioned
22 floor area ration there are also use restrictions
23 using residential, commercial, or manufacturing
24 community facility in, in the, the zoning district
25 that the Adorama is located in, the C64A which

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2 allows as of right residential floor area as well
3 as commercial and community facility.

4 CHAIRPERSON RICHARDS: Do you anticipate
5 we'll see any other applications with similar
6 implications as we move forward this session.

7 EDITH HSU-CHEN: We certainly anticipate
8 more 74-711 special permit applications.

9 CHAIRPERSON RICHARDS: How many more do
10 you anticipate?

11 EDITH HSU-CHEN: They come as... you know
12 we have, we have a handful every year. They are
13 again the special permit, the purpose of the
14 special permit is to allow for projects that are in
15 historic districts or that include historic
16 buildings...

17 CHAIRPERSON RICHARDS: We know that.

18 EDITH HSU-CHEN: ...bulk...

19 CHAIRPERSON RICHARDS: Yeah.

20 EDITH HSU-CHEN: ...use...

21 CHAIRPERSON RICHARDS: But I'm, but I'm
22 just saying are there any other applications we
23 should know of that will have similar implications
24 that are in the pipeline?

25

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2 EDITH HSU-CHEN: There are a few that
3 are in the pipeline, but we... we... we won't... a
4 handful every year.

5 CHAIRPERSON RICHARDS: Okay. Okay, I'm
6 going to go to my colleagues for questions. But I'm
7 very interested in hearing that on where are we at
8 in particular with the affordable housing fund. I'm
9 going to call the role for the vote, yes, I didn't
10 forget. I'm very interested in hearing back from
11 the admin on that. With that being said I'm going
12 to call the role for a vote. Right now on
13 particular applications that were before us before.
14 I'm just going to allow my colleagues to vote
15 first. Council Member Torres and Williams.

16 COMMITTEE CLERK: Continued zoning
17 subcommittee vote. Council Member Williams

18 COUNCIL MEMBER WILLIAMS: I vote aye.

19 COMMITTEE CLERK: Council Member Torres.

20 COUNCIL MEMBER TORRES: I vote aye.

21 COMMITTEE CLERK: Vote stands at seven
22 in the affirmative, zero in the negative, and zero
23 abstentions.

24 CHAIRPERSON RICHARDS: Alright we're
25 going to go to Council Member Johnson.

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2 COUNCIL MEMBER JOHNSON: Hi Edith. Good
3 to see you.

4 EDITH HSU-CHEN: Nice to see you too.

5 COUNCIL MEMBER JOHNSON: So I just want
6 to... I apologize, I had to step out, I apologize for
7 missing your testimony and answering some questions
8 from the chair. So City Planning determined that
9 MIH was not applicable here and that MIH is out of
10 scope.

11 EDITH HSU-CHEN: MIH is not applicable
12 in this project, correct.

13 COUNCIL MEMBER JOHNSON: So does that
14 mean that MIH is out of scope?

15 EDITH HSU-CHEN: Yes, it is.

16 COUNCIL MEMBER JOHNSON: So City
17 Planning what the city, what the city's charter
18 says when it comes to Land Use procedure is that
19 city planning is vested with ultimate authority on
20 determining what is in scope and what is out of
21 scope.

22 EDITH HSU-CHEN: Correct.

23 COUNCIL MEMBER JOHNSON: And when city
24 planning deems something out of scope it is the
25 sole determination of city planning and the council

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2 does not have the statutory charter mandated
3 authority to put something back in scope after city
4 planning has made that determination. Is that
5 correct?

6 EDITH HSU-CHEN: That is my
7 understanding, correct.

8 COUNCIL MEMBER JOHNSON: It's my
9 understanding as well. So the reason why I ask that
10 is because even if I wanted to apply MIH in this
11 circumstance I could not apply MIH because city
12 planning has deemed it out of scope.

13 EDITH HSU-CHEN: That is correct.

14 COUNCIL MEMBER JOHNSON: So the
15 negotiations that are occurring between myself and
16 the applicant are not precedent setting as it
17 relates to MIH because MIH has been deemed
18 inapplicable. And ultimately the negotiations that
19 take place on the applicant making a voluntary
20 contribution towards a affordable housing fund that
21 HPD and city planning are working to put together
22 as part of MIH. If we are able to set it up in a
23 way that applicant can make a voluntary
24 contribution that is separate. That is not part of
25 MIH. That is negotiations happen all the time

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2 between the city council and private applicants
3 with regard to things that the applicant is
4 comfortable with, that the city council is
5 requesting that makes sense for a project. That's
6 fine so long as it's, there's no coercion or
7 anyone's being forced to do something. That's okay
8 but again it's not precedent setting because MIH is
9 not applicable yet.

10 EDITH HSU-CHEN: Correct. We would not
11 call it MIH. It is your prerogative and the
12 applicant's prerogative to advance discussions
13 separately and if you come to an agreement that is
14 separate from the question of MIH per say being
15 applied that is, that is your prerogative.

16 COUNCIL MEMBER JOHNSON: So I mean I
17 think sort of a bigger issue here speaks to the
18 city charter and you know I think that there are,
19 there hasn't been a charter revision commission in
20 quite some time and the last charter revision
21 commission that was called didn't really... I mean
22 there was a lot of talk about doing some charter
23 revision as it related to Land Use procedures but
24 ultimately nothing was adopted and looking at Land
25 Use procedures I mean one of the things that you

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2 know we run into frequently in good and bad ways at
3 the council level is sometimes there are things
4 that the council would like to look at or change.
5 Sometimes the applicant's actually willing to do
6 it. But it's been deemed out of scope by the
7 commission and by the department. And in that
8 circumstance we really can't do anything because
9 you all have the sole authority and discretion at
10 the end of the day. I don't have the answer to
11 that. I'm not prepared today to say how the charter
12 should be you know changed in a specific way to
13 give some type of consideration to the council and
14 a little more flexibility. But you know when MIH
15 was discussed at the council and we had a full day
16 of hearings on MIH and a full day of hearings on
17 ZQA as part of the affordable housing plans. There
18 were hundreds of people that came and testified.
19 Chair Weisbrod and Commissioner Been were here to
20 answer a series of questions. The applicant's legal
21 memo talks about and polls from some of the
22 testimony that was given by Chair Weisbrod at that
23 time on what his potential understanding was as it
24 related to special permits. And so ultimately do
25 you believe that the statute and the law that was

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2 adopted was unclear as it related to the
3 applicability of MIH when it came to special
4 permits or do you believe that the statute is clear
5 when it comes to special permits.

6 EDITH HSU-CHEN: The statute is clear to
7 me. However, we're hearing that the statute is
8 unclear to others. When the statute on its face is
9 unclear we go to the administrative record. And the
10 record... it's explicit and clear about when and when
11 not MIH applies. It is a binding administrative
12 record and one for which there are, there's written
13 documentation, there has been oral discussions and
14 multiple venues at community boards, at city
15 council, at the city planning commission in the
16 media. If this... Again, if the statute is not clear
17 on a space we go to the administrative record and
18 that we believe it has been, it's explicit about
19 when MIH applies.

20 COUNCIL MEMBER JOHNSON: And do you, do
21 you know or believe that part of the reason why
22 special permits where this wasn't fully clarified
23 where everyone has a deep and full understanding or
24 is it related to special permits because there was
25 a fear on behalf of the city that this could be

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2 looked at as an exaction and it could call into
3 question the affordable housing program overall for
4 the city if in fact we applied it in circumstances
5 like this?

6 EDITH HSU-CHEN: I think we always have
7 to be aware of the question, of the danger of
8 exaction. And you know we want to make sure we stay
9 within our legal bounds and that we do not
10 overreach and jeopardize all that we accomplished.
11 The MIH program, it is aggressive, it's ambitious,
12 it's comprehensive. The New York City Program. It
13 is, it is the most aggressive in the United States
14 and we, we need to make sure that we, we do not
15 endanger it.

16 COUNCIL MEMBER JOHNSON: And one of the
17 balancing acts that the council and the
18 administration were walking a tight rope on was
19 there have been court decisions in other states and
20 the state of California as it related to mandatory
21 affordable housing zoning that related to
22 affordable housing and assuring that there was not
23 an undue exaction or taking from property owners at
24 that time. That was one of the things that we had
25 to sort of walk a tightrope on in passing this

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2 legislation and voting on it. That's correct. That
3 was one of the things that was discussed at the
4 department within the administration and at the
5 city planning commission.

6 EDITH HSU-CHEN: That's absolutely
7 correct. There have been mandatory programs that
8 have been defeated as you mentioned in California,
9 Wisconsin, Colorado. And there's currently a
10 mandatory program that's under challenge right now,
11 the Chicago program.

12 COUNCIL MEMBER JOHNSON: Okay. So, but
13 at the same time the, the City Planning Commission
14 in the past and the Department of City Planning has
15 given pretty wide latitude as it relates to the
16 city council negotiating through the ULERP process
17 on special permits, on map changes, on other land
18 use actions that come to the city council with, for
19 the, the council, the local council member, but the
20 council member as a whole negotiating with an
21 applicant on the site, things that are permitted
22 within scope and also things that the applicant is
23 comfortable with in being able to come up with
24 something that is going to work for the local
25 community. The, the commission and the department

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2 has been okay with that in thousands of instances
3 in the past?

4 EDITH HSU-CHEN: That is correct.

5 COUNCIL MEMBER JOHNSON: Okay. So again
6 this is a balancing act and I appreciate you being
7 here and answering our questions and it's always a
8 pleasure to work with you Edith. Thank you.

9 EDITH HSU-CHEN: Thank you.

10 CHAIRPERSON RICHARDS: Thank you. We're
11 going to go to Chair Greenfield.

12 COUNCIL MEMBER GREENFIELD: Thank you
13 Mr. Chairman. Thank you Council Member Johnson and
14 thank you Director Hsu-Chen. Wanted to just to
15 clarify a few, a few issues over here. Once again
16 simply for the purpose of making sure that the
17 record sort of reflects the entirety of the debate.
18 So specifically focusing on 74-711. So the special
19 permit 74-711, one of the policy purposes of the
20 74-711 is in fact to preserve and improve landmark
21 buildings. Can you explain to us a little bit more
22 about that and how that functions in the equation
23 over here or does it function at all in the
24 calculations that you're making at city planning?

25

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2 EDITH HSU-CHEN: Sure. The 74-711
3 special permit is a special provision that allows
4 for sites that are in historic districts or that
5 include historic building, a landmark to seek bulk
6 or use modifications. Under 74-711 you can't ask...
7 you cannot ask for more FAR but you can ask for a
8 change in the required configuration of the
9 building or you can also ask for change in use
10 restriction. So for example if you were in a
11 manufacturing district and your site included a
12 landmark the developer could ask for a, a, a use
13 change to allow for residential. That is not the
14 case here in Adorama. This is a C64A zoning
15 district where you can build residential and
16 commercial as of right. The 74-711 a prerequisite
17 for...

18 COUNCIL MEMBER GREENFIELD: So just to
19 clarify that point once again for the folks at home
20 who don't do this for a living like we do basically
21 what the permit does is it allows you to rejigger
22 things right? You can't...

23 EDITH HSU-CHEN: Yes.

24 COUNCIL MEMBER GREENFIELD: ...build a
25 bigger envelope, you can't build a bigger building,

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2 but if you want you can make changes in terms of
3 how you build or even for the use of what you're
4 building but you can't have something larger. That
5 would...

6 EDITH HSU-CHEN: You can request
7 rejiggering of the overall envelope...

8 COUNCIL MEMBER GREENFIELD: Yeah.

9 EDITH HSU-CHEN: But would not be able
10 to ask for more FAR.

11 COUNCIL MEMBER GREENFIELD: More
12 buildable space for the folks who are...

13 EDITH HSU-CHEN: Yes, you have more...

14 COUNCIL MEMBER GREENFIELD: Okay.

15 EDITH HSU-CHEN: Yes, floor...

16 COUNCIL MEMBER GREENFIELD: Yes.

17 EDITH HSU-CHEN: ...area.

18 COUNCIL MEMBER GREENFIELD: Correct.

19 EDITH HSU-CHEN: Yes.

20 COUNCIL MEMBER GREENFIELD: Yes.

21 EDITH HSU-CHEN: Okay so the 74-711 you
22 know as part of the request for the special permit
23 and the grant of the special permit there is a
24 requirement that there must be a report from the
25 landmarks commission, the landmarks preservation

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2 commission and there must be a program for
3 continuing maintenance that would benefit the
4 historic building that is subject to part of the
5 74-711. So in this case for the Adorama there are
6 two historic buildings. The City Planning
7 Commission received their requisite report of
8 harmonious relationship and the continuing
9 maintenance program. We received those from the
10 Landmarks Preservation Commission.

11 COUNCIL MEMBER GREENFIELD: Okay so is
12 this calculation different as a result than perhaps
13 Section 74-79 which would be for example a transfer
14 of air rights from a landmark building? Are you...
15 I'm just trying to understand this for my sake and
16 for the folks who are watching at home. Are you
17 saying okay this is different than a 74-79 for
18 example because in this particular case there is an
19 improvement to the structure and that's a policy
20 issue that we're concerned about or does that not
21 factor into your equation?

22 EDITH HSU-CHEN: In both 74-711, 74-711
23 and 74-79 there is a preservation furtherance of
24 the preservation of the historic resource. So in
25 74-79 there's, you can transfer development rights

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2 from a historic landmark and as part of that
3 approval there is also requirement for preserve...
4 restoration repair and continuing maintenance of
5 the landmark.

6 COUNCIL MEMBER GREENFIELD: Great. Which
7 leads me to my next question. Do you think... what
8 would be your interpretation for a 74-79
9 application? Do you think that MIH would apply if
10 it was being used for residential floor area?

11 EDITH HSU-CHEN: If, if the underlying
12 zoning allows for residential floor area and
13 there's no increase overall, there's no increment
14 of residential floor area then I would say that MIH
15 does not apply.

