

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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August 18, 2009  
Start: 11:00 am  
Recess: xx:xx am

HELD AT: Council Chambers  
City Hall

B E F O R E:  
TONY AVELLA  
Chairperson

COUNCIL MEMBERS:  
Simcha Felder  
Daniel R. Garodnick  
Eric N. Gioia  
Joel Rivera  
Larry B. Seabrook  
Albert Vann

## A P P E A R A N C E S [CONTINUED]

Jim Leeky  
Owner  
Sullivan Restaurant, LLC.

Steve Wygoda  
Representative  
Spitzer's Corner

Robert Shamlian  
Owner  
Spitzer's Corner

Rita Lee  
Staff member  
Office of Council Member Gerson

David Suarez  
Director and Operations Manager  
Lower East Side Business Improvement District

Susan Stetzer  
District Manager  
Community Board 3, Manhattan

Gail Benjamin  
Director  
Land Use Division

Lynn Kelly  
New York City Economic Development Corporation

Nenna Lynch  
Mayor's Office

Puni Makapu  
Department of City Planning

Dominic Recchia  
Speaking on matter of Coney Island  
New York City Council Member

## A P P E A R A N C E S [CONTINUED]

Ross Moskowitz, Esq.  
Strick and Strick-Levan Law Firm  
Counsel  
RJM/EM

Harry Kendall  
Lead Architect representing RJM/EM  
BKSK Architects

Committee Counsel

Daniel R. Garodnick  
Speaking on RJM/EM special permit  
New York City Council Member

John England  
BKSK Architects

Arthur King  
Resident  
1 East 93<sup>rd</sup> Street

Sara Barton King  
Resident  
1 East 93<sup>rd</sup> Street

Lynn Jowitz  
Resident  
5 East 93<sup>rd</sup> Street

Claire Cindy Lord  
Resident  
1120 5<sup>th</sup> Avenue

Joan Jacobson  
Resident  
1125 5<sup>th</sup> Avenue

Barbara Walder  
Resident  
1 East 93<sup>rd</sup> Street

## A P P E A R A N C E S [CONTINUED]

Letter:

J. G. Fritzsinger

Resident 1 East 93<sup>rd</sup> Street

Letter:

John Stewart

Board President

1120 5<sup>th</sup> Avenue

CHAIRPERSON AVELLA: Good morning everyone. I'd like to call this meeting of the Subcommittee on Zoning and Franchises to order. And I want to thank everybody for showing up, you know, you're almost on time. This is pretty good. Joining me this morning are Council Members Melinda Katz, Larry Seabrook, Simcha Felder, Joel Rivera, Al Vann and we also have Council Members Dominic Recchia and Dan Garodnick. They have issues, items up on the agenda in their Districts.

I'll skip around a little bit. I think we can move the agenda today rather quickly. The first item I'll call is Land Use number 1181, 20095609 TCM, an application by Sullivan Restaurant, LLC to operate an unenclosed sidewalk café located at 230 9<sup>th</sup> Avenue. Call up the applicant.

[Pause]

MR. JIM LEEKY: Testing. It works. My name is Jim Leeky [phonetic] the owner of Sullivan Restaurant, LLC.

CHAIRPERSON AVELLA: I have a letter in front of me that's addressed to Council Speaker Quinn, do you have a copy of that--

1  
2 MR. LEEKY: Yes. Yes I do.

3 CHAIRPERSON AVELLA: Could you read  
4 that into the record?

5 MR. LEEKY: Yes, yes I could. Dear  
6 Council Speaker Quinn: The letter should serve as  
7 our agreement with your District Office and  
8 Community Board 4 that we will commit to the  
9 following. We will have a printed notice posted  
10 on the exterior of the restaurant which states  
11 that 12 tables with 24 seats have been approved  
12 for this sidewalk café. We have outer boundaries  
13 of the sidewalk café marked on the sidewalk as  
14 required by the Department of Consumer Affairs  
15 Sidewalk Café Regulations. If there is anything  
16 else I can assist you with, please feel free to  
17 contact me at the information below.