16 COUNCIL MEMBER GREENFIELD: Okay so if
17 the underlying zoning allows for it right, I mean
18 under 74-79 essentially you're stacking the, the
19 air rights right? So you're taking it from one side
20 of the street let's say to the other side of the
21 street. And so now basically effectively what
22 you're doing is you're taking air rights that are
23 unusable and you'd be pushing it across the street
24 and now you could build more residential in that

25

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2 case if it was residential you would say that it
3 wouldn't apply in that case?

4 EDITH HSU-CHEN: The increase of the
5 residential floor area is happening on the zoning
6 lot then there is an increase in the requested
7 residential capacity. That's correct, yes.

8 COUNCIL MEMBER GREENFIELD: So might
9 apply?

10 EDITH HSU-CHEN: It might apply. It
11 might apply. In the case of a zoning lot merger it
12 would not apply but they're different, your right.

13 COUNCIL MEMBER GREENFIELD: Okay I'm
14 just... I'm trying to sort of understand the
15 parameters of when it would apply and when it would
16 apply. And this is to my point where you know not
17 everyone may necessarily agree with the borough
18 president's interpretation but certainly I
19 appreciate the opportunity to have this
20 conversation about sort of what the, what the
21 parameters, where it would apply and, and where it
22 would not apply. So getting back to this
23 particular, this particular application, the 74-711
24 special permit there were two points that were made
25 by the applicant based on my understanding of their

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2 testimony. One of which is that the overall zoning
3 lot allows for 10 FAR and therefore it shouldn't
4 apply. And then there was a sort of a more nuance
5 point which once again my understanding of the
6 applicant's point which is that even if you
7 disagree with the contention of the overall zoning
8 lot that it still wouldn't apply because we have
9 the ability to build the same residential floor
10 area. All we would have to do is we would lower the
11 commercial area. So from city planning's
12 perspective do you agree with the first point, the
13 second point, or both points? I'm just trying to
14 understand in terms of your analysis which point is
15 compelling. And once again it's not just for this
16 particular case which has a very unique fact
17 pattern, this is also instructor for us going
18 forward because one of the things that's happened
19 now for example is that developers and architects
20 and lawyers are calling and say hey what's going to
21 happen over here, when does this apply, when does
22 this not apply. So I think it's helpful to sort of
23 understand sort of the parameters of what your
24 thinking was as city planning because obviously

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2 you're the ones who make the initial decisions and
3 then it comes to us for final approval.

4 EDITH HSU-CHEN: The zoning district
5 here allows for 10FAR residential or commercial so
6 this site could do a full 10FAR residential
7 building, 138,000 square feet residential building,
8 that would mean, yes, that having to convert the
9 existing commercial use to residential.

10 COUNCIL MEMBER GREENFIELD: Okay so
11 you're agreeing with their first point.

12 EDITH HSU-CHEN: I agree, yes.

13 COUNCIL MEMBER GREENFIELD: So you don't
14 have to get to the second point from your
15 perspective. Now what about the fact that the
16 underlying landmark limits that ability? So is it
17 basically essentially your, I guess your
18 interpretation is, and this is perhaps where we
19 have some confusion although you apparently don't
20 have confusion but we, we have some confusion and
21 so that's why we're trying to clarify. So your...
22 your argument is where a special permit application
23 would allow significant increase in residential
24 floor area is that it's not allowing for... there's
25 not a significant increase in residential floor

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2 area because the overall zoning envelope allows it.
3 So you're ignoring the landmark piece. Is that
4 essentially what you're saying? Because we look at
5 it and we say well you know the landmark... the
6 landmark status is restricting what you could
7 actually build over here and therefore potentially
8 there is an increase in residential floor area
9 which then gets us to the applicant's response to
10 point number two which is a compelling response
11 which is no there is no increase in floor area
12 because we can still build it. But you're saying
13 that you're not concerned about the fact that this
14 is landmarked and therefore there are legal
15 limitations on how much floor area can be built,
16 you're ignoring that piece which is your right, I'm
17 just trying to understand the argument, and then
18 you're just focusing on the zoning envelope itself.

19 EDITH HSU-CHEN: Historic buildings can
20 pose physical constraints and challenges for
21 development of the overall lot. I mean of course we
22 want to respect the historic building and generally
23 don't see building on top, new building on top of
24 the historic building, that kind of thing. Those
25 are, those are, an example of the limitation that

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2 can be on a zoning lot that has a historic
3 building.

4 COUNCIL MEMBER GREENFIELD: Well to be
5 clear Director once again because we, we've, we
6 sort of have, really dove into the weeds over here
7 for those folks who are watching at home this
8 project that is being proposed by the applicant
9 could not be done as of right. Right? It is in
10 fact, the project as proposed requires the special
11 permit approval, right?

12 EDITH HSU-CHEN: That, that's correct.
13 The project...

14 COUNCIL MEMBER GREENFIELD: So there are
15 alternatives...

16 EDITH HSU-CHEN: ...as proposed...

17 COUNCIL MEMBER GREENFIELD: That's
18 right, as proposed, exactly. There are alternatives
19 that they could do as of right but this project is
20 not as of right and that's why we're discussing it.

21 EDITH HSU-CHEN: I think it's worth
22 stressing that the project they're proposing is
23 actually more responsive to the historic character
24 of the block and the neighboring buildings. This is
25 the Ladies' Mile historic district so for example

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2 they're asking to be able to line up the street
3 wall at the front of the building with its
4 neighbors and they're also asking for a rear yard
5 that is you know that is larger than most rear
6 yards in the area. The 74-711 does allow for bulk
7 modifications and in this case the applicant is
8 asking for bulk modifications that we think
9 enhance, and respect, and defer to the historic
10 district.

11 COUNCIL MEMBER GREENFIELD: Okay

12 Director that's a fair argument. So just to clarify
13 your argument what you're saying is that there is a
14 public policy reason why we would want them to get
15 this special permit as opposed to doing it as of
16 right and quite frankly that's because it would be
17 more in keeping with the character of the
18 neighborhood so we have an incentive for doing that
19 as well.

20 EDITH HSU-CHEN: Yes.

21 COUNCIL MEMBER GREENFIELD: That's your
22 point. But to my bigger issue your general, your
23 general contention is that if the overall envelope
24 allows for an FAR even though it's not usable FAR
25 from a legal perspective right in the case of where

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2 it would be landmarked the CPC, CPC, City Planning..
3 Department of City Planning's position is that that
4 still would not be an increase in the residential
5 floor area, is that correct?

6 EDITH HSU-CHEN: That's correct.

7 COUNCIL MEMBER GREENFIELD: Okay, so I
8 think this is good because I think we've now sort
9 of have pinpointed the disagreement perhaps that
10 we, that we have with, with the Department of City
11 Planning which is we're looking at a little bit
12 more nuanced and we're not convinced it was
13 absolutely clear on that perspective. But I would
14 point out that even based on our questioning the
15 applicant does have a response to the second point
16 which is we can still build the same residential
17 FAR and I think that's sort of the fair argument
18 that they're making. I'm simply trying to sort of
19 set the parameters because I think because this is
20 a very complicated issue, quite frankly the nuances
21 sort of got lost in the public discussion in the
22 media and I think there's a value in just sort of
23 everyone understanding what exactly it is that for
24 lack of a better term that we're fighting about. So

25

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2 I thank you for that and I appreciate the clarity.

3 Thank you very much.

4 EDITH HSU-CHEN: Thank you.

5 CHAIRPERSON RICHARDS: Thank you. Any
6 other questions? Any of my other colleagues. Well
7 thank you so much for your... Oh...

8 COUNCIL MEMBER TORRES: Sorry about that
9 Donovan.

10 CHAIRPERSON RICHARDS: ...Council Member
11 Richie Torres.

12 COUNCIL MEMBER TORRES: Thank you. Thank
13 you. So I have no subtle views on the issue and I'm
14 inclined to be deferential to my colleague but I do
15 want to ask... I was struck by your exchange with
16 Council Member Johnson. If I heard correctly I
17 think you indicated that if CPC makes a
18 determination that MIH is out of scope the
19 council's required by the charter to defer to that
20 interpretation, defer to that determination? Is
21 that...

22 EDITH HSU-CHEN: Yes, that is a very
23 standard practice. In fact, when city council
24 proposes modifications to an application after it's
25 been approved at the city planning commission of

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2 course it comes to city council the, the question
3 is kicked back to the city planning commission is
4 our modification... is city council's proposed
5 modifications within scope. And we answer that
6 question and assuming the answer is yes then City
7 Council proceeds to vote on that modification.

8 COUNCIL MEMBER TORRES: And
9 hypothetically speaking if your determination is
10 based on a misinterpretation of the law what
11 happens then? Because I imagine the charter did not
12 imagine the CPC as an infallible oracle, right,
13 you're capable of error so what happens when you
14 misread the law?

15 EDITH HSU-CHEN: Well the determination
16 is made by our very, very capable general counsel
17 in the counsel's office. And we do this in
18 consultation often with the city council's counsel
19 division so I cannot think of an instance in which
20 there was a misinterpretation of the law. There
21 many, many, many smart minds...

22 COUNCIL MEMBER TORRES: You can't
23 imagine an instance in which CPC can misinterpret
24 the law? That's a bold statement.

25

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2 EDITH HSU-CHEN: See we, we just adopted
3 the law and city planning, HPD, other agencies and
4 administration, and city council, we all worked
5 very hard to fashion this law that we think and we,
6 that we know is the most aggressive and most
7 ambitious in the nation. So I, it's a very fresh
8 law. I don't think we would have so soon
9 misinterpreted a law that we all worked so hard on
10 and for which there is a very clear administrative
11 record of our intent.

12 COUNCIL MEMBER TORRES: And I'm not
13 going to pretend that I understand every nuance as
14 well as David. But my understanding of your
15 position is that the standard for applying MIH, an
16 increase in residential FAR, significant increase
17 in residential...

18 EDITH HSU-CHEN: A significant increase...

19 COUNCIL MEMBER TORRES: Actually I'm
20 sorry increase in permitted FAR.

21 EDITH HSU-CHEN: That's right.

22 COUNCIL MEMBER TORRES: That's...

23 EDITH HSU-CHEN: Thank you. Yes.

24 COUNCIL MEMBER TORRES: Okay now I guess
25 when approaching interpretation, I think of the

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2 rule Occam's Razor that the simplest explanation,
3 the simplest interpretation is the best. And it
4 would seem to me the simplest thing to do here is
5 to interpret the text as written. But you're not
6 asking me to interpret the text as written. You're
7 asking me to read the word permitted into the text
8 amendment. That violates my rule. Why is that...

9 EDITH HSU-CHEN: I'm sorry... I don't
10 think I understand your question.

11 COUNCIL MEMBER TORRES: Does the word
12 permitted appear in the relevant section of the
13 text amendment that governs special permits?

14 EDITH HSU-CHEN: I apologize. I don't
15 have the text in front of me. But certainly
16 permitted is...

17 COUNCIL MEMBER TORRES: It does not
18 appear.

19 EDITH HSU-CHEN: Okay.

20 COUNCIL MEMBER TORRES: So if I... [cross-
21 talk] interpret the text as written that the word
22 permitted appears nowhere in the relevant section
23 so I effectively have to read that word into the
24 text amendment.

25

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2 EDITH HSU-CHEN: I think we read the
3 word permitted throughout the zoning and throughout
4 interpretations. You know zoning is essentially...

5 COUNCIL MEMBER TORRES: Does, does the
6 phrase...

7 EDITH HSU-CHEN: ...a catalogue of what is
8 permitted.

9 COUNCIL MEMBER TORRES: Does the phrase
10 permitted residential FAR appear elsewhere in the
11 text amendment?

12 EDITH HSU-CHEN: I assume it would.

13 COUNCIL MEMBER TORRES: So if...

14 EDITH HSU-CHEN: So if the permitted,
15 the word special permit, the word allowed, the word
16 permissible... I mean appears I would say thousands...

17 COUNCIL MEMBER TORRES: Right.

18 EDITH HSU-CHEN: ...of times in the
19 zoning. Zoning is essentially a, a, a catalogue, an
20 inventory of very... it's more than that. I shouldn't
21 say that, catalogue, but it is a collection of what
22 is allowed; land use, density, bulk... You know it
23 is, it is a codified set of regulations on what is
24 and is not permitted.

25

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2 COUNCIL MEMBER TORRES: But I guess on
3 the question of intent, what was the intent of the
4 city council? Because ultimately in crafting MIH,
5 if the council had intended permitted residential,
6 an increase in permitted residential FAR to be the
7 standard by which MIH was to be applied why did we
8 not say so explicitly?

9 EDITH HSU-CHEN: It's, it's very...

10 COUNCIL MEMBER TORRES: Like, I'm
11 confused...

12 EDITH HSU-CHEN: ...clear...

13 COUNCIL MEMBER TORRES: ...by that. I'm
14 not a lawyer...

15 EDITH HSU-CHEN: It's very clear to us
16 based on the many statements that have been made
17 and the records and written and otherwise of, of
18 our intent that this is, that MIH is meant to apply
19 to an increase in permitted residential capacity.

20 COUNCIL MEMBER TORRES: So I... it seems
21 to me, and again when I was voting for MIH that I
22 as a legislator, many other legislators intended
23 for determinations about the applicability of MIH
24 to special permits to be made within the formal
25 review process. And part of that formal review

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2 process is the EAS with its two scenarios. And the
3 scenario with the special permit represents a
4 significant increase in residential floor area. So
5 that would, it seems to me interpreting the text
6 based on a part of the formal review process, the
7 EAS, would seem more logical than interpreting it
8 based on scenarios hypothesized outside the EAS.

9 EDITH HSU-CHEN: I do want to point out
10 that the EAS, the scenario presented in the EAS as
11 the as of right option, it's one scenario out of a
12 myriad. It is a reasonable assumption out of many
13 reasonable assumptions that one can make about
14 potential development on the site. I don't think we
15 can rely on a scenario... EAS as a, as a final and
16 definitive crystal ball about what would happen on
17 a site... but you know if, if a, if an approval were
18 not granted.