18 CHAIRPERSON AVELLA: Thank you.  
19 With the receipt of this letter, Speaker Quinn is  
20 in favor of the application. It is within her  
21 District. Are there any comments, questions from  
22 Council Members? From any Council Member? No?  
23 Okay.

24 MR. LEEKY: Okay. Thank you very  
25 much--

CHAIRPERSON AVELLA: Thank you.

MR. LEEKY: Thank you.

CHAIRPERSON AVELLA: I see no one signed up to speak on the public hearing on this item, is that correct? Seeing no one, I will close the public hearing on this particular matter.

MR. LEEKY: Thank you.

CHAIRPERSON AVELLA: And we will go to...

[Pause]

CHAIRPERSON AVELLA: Next item on the agenda is Land Use number 1183, Spitzer's Corner, 20095590 TCM, application by Nyla, N-Y-L-A, Café to operate an unenclosed sidewalk café located at 101 Rivington Street. This lies within Council Member Gerson's District. Is the applicant here?

MR. STEVE WYGODA: Good morning.

My name is Steve Wygoda; I'm the representative for the applicant. And I wish to speak about the fact that we are applying for an unenclosed sidewalk café at this location, 101 Rivington Street. We're applying at the present time is 8

1  
2 tables and 16 seats. This application, this  
3 location was in front of you a couple of years ago  
4 and this is in Council Member Gerson's District.  
5 We have actually met with Council Member Gerson's,  
6 representatives Tammy last week. We have not been  
7 able to meet further with her to discuss the  
8 matter further. I've been awaiting further  
9 communication with her to discuss this further.

10 That being said, this application  
11 was approved for a sidewalk café through a  
12 negotiation with a Council Member a couple of  
13 years ago for 5 tables and 10 seats. Subsequent--  
14 and with a written understanding that was  
15 submitted to the City Council at that time, with  
16 an understanding that, you know, when time comes  
17 for renewal we would approach, we would try and  
18 increase the capacity slightly. That was a verbal  
19 understanding with the Council Member at that  
20 time.

21 Subsequent to obtaining the permit  
22 and the approval and the license, the Department  
23 of Consumer Affairs determined that the sidewalk  
24 was an inch too narrow. It was just under 12 feet  
25 and they revoked the license at that time. We

1  
2 then refiled the application and determined that  
3 the actual sidewalk was less than 12 feet. The  
4 measurement was to be taken from the property  
5 line, not from the projection on the wall. So the  
6 Department of Consumer Affairs has okayed and  
7 approved the application.

8           The seating is in the same area  
9 that it was originally approved back a couple of  
10 years ago. We have a series of photographs that  
11 we can leave here that were taken of the sidewalk,  
12 every hour on the hour to show the number of  
13 people walking along that side of the block from  
14 Rivington Street South to Delancey and it shows  
15 almost no people walking there and for good  
16 reason. And the owner is here. He'll speak about  
17 that as well. There's really not much activity  
18 going south of this location for pedestrians to  
19 walk along it.

20           On Rivington Street there's lots of  
21 pedestrian traffic. Do I have a time limit on how  
22 long I can speak Mr. Chair?

23           [Audience laughing]

24           MR. WYGODA: That's enough?

25           [Off mic]

2 MR. WYGODA: Oh. And I just want  
3 to add a few more salient points and then I'll  
4 wrap it up. I apologize. So Rivington Street,  
5 we're not putting no seating on Rivington Street.  
6 We've agreed to do that. There are other cafes in  
7 the neighborhood, directly across the street,  
8 diagonally across the street and around this area  
9 that have been operating for quite a while.

10 In addition the owner will produce  
11 some letters. He has been trying to be a very  
12 integral part of the community. He employs over  
13 100 people in this location and 3 other locations  
14 that he has. He contributes to--and we have  
15 letters attesting, contributing to schools and  
16 organizations locally to try and support them.  
17 And we really feel that this very minor, and we  
18 know is a privilege, is a very minor addition of  
19 seating on the side street on the south end of the  
20 store, would be an asset to the community in a  
21 sense of just keeping a business going and  
22 allowing this location to survive in some way.  
23 Thank you.

24 MR. ROBERT SHAMLIAN: Well I would  
25 just like to add that we feel that--

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CHAIRPERSON AVELLA: [Interposing]

3

State your name please.

4

MR. SHAMLIAN: I'm sorry. I'm

5

Robert Shamlian and I'm one of the owners of

6

Spitzer's Corner. I would just like to add that

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we think it's a benefit to the community to have

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the sidewalk café and, you know, I'd like to hear

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what the opposition is so I could debate.

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CHAIRPERSON AVELLA: We, for my

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Committee's education, Council Member Gerson is

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opposed to the application. And although he isn't

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here, we're going to have a member of his staff

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give testimony as to why he opposes the

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application. The one question I have is, and I

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heard everything that was said, but having been

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Chair of this Committee for, you know, almost

18

eight years now, it is extremely rare for the

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Department of Consumer Affairs to revoke consent

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after it's been given. We can't get them to do

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enforcement, period. And you acknowledged that

22

Steve. So the fact that they actually came in and

23

revoked a permit for this establishment, I mean I

24

think is very, very telling. I have to tell you

25

'cause I almost--I've never seen this before. So

1  
2 that says to me that something is seriously wrong  
3 with the operation--

4 MR. SHAMLIAN: [Interposing] I can  
5 answer that--

6 CHAIRPERSON AVELLA: --or the  
7 plans. Yeah sure.

8 MR. SHAMLIAN: Basically what I was  
9 told by them was that when we tried to re--to re-  
10 up it to a different amount of seating, so to add  
11 more seats, they came and they did a re-  
12 measurement. And in that re-measurement, they  
13 found that it wasn't to the specs that they had.  
14 However we later proved that there was the room  
15 and we do meet the criteria and if, you know, if  
16 they had known that at that time they would have  
17 never revoked it.

18 MR. WYGODA: Let me just clarify  
19 the issue was 12 foot is a requirement for a  
20 sidewalk café. They went, they measured, they  
21 found it to be less than 12 feet. They  
22 immediately revoked the license. It was on my  
23 drawings, as a result of my drawings. I went back  
24 to them and showed them that the measurements are  
25 legally and technically supposed to go to the

1  
2 property line. The width of a sidewalk is the  
3 property line to the edge of curb. They agreed.  
4 The same people who revoked the original--and that  
5 was the only, sole and only reason for the  
6 revocation, approved it. Same people who revoked  
7 it approved it based on the fact that I showed  
8 them that there was a one and a half inch  
9 projection of stucco on top of the property line  
10 and we were indeed 12 feet, actually a little bit  
11 more than 12 feet. So just to allay your thoughts  
12 about why it's so--it is very rare to revoke.  
13 That was the reason and that was also clarified  
14 and rectified.

15 CHAIRPERSON AVELLA: The only thing  
16 I can say is that based upon the letter that I see  
17 which is dated August 19, 2008, it mentions the  
18 clearance but it says the inaccuracies include but  
19 are not limited to purported compliance with the  
20 clearance requirements. So obviously there were  
21 other issues it doesn't specify in the letter.  
22 But the clearance of the six and a half inches was  
23 just not the sole issue.

24 All right. Any questions from  
25 Committee members? We do have people who are

1  
2 going to give testimony. Okay? Thank you. I'd  
3 like to call up the representative for Council  
4 Member--

5 MR. SHAMLIAN: [Interposing]

6 Actually we'd like to say one more thing if--

7 CHAIRPERSON AVELLA: [Interposing]

8 Sure.

9 MR. SHAMLIAN: --and if it says and  
10 not limited to the clearance, shouldn't it say  
11 what those other things were so we could debate  
12 those rather than having, you know, judging by  
13 that?

14 MR. WYGODA: And--

15 CHAIRPERSON AVELLA: [Interposing]

16 I would agree but I can just--all I can do is read  
17 the letter that I've, you know--

18 MR. WYGODA: [Interposing] Right.

19 CHAIRPERSON AVELLA: --that I have.

20 MR. WYGODA: So--

21 CHAIRPERSON AVELLA: [Interposing]

22 But obviously you know what they are--

23 MR. SHAMLIAN: [Interposing] No I  
24 really don't--

25 CHAIRPERSON AVELLA: --I don't know

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what this is for.