19 COUNCIL MEMBER TORRES: Yeah, but the
20 EAS is the definitive document. It informs your
21 determinations about whether the special permit
22 should be approved. Why can't it inform your
23 determinations about the applicability of MIH. It's
24 reliable for approvals but it's not reliable for
25 determining the applicability of MIH?

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2 EDITH HSU-CHEN: That's correct. The...
3 [cross-talk] not intended as a tool to determine if
4 MIH is or is not applicable. It is, it is a
5 disclosure document to talk about potential impacts
6 in the variety of categories.

7 COUNCIL MEMBER TORRES: Honestly I
8 actually don't... it's a complicated matter. I'm not
9 clear that there is a clear cut answer. As I said I
10 have no subtle view. I'm inclined to defer to the
11 local council member but I'm convinced the CPC's
12 interpretation is as clear cut as you would lead us
13 to believe. With that said that's the end of my
14 questioning.

15 CHAIRPERSON RICHARDS: Back to Council
16 Member Johnson.

17 COUNCIL MEMBER JOHNSON: Just a couple
18 more quick questions. So why is, why is MIH out of
19 scope for the council? Why is it, why can't if the
20 council wanted to impose MIH guidelines here why
21 does the city planning commission deem that it's
22 out of scope?

23 EDITH HSU-CHEN: I will defer to our
24 counsel for the specifics on MIH applicability..
25 [cross-talk]

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2 COUNCIL MEMBER JOHNSON: Is... is Anita
3 here?

4 EDITH HSU-CHEN: She was here earlier.
5 She had to leave. But MIH is not contemplated as
6 part of this special permit. This special permit
7 allows for bulk and use modifications. Again, the
8 74-711 does not allow increase in FAR. The maximum
9 FAR in the underlying zoning is the maximum FAR.
10 You can ask for changes to tweak some modifications
11 to the shape of the building but you cannot ask for
12 more FAR. Again, the maximum FAR residential here
13 is 10 and you know they could do that as of right.

14 COUNCIL MEMBER JOHNSON: And typically
15 how is a determination made on what's in scope and
16 what's out of scope? It's, It's based on the EAS?

17 EDITH HSU-CHEN: It's based on many
18 things. It's based on, on the text itself, on what
19 is dated in the text in terms of what, you know
20 what potential modifications are being sought. It's
21 based on policy. It's based on practice. It, again
22 I defer to you our general counsel to give you a
23 much more satisfying response on, on scope.

24 COUNCIL MEMBER JOHNSON: So just to
25 clarify has the commission determined that this is

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2 out of scope yet or is this an interpretation at
3 the staff level?

4 EDITH HSU-CHEN: I do not, I'm... I'm not
5 sure if the commission has been asked directly if
6 MIH is within scope. I don't know if they have been
7 asked that particular question. But the question of
8 whether or not MIH applies here, that has been very
9 avidly discussed at the city planning commission.

10 COUNCIL MEMBER JOHNSON: Okay why is an
11 historic preservation a public purpose for the
12 purpose of the zoning resolution?

13 EDITH HSU-CHEN: Historic preservation
14 is absolutely a public purpose... [cross-talk]

15 COUNCIL MEMBER JOHNSON: Okay.

16 EDITH HSU-CHEN: ...and one that we
17 strongly uphold and, and, and we, and we... in fact
18 we have things like this, this special permit to
19 help historic preservation, to help historic
20 districts and historic buildings you know stay in
21 great condition and perpetuity.

22 COUNCIL MEMBER JOHNSON: Thank you. I
23 hope this was fun for you today.

24 EDITH HSU-CHEN: A thrill. Always.

25 COUNCIL MEMBER JOHNSON: Thank you.

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2 EDITH HSU-CHEN: Always, Council Member.

3 COUNCIL MEMBER JOHNSON: Thank you.

4 Thanks Edith.

5 CHAIRPERSON RICHARDS: Thank you. Thank
6 you, thank you for your testimony. And I think
7 today is a great day in one sense because we're
8 debating the merits on pushing for more affordable
9 housing and I don't want that to get lost in
10 particular in the conversation you know. I think
11 that was the reason we pushed so hard and worked so
12 closely with you all to pass mandatory inclusionary
13 housing because we truly do understand that we're
14 in a crisis and we, where we see an opportunity we
15 would love to seize opportunities. So I don't want
16 that to get lost in the conversation today. And
17 obviously there's still a lot more details that
18 need to be flushed out in particular in terms of
19 MIH and, and its practicality in cases in
20 particular like this. So we're very grateful for
21 you coming out and we look forward to continuing to
22 work with the commission and city planning as we
23 move forward. And just want to remind you that we
24 look forward to the conversation follow-up after
25 this hearing.

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2 EDITH HSU-CHEN: Yes, indeed. Thank you.

3 CHAIRPERSON RICHARDS: Thanks.

4 EDITH HSU-CHEN: Thank you Chair

5 Donovan. Thank you Chair Greenfield. And Council

6 Member Johnson, thank you.

7 CHAIRPERSON RICHARDS: Alrighty so we're
8 going to call the first panel; Jim Cross Manhattan
9 Borough President Gale Brewer's Office, Eric Edward
10 Stern Manhattan CB5, Matt Gornick Urban Justice
11 Center, John Murry CB5, Layla Law CB5. Okay you may
12 begin. Just state your name for the record and
13 which organization you're representing and we're
14 going to have a two minute time limit on
15 testimonies so we have 25 people to get through.
16 Okay thank you. You may begin.

17 JIM CROSS: Good morning Chair Richards
18 and members of the Subcommittee on Zoning and
19 Franchises. My name is Jim Cross and I'm here
20 representing Manhattan Borough President Gale
21 Brewer. I'm here to reiterate the borough
22 president's strongly held belief that the Adorama
23 special permit for the development at 42 West 18th
24 Street in the Ladies' Mile historic district should
25 trigger the requirements of the mandatory

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2 inclusionary housing program or MIH. Our office was
3 the first and only borough president's office to
4 recommend approval of mandatory inclusionary
5 housing. And that was in large part because of its
6 application to special permits. Only two Manhattan
7 neighborhoods are likely to see neighborhood
8 rezonings that will trigger MIH; East Harlem and
9 Inwood. However, since the borough president took
10 office Manhattan has had 30 applications for special
11 permits, more than double the amount of all the
12 other boroughs combined. That is why we believe
13 that any special permit that allows developers to
14 build significantly more residential units and
15 floor area than they would otherwise be able to
16 should trigger MIH. The special permit process is
17 the only way most neighborhoods in Manhattan will
18 see any affordable housing under the MIH program.
19 Now the Department of City Planning has been clear
20 in conversations with us that they did not intend
21 for MIH to apply to this particular special permit
22 even though it would allow a much bigger and taller
23 building. But it is not clear to us or the
24 community board or to many more organizations and
25 individuals who weighed in on MIH as to why the

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2 text amendment we approved would not apply in this
3 case. The zoning resolution reads that quote where
4 a special permit application would allow a
5 significant increase in residential floor area the
6 city planning commission in establishing the
7 appropriate terms and conditions for the granting
8 of such special permit shall apply such
9 requirements where consistent with the objectives
10 of the mandatory inclusionary housing program. The
11 text does not make reference to an increase in
12 residential FAR as being required for the
13 applicability of MIH nor does it state that an
14 increase in permitted residential floor area is
15 required. The bulk permit sought in this
16 application facilitates more residential floor area
17 and should fall within the requirements. We know...
18 if I could just wrap up, we know and appreciate the
19 city planning commission spent a significant amount
20 of time debating this issue. We appreciate the
21 discussions my office has had with city council
22 land use staff and the consideration you are giving
23 to this question and especially Council Member
24 Johnson's hard work on this as well as the efforts
25 of your staff to take a more proactive approach to

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2 these applications in the future. We want to work
3 with the city council and city planning commission
4 to review future potential applications for
5 residential development in Manhattan to make sure
6 we take every opportunity we can to apply MIH but
7 we think that the language here covers this
8 application. Thank you.

9 CHAIRPERSON RICHARDS: Thank you.

10 ERIC STERN: Chair Richards, Chair
11 Greenfield, Council Member Johnson...

12 CHAIRPERSON RICHARDS: Just hit your
13 mic.

14 ERIC STERN: What?

15 CHAIRPERSON RICHARDS: It'll light up.

16 ERIC STERN: Chair Richards, Council
17 Member Johnson, Chair Greenfield thank you so much
18 for this opportunity. I'm Eric Edward Stern and I
19 chair Manhattan Community Board 5's Land Use
20 Committee. Our board calls on the council to deny
21 this special permit unless MIH is applied. And
22 before I go further I want to state for the record
23 that our board also believes that the bulk waivers
24 sought do have an adverse effect on light and air
25 at this site. The bulk modifications in the Adorama

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2 special permit would permit more than 20 market
3 rate residential units and more than 20,000 square
4 feet of residential floor area to be built that
5 cannot be built today under the existing bulk
6 regulations. The city planning commission failed to
7 apply the zoning resolution properly. ZR section
8 7432 requires the application of MIH when a special
9 permit for either bulk or use modifications allows
10 for a significant increase in pound sign
11 residential floor area. The commission's decision
12 was based not on the words of the zoning resolution
13 but rather on faulty reasoning that some statements
14 as part of the administrative record could override
15 the plain meaning of the zoning text as adopted by
16 the city council. I'll give you an example. If I
17 say I expect not to get coffee later and I choose
18 to get coffee later today has me saying that I
19 expect not to get coffee later today prevented me
20 from getting coffee later today? I'll give you that
21 as some food for thought... [cross-talk]

22 CHAIRPERSON RICHARDS: No, but I could
23 use some coffee right now.

24 ERIC STERN: Because this zoning
25 resolution clearly, has clearly defined guidelines

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2 for requiring that the city shall apply MIH in this
3 instance the council must only approve the special
4 permit if the requirements of MIH applied. The city
5 may choose just how to apply MIH. For instance, the
6 MIH requirements could only be applied, could be
7 applied to the incremental density here. But the
8 city's obligated to apply MIH in some form. And the
9 council's application of MIH here is fully within
10 scope. I want to make this very clear. When we talk
11 about scope we talk about things under
12 environmental review and under the subject matter
13 of this application. And if I can quickly explain
14 this. First, the only difference for an
15 environmental review that the presence of income
16 restrictive, of low or moderate income housing
17 units would have is that there are 20 more children
18 in those low income units then that could trigger
19 an impact on, on, on child care. We don't have that
20 threshold here. The Sherman Plaza, EAS, had 124
21 units of housing and that did not trigger the need
22 for any additional review. So we're having far
23 fewer units here if MIH is applied to the increment
24 there's no argument that environmental review,
25 further environmental review could be triggered.

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2 Second, the zoning resolution says that regardless
3 of whether every option specified in the paragraph
4 is included in the land use application all
5 affordability options available under the
6 provisions of that paragraph explaining the options
7 for MIH shall be part of the subject matter of each
8 such application through the land use review
9 process. The zoning text that the council modified
10 makes explicit that the council is able to apply an
11 MIH option even if that had not previously been
12 contemplated in the application submitted by the
13 applicant or when it appeared before the city
14 planning commission. And third the issue of MIH has
15 been a central part of the subject matter of the
16 earlier hearings at the community board and at the
17 commission. And this is based on a rule that, that
18 the city planning has, the Department of City
19 Planning has on sort of how does one decide whether
20 something was out of the subject matter. So for
21 these reasons it's clear that the council does have
22 the, not only power to apply MIH but that that
23 application of MIH, not a voluntary requirement,
24 not another negotiation but the council is legally
25 able to apply MIH, it is within scope. I welcome

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2 any and all questions. In particular I'd be happy
3 to explain why applying MIH unquestionably is
4 within the council's power at this time. I urge the
5 council to follow the law and to apply MIH. Unless
6 MIH is applied the council must deny this
7 application. Thank you very much for your
8 consideration.