MR. SHAMLIAN: --no, no, that's the whole thing--

CHAIRPERSON AVELLA: --but your--

MR. SHAMLIAN: --I don't.

CHAIRPERSON AVELLA: -- representative should know what those issues are.

MR. WYGODA: [Interposing] Yeah well, yeah the only thing was the clearance issue. And maybe they were referring to the drawings that had other errors on the drawings. But the revocation was simply because it was less than 12 feet.

CHAIRPERSON AVELLA: But that's not what the letter says.

MR. SHAMLIAN: If the letter didn't state specifics I don't know how we can take that to honor it without specifics.

[Off mic]

MR. WYGODA: Yeah, yeah

MR. SHAMLIAN: Sorry.

CHAIRPERSON AVELLA: Go ahead finish what you want to say.

MR. SHAMLIAN: I was going to say

1  
2 if the letter doesn't have specifics and  
3 reference, I don't know how we could judge by this  
4 being--that we don't know--

5 CHAIRPERSON AVELLA: [Interposing]  
6 But again, this is a letter you got. This was a  
7 letter that was received to you.

8 MR. WYGODA: Yeah.

9 CHAIRPERSON AVELLA: Well we can't-  
10 -but this is a letter addressed to the restaurant-  
11 -

12 MR. WYGODA: [Interposing] Right.

13 MR. SHAMLIAN: [Interposing] Right.

14 CHAIRPERSON AVELLA: --I'm just  
15 reading what's in the letter from the City agency.  
16 And, you know, Steve, you self-certified the  
17 application. You, you know, it was all on you--

18 MR. WYGODA: [Interposing] Right.

19 CHAIRPERSON AVELLA: --to present  
20 the right facts.

21 Mr. WYGODA: Right.

22 CHAIRPERSON AVELLA: So I'm just  
23 reading the letter. You should know what is in  
24 it--

25 MR. WYGODA: [Interposing] Well.

1  
2 CHAIRPERSON AVELLA: --you should  
3 know all the issues that are addressed. So you  
4 can't say to me well it's not fair. You had the  
5 opportunity to go back... I'm just saying that the  
6 very fact that DCA revoked the permit, which I've  
7 never seen in seven and a half years, tells me  
8 that there's something seriously wrong--

9 MR. SHAMLIAN: [Interposing] Well.

10 CHAIRPERSON AVELLA: --there was  
11 something seriously wrong.

12 MR. SHAMLIAN: At the time then it  
13 should tell you if they reinstated it and they  
14 okayed it--

15 MR. WYGODA: [Interposing] Yeah.

16 MR. SHAMLIAN: --and there's  
17 something okay then. He's obviously - - -

18 CHAIRPERSON AVELLA: [Interposing]  
19 But then why--but we're here doing the same  
20 process. And there are other issues--

21 MR. SHAMLIAN: [Interposing] Oh  
22 can--

23 CHAIRPERSON AVELLA: --and there  
24 are other issues which the community is going to  
25 bring up.

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MR. WYGODA: Yeah, the--again the explanation that I got from DCA when--at the time of revocation was that the drawings showed a sidewalk that's less than 12 feet. They re-measured it and that was the reason. We refiled it, corrected that issue and I'm just telling you what I know. I'm not trying to say anything else. And they approved the same sidewalk.

CHAIRPERSON AVELLA: Okay. Again, thank you.

MR. WYGODA: Okay.

CHAIRPERSON AVELLA: I'd like to call up the representative from Council Member Gerson's office.

[Pause]

MS. RITA LEE: My name is Rita Lee and I'm on the staff of Council Member Gerson's office.

CHAIRPERSON AVELLA: Press the button. Do you have copies of the statement you're going to give us?