9 CHAIRPERSON RICHARDS: Thank you.

10 MATT GORNICK: My name is Matt Gornick.
11 I'm a legal fellow at the Community Development
12 Project of the Urban Justice Center or CDP. I'm
13 testifying today on behalf of CDP staff attorney
14 Adrian Watkin [sp?]. As many of you know CDP
15 previously weighed in to explain its position that
16 mandatory inclusionary housing must be applied in
17 special permit applications such as these. But the
18 granting of a special permit will have the effect
19 of increasing the residential floor area that can
20 be built on a zoning lot. I've submitted a copy of
21 CDP's letter to the city planning commission on
22 this matter along with her written testimony. On
23 summary after reviewing the, the provisions of the
24 zoning resolution and relevant case law we believe
25 that MIH must be imposed on all special permits

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2 that result in a significant increase in
3 residential floor area. Whether that increase
4 results from the granting of additional floor area
5 ratio or as in this case from a different bulk
6 modification. ZR74-32 states that the commission
7 shall apply the requirements of MIH where a special
8 permit application would allow significant increase
9 in residential floor area. Importantly the zoning
10 text does not limit the commission's duty to impose
11 the requirements of MIH to instances where there is
12 an increase in maximum residential floor area
13 permitted or an increase in available FAR but
14 simply to an increase in residential floor area. It
15 is improper for the commission to limit MIH's
16 application to scenarios where maximum FAR is
17 increased when no such limitation exists within the
18 zoning text itself. It's also improper to look
19 beyond the zoning text to derive its meaning when
20 the text itself is clear enough. The commission is
21 search that because a commission report is the
22 representation to the public and to the city
23 council of the scope of the law the commission does
24 not now have the discretion to act in a way that,
25 that contradicts these representations or that goes

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2 beyond the law's explicit scope. But here the law's
3 explicit scope, the plain text of ZR74-32 simply
4 does not support the interpretation that the
5 commission has put forward. Though the commission
6 sites other sources to describe what the views of
7 certain department officials involved in the MIH
8 approval process may have been ultimately as New
9 York's highest court has explained the clearest
10 indicator of legislative intent is the statutory
11 text. And the starting point in any case of
12 interpretation must always be the language itself
13 giving effects to the plain meaning thereof. The
14 reason for this is clear. To do otherwise risks
15 thwarting the democratic process through which the
16 zoning text was reviewed, edited, and adopted by
17 the city council. This telling that the
18 commission's resolution on the Adorama special
19 permit fails to address either the text of ZR74-32
20 or CDP's extensive discussion of the commission's
21 obligation to follow the law as written. The
22 commission appears to avoid the text of the zoning
23 resolution in order to avoid the inescapable
24 conclusion that the text requires but we urge the
25 council not to do the same. Within this context it

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2 is critical that the city council correct the
3 actions of the commission and impose the MIH
4 program requirements as required by the zoning
5 resolution. As explained more fully in the legal
6 memo submitted with our testimony Section 197DC of
7 the city charter provides that the city council
8 shall take final action on commission decisions
9 subject to council's review. The charter grants the
10 council authority to approve, approve with
11 modifications, or disapprove such commission
12 decisions. Although the city council has not yet
13 faced a decision about whether to modify a special
14 permit application in order to impose the
15 requirements of MIH the charter expressly grants
16 the council the authority to approve with
17 modifications any action of the commission subject
18 to the council's review. And the council has
19 invoked this authority to modify numerous other
20 special permit applications. Although the charter
21 grants the commission the authority to determine
22 that proposed modifications warrant additional
23 environmental or land use review under section 197C
24 the commission rarely invokes this provision. And
25 if it does it doesn't mandate further... and if it

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2 does not mandate further review any recommendations
3 to the commission might make about council proposed
4 changes are purely advisory. ...the imposition of
5 MIH, a modification that would change the
6 affordability levels of a small number of
7 residential units, I'm sorry I'll wrap up in just a
8 moment but not fundamentally alter the number of
9 units or otherwise change the plans at issue seems
10 unlikely to warrant additional review. Moreover,
11 even if the commission were to determine that
12 additional review is warranted the determination
13 would simply return the modified proposal to the
14 process described under charter section 197C. It
15 wouldn't necessarily block council's proposed
16 modifications thus the council should not be
17 deterred from making whatever modifications it
18 believes to be appropriate in this case the
19 imposition of MIH. Thank you so much for this
20 opportunity to testify and I welcome any questions.

21 CHAIRPERSON RICHARDS: Thank you.

22 LAYLA LAW-GISIKO: Thank you Chair
23 Richards. Thank you Council Member Greenfield and
24 Johnson. My name is Layla Law-Gisiko. I'm the Chair
25 of the Landmarks Committee and a member of the Land

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2 Use Committee of Manhattan Community Board 5. I'm a
3 preservationist. I'm a neighborhood resident for 15
4 years of the subject site. Additionally, I am
5 someone who believes that we need to follow the
6 rule of the law. I'm testifying today on the
7 Adorama special permit and believe strongly that
8 the city must apply the affordable housing
9 requirement of MIH to the special permit. I'm a
10 preservationist and I strongly believe that
11 preservation and affordable housing objectives can
12 work side by side. In fact, the environmental
13 assessment statement for the mandatory inclusionary
14 housing text amendment already... this in reference
15 to neighborhoods with historic districts the EAS
16 says according to the market and financial study
17 conducted by BA, BAE these neighborhoods contain
18 some of the strongest housing real estate markets
19 in the city. They also represent some of the least
20 economically diverse neighborhoods in the city
21 according to analysis provided by the DCP reports.
22 MI, MIH promoting economically diverse
23 neighborhoods. In the future with action 74-71
24 permit applications that facilitate a significant
25 increase in housing would be required to comply

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2 with the proposed action creating a requirement for
3 permanently affordable housing where a property
4 owner chooses to pursue modifications under 74-71
5 to create a substantial amount of new housing. In
6 that case we're talking about 20... 23,000 square
7 feet. The MIH requirement would apply. Since these
8 sites are concentrated in the strongest residential
9 real estate markets in the city and MIH development
10 on these sites would likely be feasible even with
11 ongoing commitments to maintain and preserve
12 historic character of the site consistent with the
13 preservation purpose of the special permit. In the
14 event that the MIH requirements would make or
15 project infeasible the BSA special permit created
16 by the proposed action would be available to
17 provide relief. I will wrap up quickly. With
18 extremely limited opportunities and, and up to
19 that... I was quoted and now I'm back to my own
20 testimony. With extremely limited opportunities for
21 low income households to move into Manhattan
22 Community Board 5 and in this sense is striking
23 particular CB5 urges the city council to require
24 the provision of housing units affordable to
25 households with incomes at or below 60 percent of

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2 area median income. Fortunately, the city council
3 in its ability to approve a special permit with
4 modifications is able to apply the requirement of
5 MIH special permit and we call on the city council
6 to apply MIH. Thank you.

7 CHAIRPERSON RICHARDS: Thank you so much
8 for your testimony. Just a quick question and I...
9 borough president's office wants to take a shot at
10 this, Urban Justice Center, who... whomever. Do you
11 think the as of right scenario represents a real
12 assessment of what would be built on the property
13 without approval of the special permit? I know
14 you're... as well, wanted to get your opinion on
15 that.

16 UNIDENTIFIED MALE: Well we, we do and
17 we looked at the as of right scenario but you know
18 we also look... [cross-talk]

19 CHAIRPERSON RICHARDS: That you do
20 believe it represents...

21 UNIDENTIFIED MALE: Yeah but we also...
22 you know we also looked at the significance of the
23 bulk waivers here and you know I believe that for
24 example on lot 15 we're talking about, about nine
25 or 10 additional stories as a result of the bulk

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2 waivers being granted. And again we feel that the
3 language of the text amendment which focuses on...
4 first it, first it refers to Section 74-711 bulk
5 and use modifications. It could have excluded you
6 know provided however that a special permit solely
7 seeking bulk modifications will not come under
8 these requirements. It did not do that. And again
9 it says residential floor area, not permitted
10 residential floor area. So you know we believe it...
11 we believe that these significant bulk
12 modifications do fall within the decks.

13 UNIDENTIFIED MALE: So the EAS that was
14 submitted by the applicant that city planning has
15 sort of taken as valid through this Land Use review
16 process assumes, makes an assumption that the
17 existing commercial floor area will remain
18 commercial floor area. And that assumption that the
19 existing commercial floor area will remain
20 commercial is present in both the as of right
21 scenario and in the width action scenario. And so
22 in that case we have an increment of when you grant
23 the bulk modifications that allow for a taller
24 building and a building that does not conform to
25 the underlying zoning resolutions. Then there is an

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2 increment. There is the more than 20,000 square
3 feet and the more than 20 units of, of residential
4 nature. So the applicant has sought to I think
5 create some confusion here because they've said
6 well there's an alternative as of right scenario
7 where you convert the commercial floor area that
8 exists today to residential and then you compare...
9 and, and you don't grant the bulk modification. So
10 you pack as much residential as you can, to what is
11 allowed under the underlying zoning regulations.
12 But then the width action that they are comparing
13 that to is the width action that assumes that the
14 commercial floor area remains as is. And so it's
15 not an apples to apples comparison. And so the, one
16 of the major points of the environmental review
17 process is to understand the increment. And with
18 the way you do that is that you have to make
19 certain assumptions initially. So what do we think
20 is reasonable. Does the commercial floor area that
21 exists today stay commercial or does it convert.
22 And that assumption needs to be the same when
23 looking at the increment in both of these cases.
24 You can't have an as of right with converted floor
25 area to, from commercial to residential and then

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2 have the width action you know maintain the
3 commercial as is. In fact, the width action needs
4 to contemplate both the bulk modifications and the
5 converted floor area from commercial to
6 residential. And if you do that, if you have an
7 apples to apples comparison, the increment, the
8 20,000 square feet and 20 units remains.

9 CHAIRPERSON RICHARDS: Thank you. Any
10 questions. Council Member Johnson.

11 COUNCIL MEMBER JOHNSON: Jim I have a
12 question for you. And I'm happy to have the
13 community board and the urban justice center weigh
14 in as well. Thank you all for being here. Thank you
15 for your thoughtful testimony and for all the hard
16 work you all have put in for months on this
17 application. I know it's been a significant
18 undertaking and you all have as community board
19 members, volunteers I think done an enormous amount
20 of good work on this so I want to thank you for
21 that. It's been very helpful. Jim you're, you're a
22 lawyer, you worked at the council. You're Gale's...
23 the borough president's general counsel and you
24 lead her land use division and department. So the
25 city planning commission testified immediately

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2 before you and they said it's out of scope. It's
3 out of scope. So in the past when the city planning
4 commission makes a determination that something is
5 out of scope which happens all the time for the
6 council member and the borough president as it
7 moves to the land use process it limits the city
8 council's ability to be able to do certain things.
9 Because the city planning commission and the
10 department have made this determination I have
11 heard of course disagreement from this panel in
12 saying that it shouldn't be ruled out of scope,
13 that it should be in scope and they gave good smart
14 reasons why. What is your suggestion in this
15 instance?

16 JIM CROSS: I think you're right. I mean
17 in terms I... my understanding of the charter both
18 from when I was at the council and currently is
19 that city planning makes the determination of
20 what's in scope. And so we, I would agree with the
21 other people up here that I don't think necessarily
22 that this is, that applying MIH would be out of
23 scope. City Planning did not raise that with us as,
24 as one of their objections to applying MIH that it
25 was out of scope. But if that is the position that

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2 they're taking now it, it could put you in a
3 difficult situation and I, I recognize that.

4 COUNCIL MEMBER JOHNSON: And quickly
5 before we go to Eric just one more question that
6 in, in your time both at the council and in the
7 borough president's office when there have been
8 instances of the borough president or a council
9 member or the council as a whole wanting to push
10 the envelope on something that's been determined
11 out of scope by the city planning commission can
12 you think of instances where that's happened, where
13 the council has challenged the city planning
14 commission on their determination on something, on
15 whether or not something has been in and out of
16 scope?

17 JIM CROSS: I can't. But I, in all
18 fairness, I, at the council my role was legislative
19 not land use. So I wasn't you know as involved in
20 that as I am now.

21 COUNCIL MEMBER JOHNSON: Okay, Eric.

22 ERIC STERN: Sure. I'd like to just set
23 the record straight, that we heard a representative
24 from the Department of City Planning, from the
25 staff say that that member does not believe that

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2 the council's application of MIH would be in scope.
3 The city charter says that the city planning
4 commission shall make the determination of whether
5 the modifications that the council sends are within
6 scope. And there is a process where they... hold a
7 hearing and understand from the public does this
8 require additional environmental review. Has this
9 been discussed throughout the ULERP process. So I
10 would say just for the record, for everyone to
11 understand city planning has not said this is out
12 of scope. There is a staff member and perhaps the
13 staff of city planning do not believe it is within
14 the scope. But that's a determination that the
15 council would have to make based on reasonable you
16 know logic and I think as we've put forward here
17 there's not additional environmental review and
18 it's been certainly part of the subject matter of
19 this application.

20 COUNCIL MEMBER JOHNSON: Are you a
21 lawyer Eric?

22 ERIC STERN: I'm not.

23 COUNCIL MEMBER JOHNSON: I'm not either.
24 Jim is, Layla's not... [cross-talk] gentleman from

25

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2 UJC is. So I just have a legal question which is
3 what I asked the department of city planning.

4 MATT GORNICK: I should add, I'm not a
5 licensed lawyer... just took the bar...

6 COUNCIL MEMBER JOHNSON: That's okay. I
7 know you'll pass. So one of the... as I mentioned
8 when I was asking the Manhattan Director one of
9 sort of the tightropes that we walked in the
10 legislative process from the council side, from the
11 administration side, from the agency side was
12 trying to ensure that we are passing an affordable
13 housing program zoning changes that would hold up
14 in a court of law. I'm not saying they would or
15 wouldn't. I'm not a lawyer. It's far above my
16 ability to judge whether or not it would or would
17 not stand up. But I think part of the, what I sense
18 is part of the fear from the agency and city side
19 is they're potentially afraid that this could be
20 looked at as an exaction and a taking and could
21 open the city up to litigation from an applicant
22 and potentially hurt and imperil the city plan, the
23 city's larger affordable housing plan that passed.
24 Now, again, I'm not an attorney. That seems like a
25 reasonable fear. So again I'm not saying they would

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2 succeed or fail but I think the city being careful
3 about where they make these determinations is I'm
4 not sure if it's the right call or wrong call. But
5 I think they're trying to be careful and part of me
6 understands why they're trying to be careful. Do
7 you all have any response to that?

8 ERIC STERN: I guess I would say I don't
9 think application here would imperil the program
10 but I obviously cannot guarantee that or say that
11 nobody would challenge it. That's part of the
12 situation that we all confront here. I, I think it
13 is you know the applicant is getting a significant,
14 is getting a special permit which allows the use of
15 a significant amount of residential floor area for
16 residential development and therefore the
17 requirement of MIH is therefore part of the
18 permitting process.

19 COUNCIL MEMBER JOHNSON: So what... what...
20 Go ahead Layla.

21 LAYLA LAW-GISIKO: I think that it's
22 also fair to recognize that if indeed applying MIH
23 would bring hardship there are recourses within the
24 law that the applicant can use to actually get out
25 of it. And I think that you know the spirit of the

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2 law is really important here and you know trying to
3 change the, the, the policy because it doesn't suit
4 one particular applicant or because there's a fear
5 that you know it may, that the law may be
6 challenged might be a little dangerous. I think
7 that the law was very carefully crafted and you
8 know we took a look at it very seriously and we do
9 recognize the need for applicants to basically be
10 able to opt out because it would be a hardship. And
11 it isn't built within the law. What is also built
12 within the law is that in historic districts MIH
13 shall apply. And you know as a preservationist I
14 think it's truly important that we get out of this
15 rhetoric that either you have to have historic
16 preservation or you have to have affordable housing
17 but that they can't work together.

18 COUNCIL MEMBER JOHNSON: Do... do...

19 LAYLA LAW-GISIKO: And it is, it is
20 untrue and one... you know and this actually... this
21 narrative very often comes from developers
22 themselves.

23 COUNCIL MEMBER JOHNSON: As Chair of the
24 Landmarks Committee and as someone who has been a...
25 preservationist for a very long time and it's been

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2 great to see your advocacy and work in the
3 community you do believe there is a value to the
4 historic preservation part of this project.

5 LAYLA LAW-GISIKO: Oh yes absolutely.
6 Absolutely. And we did review the application at
7 the Landmarks level and we believe that the
8 preservation program is a great preservation
9 program. We'll... believe that the applicant in
10 exchange for this program is getting a huge you
11 know benefit.

12 COUNCIL MEMBER JOHNSON: So...

13 LAYLA LAW-GISIKO: So we believe that it
14 is fair.

15 COUNCIL MEMBER JOHNSON: So what, what's
16 an acceptable compromise? What's an acceptable
17 compromise given that city planning has made a
18 determination, it's out of scope? Now I know Eric
19 you said there's a process, we could still impose
20 it, then we could seek a vote from the city
21 planning commission on whether or not they accept
22 that modification, if they turn that modification
23 down which I think they would given what one of the
24 senior ranking officials in the agency is saying.
25 Then it comes back to the council. It's deemed out

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2 of scope. Do we pursue litigation or do we come up
3 with some type of compromise that gets some monies
4 towards an affordable housing fund in the
5 community? Is that an acceptable compromise?

6 ERIC STERN: So we think the challenge
7 is what, if there were to be a voluntary commitment
8 from the applicant what mechanism is there to make
9 sure that that, that that applicant holds true to,
10 to their statement. And what does this mean for the
11 next 74-711 application once precedent is set that
12 the city planning commission and the city council
13 are not going to apply MIH to a specific
14 application where the fact pattern does trigger
15 MIH. And I would say that I think to answer your
16 question specifically it's a hard issue and there
17 sort of what happens in this particular case and
18 what is the broader role of the council in
19 reviewing these applications. But I will say that
20 if the council does not seek a modification here to
21 apply MIH and just lets the city planning
22 commission have complete say over whether MIH
23 applies or doesn't apply. What does that mean for,
24 for future zoning map amendments? What does that
25 mean for future special permit applications where

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2 you know applicants like you know show you know
3 environmental review that maybe fudges some
4 numbers. Does the council want to have no role in
5 ever determining whether MIH applies and only
6 tinkering with which option applies or is it
7 important for the council in its charter mandated
8 function as reviewing the city planning commission
9 decision approving a special permit, wanting to
10 have the ability review the entire decision. And I
11 understand the concern in this particular case.
12 And, and it's a... it's a hard case but our... our
13 community board would urge that the modification be
14 sought and that if that modification were deemed
15 out, you know not, not permissible in this
16 particular case, that the application be, be
17 denied. There are bigger issues here on the
18 precedential nature of this case is important
19 enough that it is important for the council to hold
20 their ground here and to ensure that we don't have
21 to have these negotiations every time a 74-711
22 application that gets a bulk modification to permit
23 significantly, allow for significantly more
24 residential floor area goes through. Has to be
25 subject to this costly negotiation.

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2 COUNCIL MEMBER JOHNSON: So lastly. So
3 let's, let's operate under the scenario that we do,
4 do that, that we, the council says we're applying
5 MIH, we send it back to the commission, and let's
6 say the commission accepts it, I don't think they
7 will but let's say they do, then what does the
8 community board want? The community board thinks
9 that we should be operating off of the increment,
10 off of the 23,000 square feet and, and as part of
11 the MIH regulations this project wouldn't be
12 exempted from on-site affordable housing so a
13 proper remedy in that situation would be
14 contributions towards a fund that could then
15 benefit community district number five?

16 ERIC STERN: So, so our, our board did
17 not take up, we believe that MIH has to apply but
18 we believe that 74-7... that the relevant provisional
19 zoning does afford the city the ability to
20 determine how MIH applies in these kind of
21 circumstances. So if the council were to say that,
22 that MIH percent only applies to the increment that
23 is not something the community board would object
24 to.

25

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2 COUNCIL MEMBER JOHNSON: And so you
3 would be okay with it, there being a contribution
4 to an affordable housing fund even though the rules
5 have not been promulgated yet by HPD and city
6 planning and that money, I think the borough
7 president made a big difference in this, big
8 difference on this point during the... [cross-talk]
9 which staying the community board, that was one
10 thing she insisted for her support of the MIH,
11 modified MIH program. That's something that would
12 be acceptable?

13 ERIC STERN: That, that the increment
14 that would be contemplated with that that with,
15 with, by just looking at the increment that if that
16 number is below you know what is... what requires
17 either the on-site or off-site so in this case
18 perhaps could allow for contribution to the fund
19 then a contribution to that fund as a way to, to
20 comply would, would be...

21 COUNCIL MEMBER JOHNSON: But ultimately
22 what matters is how we get there. So even though
23 that's what I'm proposing now I'm proposing it in a
24 way that does not, does not require MIH. You all

25

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2 are saying be... from a presidential way you want MIH
3 applied and then it's okay.

4 ERIC STERN: Well we don't...

5 COUNCIL MEMBER JOHNSON: What if I
6 achieve that without applying MIH?

7 ERIC STERN: So I think...

8 COUNCIL MEMBER JOHNSON: Not good
9 enough.

10 ERIC STERN: So I... I wouldn't... I... we're,
11 we're...

12 LAYLA LAW-GISIKO: Can... can I... can I
13 make a...

14 COUNCIL MEMBER JOHNSON: Go ahead Layla.

15 LAYLA LAW-GISIKO: I think we have to
16 recognize that the reason why we are in this
17 situation is because this applicant filed this
18 application and worked on this application way
19 before MIH was even in the pipelines. And when they
20 came to my committee MIH was not discussed at our
21 own level. And the applicant is not trying to get
22 out of MIH because they're, you know don't like
23 affordable housing or anything. It's just that they
24 worked on the design of their building before this
25 law existed. And because they're the first out of

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2 the gate they end up in the situation where they're
3 like you know how are we going to make it work.
4 What we as a community want to avoid is actually to
5 create a precedent that would then open up a
6 loophole for other developers to say hey but you
7 know they got out of it. So we should get out of
8 it. I think that the, the spirit of the law is a
9 very clear MIH should apply. Now can we make room
10 and accommodation and negotiation with a specific
11 developer given that they're the first ones out of
12 the gate without compromising the whole principal
13 of the law. I think we should make every effort. It
14 has to be you know smart and concerted. I'm not...
15 you know I... I saw the numbers 25 percent of 23,000
16 which would bring to 5,000 square feet which would
17 bring to 5.5 units. Is it really the right numbers?
18 I don't know. We should talk about it. I think you
19 know it's reasonable to approach it this way. But
20 certainly what we want to avoid at all cost is to
21 create a precedent that would create a loophole for
22 other developers who are working on their project
23 and can incorporate the existing law within their
24 design to you know take advantage of it.

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2 COUNCIL MEMBER JOHNSON: Thank you. I
3 don't think you're going to change city planning's
4 mind. I think... I think that they have been very
5 clear on this. They've told me on many, many
6 occasions over the past many months and the chair
7 said it at the commission. He doesn't believe it
8 applies. So what I am trying to do is come up with
9 a responsible way to achieve a good end result on
10 this project in a way that benefits the community,
11 is fair to the applicant, and while at the same
12 time doesn't in any way imperil the work the
13 council did on affordable housing. It's a very
14 difficult tricky balance to strike. It's one that I
15 have been trying to figure out. Your feedback has
16 been helpful and I appreciate the fact that you've
17 spent all morning here and I've worked so hard for
18 so many months on this application and I've been
19 really thoughtful about it. I'm not sure that in
20 the end we're going to fully agree on the right way
21 to achieve it but it doesn't mean that I discount
22 all the work you've done. I'm just trying to handle
23 this in the most responsible way possible.

24 MATT GORNICK: Councilman if I may... Well
25 your desire to compromise here is certainly well

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2 taken. I just want to point out that the city
3 planning commission does not need to approve any
4 modification that this council might make. In fact,
5 with the Madison Square Garden special permit 2013
6 with the East New York rezoning in both instances
7 this council approved with modifications per the
8 New York City charter those modifications are going
9 to go back to the city planning commission at which
10 point if there's no additional environmental or
11 land use review required and in both cases they
12 said no, no additional review is required. At that
13 point they will make mere recommendations to what
14 the council should do but those are not binding.
15 And so even if... even if the, this council inserts
16 MIH into this application and that gets sent to
17 city planning commission, they say no we believe
18 what we already told you. That is a mere
19 recommendation. This, this council is the final
20 arbiter of the law.

21 COUNCIL MEMBER JOHNSON: And I
22 understand that and I would just add that I think
23 that there is typically, not always, but typically
24 there's deference given to the local council member
25 on Land Use related items. I would say that this

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2 question is a much larger question separate and
3 apart from this project. And there's a diversity of
4 opinion I think on this land use committee which
5 I'm not a member of and more broadly in the council
6 and I think you heard some of it today from some of
7 the members who ask questions. And there are
8 members here that may agree or disagree with the
9 community board's opinion on this, the borough
10 president's opinion on this, my opinion on this.
11 And so I just think that we have to take that into
12 consideration that because as has been enunciated
13 this is looked at in some precedent setting way on
14 how these applications are handled I'm sure there's
15 a diversity of opinion within the council on what
16 we should do as it relates to the in scope, out of
17 scope modification, city planning, commission vote,
18 legal questions, all of those things. I can't tell
19 you what the ultimate answer is and where a
20 majority would come out but of course it's a sticky
21 complicated question. Thank you Mr. Chair for being
22 so differential and allowing the panel and myself
23 to, to have a long back and forth on these
24 important questions and thank you for your
25 testimony today.

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2 MATT GORNICK: Thank you Council Member...

3 [cross-talk]

4 CHAIRPERSON RICHARDS: Thank you.

5 Council Member Greenfield.

6 COUNCIL MEMBER GREENFIELD: Yes, thank

7 you very much.

8 CHAIRPERSON RICHARDS: Chair Green...

9 COUNCIL MEMBER GREENFIELD: Thank you

10 Council Member Johnson and once again I want to

11 acknowledge the time and the effort and the

12 diligence that you're putting, you're putting into

13 this and I do think it is certainly my view as the

14 chair of the Land Use Committee that when possible

15 we should try to reach compromise as opposed to

16 drawing lines in the sand. And I appreciate that

17 you're making the good faith effort to do so and

18 wish you luck with that. I do want to just ask Jim

19 a question. First of all, as you, as you probably

20 heard before I have commended you and your office

21 and your boss Borough President Gale Brewer. I

22 appreciate you bringing up this issue. I think it's

23 an important conversation. I think that even if we

24 all don't agree on the exact legal distinctions

25 which as lawyers, in my case a lawyer, your case a

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2 lawyer, and some other folks can debate it we can
3 certainly agree that it's an important conversation
4 to have and the broader issues at play are
5 significant policy issues. And so by invoking the
6 triple no that your office did you brought this
7 here today and so we're grateful for that. I do
8 want to ask you a question just specifically about,
9 about the issue in terms of the, the zoning,
10 specifically the zoning resolution section 74-32
11 that we're all debating here today. I do want to
12 put it somewhat in context which is that when we
13 were passing this right you know I think that once
14 again I love to refer to the folks watching at
15 home, people watching at home would think that oh
16 wow you know they just passed one paragraph and
17 they must have spent a lot of time on this
18 paragraph. It's not what happened in this case.
19 Okay. We passed the mandatory inclusionary housing
20 plan. And we passed the zoning for quality and
21 affordability. Zoning for quality and affordability
22 the text was 496 pages and the mandatory
23 inclusionary housing was another 62 pages. It's
24 over 550 pages of text, right. So just to put it in
25 context folks you know looking at our Talmud debate

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2 we didn't just pass one paragraph, we passed 550
3 pages of text and certainly one could understand
4 how looking back there would be disagreement on
5 what exactly the, the intent was. I certainly agree
6 with the borough president's position that this,
7 this particular section of legislation is not clear
8 and therefore is open to interpretation. Now I want
9 to just discuss that particular point. So I agree
10 with that position. My question though for you is
11 that you heard the contention and I just want to
12 sort of focus on the two issues. I imagine that you
13 probably also agree with me in my disagreement with
14 the Manhattan director that in terms of the city,
15 Department of City Planning's interpretation that
16 it's simply based on the envelope, right, and when
17 the envelope in this case is 10FAR and therefore
18 you're not building up until 10FAR then that
19 wouldn't be an increase in the residential floor
20 area. Would you agree with my position that, that
21 that is not as clear as the Department of City
22 Planning makes it out to be?

23 Well Chair Greenfield our position is
24 that the actual zoning text is clear and..

25 COUNCIL MEMBER GREENFIELD: Okay.

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2 ...that it does not say permitted floor
3 area or residential FAR...

4 COUNCIL MEMBER GREENFIELD: Even better.

5 ...so...

6 COUNCIL MEMBER GREENFIELD: Good.

7 ...but yes, I, I...

8 COUNCIL MEMBER GREENFIELD: So...

9 ...agree with you.

10 COUNCIL MEMBER GREENFIELD: So... Fair
11 enough. So you're saying you're going one step
12 further than me. I'm taking the Department of City
13 Planning I'm sort of the man in the middle which
14 happens on occasion. Department of City Planning
15 says it is clear that this doesn't apply. The
16 Office of the Borough President Gale Brewer saying
17 it's clear that it does apply. Chair Greenfield is
18 somewhere in the middle and it says it's not really
19 clear on whether it applies. We're not... that's
20 fair. Now we have the broad spectrum of views...

21 Exactly.

22 COUNCIL MEMBER GREENFIELD: ...within,
23 within city government. So then I guess the second
24 question would be, and this is something that I
25 wanted to chat about which is as it relates to this

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2 particular fact pattern right, so the applicants
3 are making an argument that says well which, which
4 I think is a fair argument. I'm not saying they're
5 correct but I think it's a fair argument so I want
6 to just explore this argument which... saying wlel
7 even if you were to say that, which is the way I
8 framed it which is point one that the envelope..
9 that the... it's not clear that if the envelope is
10 10FAR that you should necessarily be able to build
11 10FAR. In our particular case they're saying we
12 don't think there's an increase in the residential
13 floor area because as of right we could build the
14 same amount of residential floor area which I'm
15 calling argument number two. So what say you in
16 response to argument number two?

17 We don't agree with that because
18 argument number two gives you your trading
19 commercial space for residential space. The, what
20 the project at hand has the same amount of
21 commercial space that the as of right scenario
22 assumed plus all of this additional residential
23 floor area. So we think that's a significant
24 difference.

25

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2 COUNCIL MEMBER GREENFIELD: I

3 understand.

4 So they're, they're not... As Eric said
5 they're not...

6 COUNCIL MEMBER GREENFIELD: So you're
7 saying even though technically... So what you're
8 saying is even though technically you're, you're
9 not increasing the residential floor area, you are
10 increasing the commercial floor area and ergo,
11 therefore, you must be increasing the residential
12 floor area...

13 You're maintaining the same...

14 COUNCIL MEMBER GREENFIELD: ...in, in, in
15 returns...

16 ...level of...

17 COUNCIL MEMBER GREENFIELD: See what I'm
18 saying Jim about the tamuda argument? This is a
19 great... I'm, I'm really enjoying myself today.

20 [cross-talk]

21 JIM CROSS: I have found this very
22 interesting...

23 COUNCIL MEMBER GREENFIELD: Yes... [cross-
24 talk]

25 JIM CROSS: ...to work on.

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2 COUNCIL MEMBER GREENFIELD: You know so
3 I think, I think that's...

4 JIM CROSS: And we, and Gale appreciates
5 you know all the consideration that the committee
6 is giving to this, that you're giving to this, and
7 that Council Member Johnson...

8 COUNCIL MEMBER GREENFIELD: Yeah, and I
9 want to be clear by the way because I made this
10 point before and I think it's an important point.
11 We're not picking on this applicant. And there is
12 nothing in my view as the chair of the committee
13 this applicant has done incorrectly. And I just
14 want to, I just want to let the record reflect from
15 my perspective it is simply that this applicant is
16 the first applicant where this question is being
17 brought up. And so this applicant has the
18 unfortunate task because it's taking this applicant
19 time and money and energy and effort to answer
20 these questions that anyone else would have to have
21 asked. And from my perspective as chair we're not
22 casting any aspersions or any questions or any
23 negativity on the applicant. It's simply that this
24 applicant is the vehicle for a legal question that
25 we have and a policy question that we're discussing

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2 but in no way shape or form does anyone have any,
3 any claims against the applicant. We think the
4 applicant is doing what they're thinking is correct
5 and we're simply debating that argument. Is that a
6 fair...

7 JIM CROSS: Our office...

8 COUNCIL MEMBER GREENFIELD:

9 ...interpretation as well?

10 JIM CROSS: Our office feels the same
11 way.

12 MATT GORNICK: We agree.

13 COUNCIL MEMBER GREENFIELD: Okay, fair
14 enough. Great. I notice that, did you want to add
15 something to that, to...

16 ERIC STERN: Yeah I think your...

17 COUNCIL MEMBER GREENFIELD: ...Jim's
18 point? Yes.

19 ERIC STERN: I just wanted to clarify
20 that in the original environmental assessment
21 statement there's a scenario, both scenarios that
22 as of right and with action have the commercial
23 floor area maintained as commercial floor area,
24 that floor area...

25 COUNCIL MEMBER GREENFIELD: Yeah.

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2 ERIC STERN: ...which exists today. The
3 only scenario or the only sort of contrast the
4 applicant has suggested would result in no change
5 in residential floor area is one where the as of
6 right scenario converts the existing commercial
7 floor area to residential...

8 COUNCIL MEMBER GREENFIELD: Yeah.

9 ERIC STERN: ...and maintains the existing
10 bulk constraints. And the with action... it doesn't...
11 the, the... and the with... sorry the, and the with
12 action... [cross-talk]

13 COUNCIL MEMBER GREENFIELD: We agree.

14 ERIC STERN: ...maintains the existing
15 commercial space and does get the bulk
16 modification.

17 COUNCIL MEMBER GREENFIELD: We agree. So
18 their argument. And this is where it gets somewhat
19 Talmudic, their argument is we're getting more
20 commercial FAR, we're not getting necessarily more
21 residential FAR this is sort of where you can argue
22 it both ways. So I understand. I certainly
23 understand the point and I, I hear, I hear what
24 you're saying.

25

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2 ERIC STERN: Just, just to, just to
3 clarify one piece though I think the same
4 assumption whether commercial floor area's going to
5 convert to residential or not needs to be the
6 assumption for both the as of right and the with
7 action when you're looking at the increment. You
8 can't change that assumption when you're
9 understanding the increment.

10 COUNCIL MEMBER GREENFIELD: I'm not sure
11 I agree but I hear your point. I think there is a
12 valid argument to make on both sides which is their
13 argument is we're keeping the residential floor
14 area the same and to Jim's point is well if you're
15 increasing the commercial floor area then you're
16 sort of trying to have it both ways. So I think
17 there's, I think there's fair arguments on both
18 sides but I hear, I hear, I certainly hear your
19 perspective. I do just want to point out and this
20 is to Council Member Jonson's point earlier today
21 which is that it is certainly worth reading the
22 arguments that the Urban Justice Center has made in
23 their memo today which are very clearly... which very
24 clearly lays out the ability which certainly
25 obviously we're biased because we're the city

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2 council so we would agree with you. But it very
3 clearly lays out the ability of the city council to
4 both modify special permits and recognizes that
5 that is in fact, I think we would agree there is in
6 fact a legal question but we would argue that we
7 have the ability to modify. But I think everyone
8 agrees and I think this is the key point and I
9 think the Manhattan Director agreed as well that we
10 certainly have the ability to vote down a special
11 permit. And so I want to thank you for sharing that
12 with us. And I think it's an important point. But
13 that doesn't still take away from my perspective
14 which is I think the, the ultimate goal, especially
15 considering that you know what we're discussing is
16 not in a vacuum and it does apply to an individual
17 applicant, our ultimate goal is always to try to
18 fashion a compromise where we think it's relatively
19 fair to all sides but certainly we would have the
20 authority definitely to vote it down and even to
21 modify the permit. And I think you've done a
22 service and you might want to share this with
23 council for the developers to give them the other
24 side and other perspective because reasonable...
25 reasonable parties can agree to disagree over these

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2 issues. And I'm certainly hopeful that we don't get
3 to a point where we have to litigate this and we
4 can hopefully try to resolve with Council Member
5 Johnson's leadership. And I thank you chair for the
6 time.

7 CHAIRPERSON RICHARDS: Thank you Mr.
8 Chairman. Thank you all for your testimony. I just
9 wanted to also just state on the record that the
10 special permit doesn't actually govern the
11 configuration of commercial and residential within
12 the building. So just something that I wanted to
13 note as well. Alright. Thank you all for your
14 testimony.

15 [cross-talk]

16 CHAIRPERSON RICHARDS: Alrighty, next
17 panel. Mike Slattery REBNY, Andrea Goldwyn New York
18 Landmarks Conservancy, you still here? We're just
19 doing pro and opposition. This is a pro panel and
20 then the next would be opposition. 32BJ most likely
21 in the next panel.

22 COUNCIL MEMBER JOHNSON: Mr. Chair if I
23 just, just quickly I, I can stay for this panel and
24 then I have to leave so I apologize for folks. I
25 keep pushing off a meeting that I've been pushing

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2 off for hours. So I'm sorry for leaving after this
3 panel for the folks that are here but if you have
4 testimony that you would like for me to read I'm
5 happy to get it from the committee staff so I can
6 hear what everyone has to say. Thank you Mr. Chair.

7 CHAIRPERSON RICHARDS: Thank you. And
8 thank you for keeping me here all day. Alright you
9 may begin.

10 MIKE SLATTERY: Alright, Mike Slattery,
11 Real Estate Board New York. Just to summarize the
12 testimony given you the written comments but... We
13 believe the city planning commission properly
14 approved the Adorama special permit pursuant to
15 zoning resolution 74-711. REBNY supports the
16 commission's well considered decision and we urge
17 the city council to respect the commission's
18 decision and not deny the special permit or to
19 impose additional conditions that are not supported
20 by the zoning resolution. Some say that the
21 commission was obligated to apply the requirements
22 of the recently enacted MIH program in establishing
23 the terms and conditions and special permit. This
24 objection is based on a misinterpretation of the
25 zoning resolution 74-32 and directly contradicts

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2 the documented intent of MIH and would defeat the
3 purpose of 74-711. The bulk waivers available under
4 74-711 provide owners economic relief and allow an
5 owner to utilize available floor area on a zoning
6 lot which is incumbent and burdened by Landmark
7 properties. If these bulk waivers are only
8 available in combination with AIH, MIH it may not
9 be financially feasible for property owners to
10 commit to a costly preservation program. As a
11 result, property owners will be less inclined to
12 utilize the landmark special permits for
13 residential projects which will result in more
14 commercial projects and as of right development and
15 less restoration and maintenance of historic
16 properties. The text of the MIH is ambiguous. The
17 ambiguity in the section 74-32 primarily results in
18 the fact that nothing in this section which has
19 been spoken about significantly here today to find
20 what the baseline is from which a significant
21 increase in residential floor area is to be
22 measured. What constitutes an increase? Is it
23 permitted or what is... can be built without a
24 special permit. What constitutes significant and
25 not clear from the languages of the statute. But

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2 the answer is clear in the legislative history and
3 throughout the ULERP process. The commission's
4 February 3rd, 2016 report on the legislation makes
5 clear that MIH programs require and not be
6 triggered by a special permit applications like
7 Adorama that do not seek to increase maximum
8 residential FAR allowable zoning area. The... and as
9 the borough president pointed out her testimony she
10 thought they was unclear till but the commission
11 made clear that the program is not expected to be
12 applied in conjunction with special permit
13 applications that would reconfigure residential
14 floor area that is already permitted under zoning
15 without increasing the amount of residential floor
16 area permitted. And because the program should not
17 discourage the type of actions with the battle of
18 the land use rational that may facilitate
19 residential development but not themselves increase
20 residential capacity. You think the commission
21 handled this application properly in applying MIH
22 program to Adorama special permit would defeat the
23 intent of the statute, deny applicants a special
24 permit to which it is entitled and endanger
25 landmark structures throughout the city. REBNY

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2 respectfully urges the city council to affirm the
3 commission's grant of the special permit without
4 any modifications or conditions. Thank you.

5 ANDREA GOLDWYN: Okay. Good day Chair
6 Richards, Chair Greenfield, Council Member Johnson.
7 I'm Andrea Goldwyn speaking on behalf of the New
8 York Landmarks Conservancy. The Conservancy
9 supports city planning's position that mandatory
10 inclusionary housing does not apply to the Adorama
11 proposal as it requests modifications of bulk under
12 section 74-711 but not an increase in FAR. The
13 Landmark's Commission had previously approved an
14 application for the design of a new building at the
15 site that uses setback and bulk modifications so
16 that it would be appropriate within the Ladies'
17 Mile historic district. That design and associated
18 alterations to historic buildings on the lot do not
19 increase FAR. In fact, the approved design does not
20 utilize the full FAR. City planning's explanations
21 of MIH indicate that this policy would not apply to
22 bulk transfers requested under 74-711. A CPC's
23 report for this application states the
24 applicability section of the CPC report for MIH
25 anticipates exactly this type of project. The

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2 program is not expected to be applied in
3 conjunction with special permit applications that
4 would reconfigure residential floor area already
5 permitted under zoning without increasing the
6 amount of residential floor area permitted. The 74-
7 711 special permit was established to incentivize
8 restoration of landmarked properties by offering
9 flexibility and utilizing existing FAR so waivers,
10 so via waivers so that any addition or new
11 construction can be appropriate within a historic
12 district. And then by requiring that owners
13 undertake exemplary restoration work and agree to
14 maintain the buildings at the same level and
15 perpetuity it's been a valuable tool leading to
16 appropriate new buildings in historic districts and
17 to the restoration and maintenance of landmarks.
18 The owners of 42 West 18th Street will be required
19 to complete a first class restoration of two
20 historic buildings, the current and all future
21 owners will be required to maintain the historic
22 structures in sound first class condition under a
23 binding continuing maintenance plan. We share
24 concerns that if MIH is applied in this case it
25 would discourage future 74-711 projects. Creating

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2 affordable housing is a laudable goal. For 50 years
3 the city has recognized the historic preservation
4 is also a laudable goal. It would be unfortunate
5 that developers abandon 74-711 and its preservation
6 purpose because of a new interpretation of MIH
7 requirements. Thank you.

8 CHAIRPERSON RICHARDS: Thank you both
9 for your testimony. And some would say this is a
10 historic day when you both are sitting next to each
11 other in agreement.

12 MIKE SLATTERY: It, it, it's happened
13 once before when... [cross-talk]

14 CHAIRPERSON RICHARDS: We should get a
15 picture of this, David.

16 MIKE SLATTERY: ...kind of does.

17 ANDREA GOLDWYN: It, it has happened..

18 CHAIRPERSON RICHARDS: Has Hell frozen
19 over? Sorry I shouldn't have said that..

20 ANDREA GOLDWYN: No, it's okay.

21 CHAIRPERSON RICHARDS: ...on the record.

22 ANDREA GOLDWYN: We're surprised too.

23 CHAIRPERSON RICHARDS: Yes, a historic
24 day.

25

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2 MIKE SLATTERY: Oh we're taking pictures
3 now.

4 CHAIRPERSON RICHARDS: Hug.

5 ANDREA GOLDWYN: We're good.

6 CHAIRPERSON RICHARDS: Not that close,
7 okay got it. Thank you so much both for your
8 testimony. And I guess we would just have the same
9 question. So why... so just go through your
10 interpretation on why MIH shouldn't apply here
11 again. I think...

12 MIKE SLATTERY: I think it's been clear
13 throughout the process that applications which did
14 not increase the residential floor area were not
15 subject to MIH. This application does not increase
16 residential floor area. There's been... as, when the
17 Council Member Greenfield said... conversations about
18 what substantial increase in residential floor area
19 means. But I think as we try to say oh this is,
20 this is the, the door to get to MIH requirements
21 you know we don't know what substantial increase
22 is. We're not, that's not a defined term in
23 resolution. It's substantial increase over what.
24 And I think what the city was always saying, I
25 think it's been clear, certainly the conversations

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2 we had with them. I... I would hope the conversations
3 that they had with you in explaining 500 pages of
4 text that the application of MIH would only occur
5 when an application was granting more floor area
6 than was currently allowed on the site. This is
7 not...

8 CHAIRPERSON RICHARDS: Residential floor
9 area.

10 MIKE SLATTERY: Residential floor area.
11 And, and I say that you, and good, good
12 clarification because we go from manufacturing to
13 residential. That's an increase in residential
14 capacity even though no increase in floor area. So...

15 CHAIRPERSON RICHARDS: And do you
16 believe the, the goals that they set forward on
17 preservation are worthy and good and on point? Can
18 you just give your opinion on that?

19 ANDREA GOLDWYN: Sure. Absolutely. I...

20 CHAIRPERSON RICHARDS: Is this enough
21 money? Do you want more?

22 ANDREA GOLDWYN: We, you know we, we
23 echo the concerns in the council's own report on
24 landmarks that there should be more and better
25 financial incentives for the owners of landmark

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2 properties. And so we are very concerned when there
3 might be an obstacle to completing that
4 preservation purpose. We think that the goals of
5 74-711 are being met in this project both through
6 the restoration of the historic buildings, the
7 continuing maintenance plan, and by the use of the
8 waivers to put forth a design that the Landmarks
9 Commission could approve for the new building. This
10 has been an effective incentive and we want to see
11 it go forward robustly.

12 CHAIRPERSON RICHARDS: Okay. But you
13 won't in the future choose between affordable
14 housing and preservation? If you had to choose one
15 which one would you choose?

16 ANDREA GOLDWYN: Well I think the
17 Landmarks Conservancy which was founded to preserve
18 and protect historic buildings is primarily
19 concerned with preservation. One of the issues that
20 we were concerned about during the MIH debate and
21 the MIH NCQA debate was would the Landmarks
22 Commission be forced into looking at buildings that
23 were out of scale for historic districts in order
24 to put, to conform with MIH. So it's an issue that
25 comes up over and over again. That being said and I

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2 think it, one of the other panelists mentioned it,
3 affordable housing and preservation are not at odds
4 in any way. There is affordable housing in historic
5 districts across the city. We recently put forward
6 the report on the economic benefits of preservation
7 that talks about diversity, affordable housing, and
8 maintain property values within historic districts.
9 So they can absolutely work together. There's no
10 reason to choose.

11 CHAIRPERSON RICHARDS: Glad, glad..

12 [cross-talk]

13 MIKE SLATTERY: We may disagree..

14 CHAIRPERSON RICHARDS: ...to hear you say
15 that. You get where I was going.

16 MIKE SLATTERY: Yeah... on the 74-711 I
17 know there's been a lot of talk but this, 74-711 is
18 not a benefit. It's basically providing relief
19 because of the encumbrances that historic
20 designation impose on properties so that the intent
21 is that you would still be allowed to use the
22 allowable floor area that is on the zoning lot. But
23 if you are... have to accommodate a landmark property
24 that you were given relief from zoning restrictions
25 in order to fully develop your property. So it's

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2 not a benefit. It's basically a relief that's
3 granted as to the zoning resolution.

4 CHAIRPERSON RICHARDS: Still up for
5 debate but, but definitely. Chair Greenfield do you
6 have any...

7 COUNCIL MEMBER GREENFIELD: I mean it's
8 not completely a relief because there is that
9 requirement obviously that the property owner at
10 the very least maintain and in many cases make
11 improvements on...

12 MIKE SLATTERY: Not free relief..

13 CHAIRPERSON RICHARDS: ...to be fair
14 right, right...

15 MIKE SLATTERY: It's not free relief.

16 CHAIRPERSON RICHARDS: What, yes.

17 MIKE SLATTERY: Not free relief.

18 CHAIRPERSON RICHARDS: Okay, so I just
19 want to clarify.

20 MIKE SLATTERY: yeah, yeah, yeah. But I,
21 I, only because I know it's been talked about in
22 some of the testimony that this is a benefit that's
23 being granted to the property owner and in exchange
24 for that benefit we should be imposing affordable
25

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2 housing. I just want to make that clear that's not
3 the case.

4 COUNCIL MEMBER GREENFIELD: That's a
5 fair perspective but I think it's also fair to
6 argue that in exchange for preserving and in this
7 particular case improving the landmarks which seems
8 to me to be the argument of the Landmarks
9 Conservation folks which basically is in exchange
10 for that that you are in fact, you are in fact
11 getting this relief. Right so, so it is, there is a
12 policy base... basis and I think that's in fact eh
13 point that the Landmarks Conservancy is making
14 which is that they would like to keep this policy
15 basis intact. I would imagine that the Landmarks
16 Conservancy would probably not support a, an
17 application if there was no improvement or
18 preservation of the underlying landmark right? I
19 think we can all agree on that.

20 ANDREA GOLDWYN: I, I think we would, we
21 would have difficulty with that. I think the
22 Landmarks Commission would have difficulty with
23 that. It wouldn't be a 74-711 at that point.

24 MIKE SLATTERY: And a related part also
25 is that it's not just simply preservation landmark

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2 but in this particular case there's also a, the
3 appropriateness of the building that's being
4 designed so just don't have free latitude to design
5 whatever you like. You have to design within the
6 context of the historic district.

7 COUNCIL MEMBER GREENFIELD: I

8 understand. My only point is that it's not crystal
9 clear and there for that reasonable people which we
10 all are could agree to disagree on the
11 interpretations. And I could certainly understand a
12 world where city planning says it's clear to them
13 and the borough president says it's clear to them.
14 And I could even take the position that neither
15 side is clear to me. That's simply my point in the
16 equation. I think there's room for disagreement.
17 But I thank you for giving us your perspective and
18 certainly I think it's an important prospector for
19 both of your respective sides in terms of the
20 conversation and trying to resolve this issue,
21 thank you.

22 MIKE SLATTERY: Thank you.

23 CHAIRPERSON RICHARDS: Thank you. Thank
24 you. Thank you for your testimony. Alrighty we're
25 going to call the next panel. Monte Saunders 32BJ,

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2 Nancy Goshow, Goshell [phonetic] Manhattan CB5, did
3 I get that right, Samuel Miller CB Manhattan CB5,
4 Clayton Smit CB5. Alrighty everyone's not here
5 we'll call some more individuals. Just to try one
6 more time. Nancy Goshow CB5, Samuel Miller
7 Manhattan CB5, Clayton Smit CB5. Alright, they're
8 not here. Alright, okay. Alrighty we'll go to
9 Marcel Negrete Municipal Art Society, they
10 submitted testimony I believe, Samuel Bagatti
11 Uptown for Bernie. Welcome back. Dan Gasper
12 resident of 32 West 18th, sorry didn't mean to give
13 your address out. Dan Gasper, Dan Gasper okay. Ava
14 Farkas Met Council on Housing. And Mary Crosby
15 Metropolitan Council Housing. It's the last panel.
16 Alrighty you may begin. And just state your name
17 for the record and who you're representing as well.

18 [cross-talk]

19 AVA FARKAS: My name's Ava Farkas, the
20 Executive...

21 CHAIRPERSON RICHARDS: Sorry, Ava.

22 AVA FARKAS: Ava.

23 CHAIRPERSON RICHARDS: I should know it
24 by now, Ava.

25 AVA FARKAS: Ava, yes.

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2 CHAIRPERSON RICHARDS: Ava Farkas.

3 AVA FARKAS: Thanks. Ava Farkas Director
4 of the Metropolitan Council on Housing. We urge the
5 New York City Council to act within its legal
6 authority and amend the zoning application to
7 require mandatory inclusionary housing on the
8 Adorama site with 20 percent of the total 66 units
9 for families earning 40 percent of area median
10 income or 31,000 for a family of three. The council
11 should not accept a voluntary agreement from the
12 developer in lieu of this legally binding
13 requirement. We believe there's no ambiguity. The
14 special permit which would allow for a 65 percent
15 increase in residential units on the site surely
16 constitutes a significant increase in buildable
17 square feet which should trigger MIH. And it's
18 precisely in this kind of hot real estate market
19 that MIH makes the most sense. The focus on
20 rezoning low income communities of color to build
21 luxury housing with affordable units thrown in runs
22 the risk of heating up the market and pricing long
23 term tenants out. In contrast the flat iron area,
24 the Ladies' Mile on the other hand is already a
25 strong market with high rents where additional

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2 development will not cause displacement and where
3 market prices are high enough to offset affordable
4 units under MIH. The spirit of MIH is to promote
5 the creation and preservation of housing with
6 varied incomes and redeveloping neighborhoods and
7 to enhance neighborhood economic diversity and thus
8 to promote the general welfare. Yet it seems in the
9 city's estimation only low income, only low income
10 communities of color need more quote unquote
11 diversity, not areas such as flat iron which also
12 suffer from stark economic and demographic
13 homogeneity. Whites comprise 74 percent of the
14 population in the census tract. The median income
15 is over \$110,000. Only two percent of the
16 population is below the poverty rate. Met Council
17 believes that the maximum amount and deepest
18 affordability should apply to this project. We
19 demand that all 66 units adhere to the MIH so that
20 the project will supply 13 to 19 affordable units.
21 The city should at minimum apply to 20 percent at
22 40 AMI option. This case will set a precedent. What
23 is decided here will impact the legitimacy of the
24 entire MIH plan. If the city council is serious
25 about using this policy to create new affordable

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2 housing it should assert its authority to do so
3 even where the administration has abnegated its
4 responsibility. There is no better place to start
5 than right here with a luxury condo development
6 built on a piece of Manhattan's prime real estate.
7 Thank you.

8 CHAIRPERSON RICHARDS: Thank you. You
9 may begin.

10 DAN GASPER: Sure. And I'm not here to
11 talk about MIH, one of the few, my name is Dan
12 Gaspar and I'm a resident and unit owner at 32 West
13 18th Street which is a condominium property
14 directly impacted by the proposed development at 42
15 West 18th Street. I'm here representing myself and
16 the other unit owners of my building. The city
17 planning commission issued a decision advising that
18 the special permits at issue were appropriate and I
19 strongly disagree. In the months leading up to the
20 CB... CPC decision Community Board 5 adopted a
21 resolution opposing the special permits for this
22 project. While a lot of attention was paid to CB5's
23 focus on MIH it seems much less attention was
24 afforded to their finding that the waiver of rear
25 yard requirements would result in a negative impact

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2 to adjacent buildings. Similarly, Manhattan Borough
3 President also issued an unfavorable recommendation
4 citing that the heights of the proposed development
5 would decrease light and air to 32 West 18th
6 Street. I had previously submitted testimony to the
7 CBC highlighting my concerns and those of the rest
8 of my condominium. In its written decision the CBC
9 kindly acknowledged each of our concerns and then
10 summarily dismissed each of them. I submit that
11 they dismiss these concerns without any further
12 investigation and more importantly without regards
13 to the applicable zoning law. Because my time is
14 limited I'll quickly address the CPC's findings
15 with regard to our concerns which are essentially
16 three short points. First, we had objected to the
17 developer's argument that Section 33-281 of the
18 zoning resolution permits them to build a three
19 story, 30-foot-high retail space in the through
20 lot. As we pointed out in our letter the stated
21 section does not apply to mixed use building and
22 that by right, as of right, the through lot
23 building should be limited to two stories or 23
24 feet. I live on the second floor of my condominium
25 with my wife and two children and the third story

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2 of this building and the through lot would have the
3 effect of boxing us in and eliminating all natural
4 light from our bedroom windows. I should point out
5 that this is, this is a debate as to what is as of
6 right, this is not something that they're applying
7 for a special permit waiver on. Second, and I'll
8 get back to the permit waivers here. We had
9 objected to the developer's proposal to reduce the
10 rear yard from 60 feet to 50 feet. We pointed out
11 that our building and the building directly behind
12 us on 17th Street already have a non-conforming
13 rear yard, rear yard of about 15 feet. This limited
14 rear yard already results in significantly reduced
15 access to light and air. Reducing the adjacent yard
16 by an incremental 10 feet further, further than
17 what is allowed by code would significantly further
18 impact our access to light and air. CPC's
19 conclusion inexplicably was that the proposal of 50
20 feet is bigger than the current non-conforming rear
21 yard in our lot. This seems to me to be a case of
22 two wrongs not making a right. They are using an
23 existing state of non-compliance as precedent to
24 justify creating a new increased state of non-
25 compliance. Third, the developers requested height

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2 and setback waivers would allow the northern tower
3 facing 18th Street just west of our building to
4 rise above 60-foot maximum building height
5 applicable to narrow lots and would allow the tower
6 facing 18th street... 18th Street to rise 3 to 170
7 feet. Our building has spent considerable expense
8 to develop and outfit a roof deck that is used by
9 the residents. With the waiver the proposed tower
10 on 18th street would extend about 21 feet above our
11 roof deck blocking views and sunlight. The proposed
12 tower will have a significant adverse impact on all
13 residents who regularly take advantage of this
14 important common space and I should note that this
15 is the only common space given the existing lack of
16 a rear yard. Note that the as of right 60-foot
17 height of the tower and even a reasonable waiver to
18 extend beyond that would have minimal impact on our
19 residences but the proposed waiver of an additional
20 110 feet which is almost triple the amount that's
21 allowed is excessive and creates a significant
22 adverse impact. I'll close here. As I understand it
23 the waivers under 74-711 is that they shall have
24 minimal adverse effects for access to light and
25 air. Had the CPC paid any attention to the concerns

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2 raised by me and other members of our building as
3 well as by CB5 and the Manhattan Borough President
4 they would understand that the impact of these bulk
5 waivers is in fact substantial, far greater than
6 the minimal impact threshold. And so I humbly
7 request that the special permit waivers be
8 rejected.

9 CHAIRPERSON RICHARDS: Thank you.

10 MONTE SAUNDERS: Good afternoon. My name
11 is Monte Saunders. I've been working as a porter in
12 midtown for the past 15 years. I'm here testifying
13 on behalf of my union SEIU 32BJ. It's the largest
14 property service union in the nation. We work to
15 raise industry standards for building service
16 workers in schools and commercial residential
17 buildings across the city. We know that the city
18 has an affordable housing crisis and we believe
19 that new developments can benefit our communities
20 only if they are developed by responsible actors
21 that provide both affordable housing and good jobs.
22 This is why I'm here today speaking in opposition
23 to the proposed development on 42 West 18th Street.
24 The applicants have not made an adequate commitment
25 to creating building service jobs on the site.

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2 Workers in the city need jobs that provide family
3 sustaining wage benefits. New residential
4 developments can be a source of these good
5 permanent... Unfortunately, Acuity Capital Partners
6 has not yet made that commitment. Even with good
7 jobs it has become increasingly difficult for
8 service workers to live in New York as the cost of
9 housing has risen. For this reason, 32BJ has fought
10 hard to ensure that new residential housing in New
11 York City be affordable to working people. Without
12 mandatory inclusionary housing the affordable
13 housing commitment at this site is unclear to us
14 and this raises concerns. In addition to this we
15 have concerns about the track record of the
16 applicant. One of the entities through which they
17 do business... corporation own five buildings on the
18 public advocates landlords watch list. Also an
19 agent affiliated with them Noam Corporation Solomon
20 Gottlieb ranked 37 out of 100 on the public
21 advocate's list of New York City's worst landlords.
22 32BJ wants to see responsible development in the
23 city and we don't believe that this project meets
24 the standard for the community. I urge you to vote
25 no on this project. Thank you.

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2 CHAIRPERSON RICHARDS: Thank you.

3 SAMUEL BUGATTI: I'm Samuel Bugatti. I'm
4 here speaking for Uptown for Bernie and Northern
5 Manhattan is Not for Sale. And I'm happy to see
6 apparently I have greater stamina than six out of
7 seven members of the Zoning Subcommittee. Two
8 months ago I came to this chamber in order to
9 testify against a proposal to up-zone and apply MIH
10 to a single lot on Sherman Avenue in Inwood. I
11 agree that the Sherman up-zoning would represent a
12 misuse of MIH. In wealthier parts of the city with
13 high prevailing rates of rent and few to no rent
14 stabilized units MIH could help to bring middle
15 income housing to places where it does not
16 otherwise exist. On the other hand, in working
17 class areas such as Inwood with many rent
18 stabilized units, high density projects under MIH
19 would mainly cause gentrification and displacement.
20 For these reasons I believe it was a mistake for
21 some in the media to speak of the Sherman Proposal
22 in Inwood as the test case for MIH rather it was
23 always a misguided and misdirected application of
24 the new law. More properly this proposal, Adorama
25 under consideration today is the true test case for

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2 MIH. This is precisely the type of area and type of
3 development that ought to be harnessed to the
4 production of middle income housing stock in places
5 where it is currently unavailable. MIH requirements
6 at the very least if not more ought to be applied
7 to this proposal if the policy is to maintain any
8 potential to make New York more affordable and if
9 MIH is to maintain any modicum of public support or
10 credibility rather than be regarded as merely a
11 vehicle for the gentrification of working class New
12 York. Thank you.

13 CHAIRPERSON RICHARDS: Thank you. Thank
14 you. Question for you Ava. So just go back into
15 your rational. So I know we just went through this
16 big issue in Inwood in which obviously there was
17 community pressure to strike down mandatory
18 inclusionary housing. Some would say that this sort
19 of could have set a precedent for others now to
20 fight against having MIH applicable across the
21 board in other areas as well. So can you just give
22 me a little bit of your rational on why MIH should
23 apply here and why didn't it apply in Inwood?

24 AVA FARKAS: Well it wasn't a question
25 of whether MIH didn't legally apply in Inwood. I

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2 mean it did. It would have applied, but the
3 question there was whether the community thought
4 the project overall was going to be a benefit and a
5 help to the community and people including our
6 organization, our members, and the coalition didn't
7 believe that the project was going to help in the
8 production of affordable housing. We felt that a
9 building that was going to be majority luxury
10 housing was going to have the effect as Sam
11 mentioned of gentrifying the community and causing
12 rents to rise and that the affordable housing..

13 CHAIRPERSON RICHARDS: But they could..
14 But they could build as of right which is similar
15 to what..

16 AVA FARKAS: They could have... [cross-
17 talk] Yeah.

18 CHAIRPERSON RICHARDS: Right.

19 AVA FARKAS: I mean they can..

20 CHAIRPERSON RICHARDS: Okay.

21 AVA FARKAS: ...do that. They've had the
22 right to do that since they purchased the property
23 in 2008. They spent a lot of money on it. Clear
24 they.. they want to make a return on their
25 investment and the best way to do that was to get

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2 additional you know floor area for the building. So
3 you know there, there is a determination by the
4 community that it wasn't really affordable to the
5 community and it wasn't going to be a project that
6 was going to benefit the community. We never argued
7 that MIH didn't technically apply. Here this is an
8 area of the city where MIH actually makes a lot
9 more sense where the, the residential, the real
10 estate market is strong, where incomes... the median
11 income in Inwood is \$37,000 for a family. The
12 median income in this area is \$110,000 for a
13 family. So building housing units at 40 percent of
14 AMI is a totally different thing in this area of
15 Manhattan that we're talking about today. And it's
16 an area where without a policy like MIH there's
17 going to be no production of affordable housing. So
18 I think there's a totally different... it's like
19 apples to oranges. And I think if the mayor is
20 sincere in his you know quest for affordable
21 housing and he expressed such disapproval at the
22 council's decision up in Inwood then he should be
23 pushing, the administration should be doing
24 everything they can do to get affordable housing to
25 be built here in this case. And it seems that

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2 really MIH is being applied where it benefits
3 developers not where it benefits the community.

4 CHAIRPERSON RICHARDS: Okay. You're
5 going to take a shot at that too sir?

6 SAMUEL: Yeah, well I agree completely
7 with Ava and we've worked together you know on this
8 issue in Inwood. I'm a resident of Inwood. In
9 Inwood the question was not do we want MIH or not.
10 The question was do we up-zone to allow more than
11 twice as large a building than would have been
12 possible as of right. And MIH was sort of tacked on
13 as a justification for doing that, that up-zoning
14 which I can tell you basically nobody in Northern
15 Manhattan supported. It was an overwhelmingly
16 working class area. The more market rate housing
17 that is built there the more it is going to
18 undermine and, and destroy the rent stabilized
19 housing in that area. This is a completely
20 different situation in the Flat Iron district. And
21 from my point of view and I think from most working
22 class voters point of view this is the ideal place
23 where MIH is supposed to happen. It's a place where
24 there is practically no rent stabilized or rent
25 controlled housing. It's an expensive area and it's

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2 an area where so called affordable housing under
3 MIH standards would be a real addition. It would be
4 bringing affordable housing to places where it
5 doesn't currently exist and where it would not have
6 the backlash effect of gentrification and rising
7 rents in, in the neighborhood. So I'm, I'm not
8 taking a position you know for or against MIH.
9 That's not what I'm trying to say. I'm saying if
10 MIH is going to succeed as a law and have public
11 support this is the type of place where it needs to
12 happen. And if it doesn't happen here this, this is
13 the test case. If it doesn't happen here I don't
14 think it's going to succeed anywhere.

15 CHAIRPERSON RICHARDS: Thank you all for
16 your testimony today and thank you for coming out
17 to the hearing. Just want to thank the applicants,
18 thank everybody who came out whether a pro or in
19 opposition of the panel. You know we, we're
20 appreciative of you... Oh, we have one more person?
21 Okay. Alrighty, come on up before we close out.

22 MARY: Okay good afternoon. My name is
23 Mary Crosby and I am a volunteer with Metropolitan
24 Council on Housing. I also, for many years, close
25 to 40 years, lived in Chelsea. I'm very familiar

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2 with the area. I was one of the rent stabilized
3 people, middle class has been moved out of Chelsea.
4 And now Chelsea doesn't have so much middle class.
5 It has ultra wealthy people and Hollywood
6 celebrities and so forth. So I'm very much in favor
7 of the mandatory inclusionary housing being applied
8 to this project, this permit. What I heard today in
9 the testimony was that the increase in units would
10 be 44 units and it would be increased to 66 units.
11 That's a substantial increase. And I would also
12 like to comment on the proposed compromise which
13 would be some money being given to affordable
14 housing fund. And my question would be, I would
15 just put this out, I'm not a financial expert but
16 to me a dollar put into a fund today by the time
17 that fund actually gets developed and used for
18 something, we don't know what or when or how it's
19 not going to be worth a dollar anymore. So from the
20 point of view of people like me who are... I'm a
21 retired person. I can't afford to live in Chelsea
22 anymore. I probably would not even be able to apply
23 for the so called affordable units that might be
24 put into this project. So I'm just asking, I
25 recognize the difficulty, I'm asking the council to

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2 use their authority. I'm appalled that the, some
3 people want to undermine the authority of the
4 council to use your, your powers to really review
5 this and apply the right policy and apply the
6 mandatory inclusionary housing, the zoning law as
7 it was intended fairly in all neighborhoods. Not
8 just where it's profitable for the developer. I
9 appreciate your attention and thank you for
10 allowing me to speak.

11 CHAIRPERSON RICHARDS: Thank you Ms.
12 Crosby. Thank you for your testimony. And I just
13 wanted to put out there, there actually is a time
14 limit even though we're still fleshing out and
15 we'll be working with HPD to flesh out the time
16 limits on the affordable housing fund. There will
17 actually be a timeline in which they have to spend
18 the money within community board or within the
19 borough. So with that being said anyone else here
20 wishing to testify? We're going to go... You...
21 statement before I close out? Alright, and then
22 I'll close out and then we're, we're finished.

23 COUNCIL MEMBER GREENFIELD: I just want
24 to note something. Just an observation because I
25 just think once again in the, in our efforts to be

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2 fair to everyone I'm a big supporter of 32BJs, but
3 I think that in the testimony someone mentioned
4 that they do business with an organization that's
5 on the Public Advocate's Landlord Watch List. Just
6 to be clear it doesn't seem like anyone is accusing
7 the developer of being involved or in owning any
8 properties that are on the public advocate's watch
9 list. Can you shake your head if I'm correct or
10 incorrect? So you're not on the public advocate's
11 watch list just to be fair so that the record
12 reflects that. That being said we're certainly fans
13 of 32BJ and good working jobs and would always be
14 happy to have conversations continue between those
15 parties. I just wanted to make sure that the record
16 reflected that. I would have asked the question but
17 to be perfectly honest I got a little hungry so I
18 went outside for a two-minute lunch break so I just
19 wanted to reflect that. But I, I am grateful to
20 everyone especially to the outstanding Land Use
21 staff and to our fabulous chairman of the zoning
22 subcommittee for taking the entire day to analyze
23 this issue and to work hard to try to sort through
24 it and also to the Manhattan Borough President for
25 flagging this issue for us. And I'm happy to have

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2 spent the time reviewing it. And I'm looking
3 forward to what will hopefully be a amicable
4 agreement between all parties. Thank you.

5 CHAIRPERSON RICHARDS: Thank you Chair
6 Greenfield. And I hope you saved me some hummus. I
7 am definitely starving. But want to thank everyone
8 for coming out and, and once again I think that
9 this is a worthy debate. Listen, our job is to push
10 the envelope and to ensure we are getting as much
11 affordable housing as possible out of the city
12 being that, being the crisis that we're in. But we
13 also... our job is also to think responsibly as well.
14 Think about long term ramifications and to try to
15 compromise which is something we try to really do
16 in this committee in particular. We never make
17 everyone happy. But we strive our best in
18 particular working myself and Chair Greenfield and
19 other committee members in the council. In, in
20 whole we really try to strive to, to bring all
21 parties together to come up with good deals and...
22 not perfect deals but good deals. And just want to
23 stress you are very close to 32BJ. Actually used a
24 parking lot there once that you're going to build
25 on. I think I was actually on my way into an

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2 endorsement meeting actually, 32BJ. Just, just
3 putting that out there. Strike that from the
4 record. But, but it's, but, but actually you know
5 you should be good neighbors and I'll just put that
6 out there as well. With that being said thank you
7 all for coming out. It was a pleasure to hold this
8 hearing on the applicability of mandatory
9 inclusionary housing in this guinea pig case. Thank
10 you all. Thank you all for coming out. With that
11 being said I will now close the public hearing on
12 Land Use item number 433, 438 and we're going to
13 lay this item over until the next regularly
14 scheduled subcommittee meeting. Meeting adjourned.

15 [gavel]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date September 14, 2016