MS. LEE: Is this better? The light's on. Oh. I know I have a little voice for a big lady. I work for Council Member Gerson. I

1  
2 apologize he could not be here this morning. He  
3 had two other Committee meetings that he had to  
4 attend. I just want to say that--

5 CHAIRPERSON AVELLA: [Interposing]  
6 Introduce yourself.

7 MS. LEE: My name is Rita Lee.  
8 Having a sidewalk café is a privilege and an  
9 honor. It's just not haphazardly given to any  
10 restaurant that simply wants to expand their bar  
11 or restaurant. This restaurant, bar, has proven  
12 to be a very bad neighbor. In fact it's in an  
13 overcrowded area. You have letters which I gave  
14 you from two Commanding Officers from the precinct  
15 which said the Precinct Commanders, which is very  
16 rare because I've never really gotten a letter  
17 like that from a Precinct Commander, the  
18 neighborhood is too crowded. There were too many  
19 problems. There's too much traffic, both  
20 pedestrian and vehicular. Alan does definitely  
21 wants to deny this application even though he  
22 tried to work out with them originally, he made an  
23 agreement with the restaurant for the amount of  
24 tables and chairs and the hours that the café  
25 would operate. But that agreement was not upheld

1  
2 and within a year the applicant already changed  
3 it. Alan never said that this would just be good  
4 just for a year He said this was the agreement and  
5 he wanted it forever until another agreement was  
6 made. Aside from the fact that the Community  
7 Board overwhelmingly and wholeheartedly opposes  
8 this café. The New York State Liquor Authority on  
9 four occasions gave violations to this café for  
10 underage drinking. And the penalty which was paid  
11 the other day by the applicant was \$6,000. I am  
12 surprised however that that was the only penalty  
13 by the Liquor Authority but that's what the Liquor  
14 Authority did. There are also many other letters  
15 from organizations and individuals. One woman was  
16 not allowed into the restaurant because she had  
17 two of her children with her and the operator of  
18 the restaurant said after 7:00 o'clock we don't  
19 allow children in the restaurant. I've never  
20 really heard of that. I thought perhaps it was  
21 the State Liquor Authority, an agreement they made  
22 after the violations for underage drinking but it  
23 turned out that that was not the case. The Liquor  
24 Authority never made such an agreement. Alan  
25 really hopes that the Council will deny this

1 application.

2  
3 CHAIRPERSON AVELLA: And for the  
4 record, Council Member Gerson did send the  
5 Committee a letter dated August 17<sup>th</sup> which does  
6 outline his objections and many of the points that  
7 you just went over. Any questions from Committee  
8 members? Seeing none, thank you.

9 MS. LEE: Thank you.

10 CHAIRPERSON AVELLA: I have two  
11 other speakers, one in favor, one in opposition.  
12 I'll take the one in favor, David Suarez.

13 [Off mic]

14 [Pause]

15 MR. DAVID SUAREZ: Good morning  
16 Chairman Avella. My name is David Suarez. I am  
17 the Program Director and Operations Manager of the  
18 Lower East Side Business Improvement District.  
19 And I am going to be reading a prepared statement  
20 from Roberto Ragon [phonetic] who's the Executive  
21 Director of the Lower East Side Business  
22 Improvement District office who is unfortunately  
23 unable to attend this morning.

24 I'm pleased to submit testimony in  
25 support of Robert Shamlan, the owner of Spitzer's

1  
2 Corner, in an effort to establish, maintain and  
3 operate an unenclosed sidewalk café at 101  
4 Rivington Street in Manhattan. Spitzer's Corner  
5 is one of the finer and most popular  
6 establishments on the Lower East Side. While  
7 there is a bar area that serves alcoholic  
8 beverages, many customers come to the  
9 establishment for an enjoyable dining experience.  
10 The operation offers a moderately priced menu for  
11 residents and visitors along with a brunch menu  
12 all personally designed by a three star Michelin  
13 rated chef. In addition the establishment carries  
14 local Lower East Side products as well as  
15 delicacies unavailable anywhere else in the City.

16 Mr. Shamlan lives in the community  
17 with his wife and two children. On numerous  
18 occasions he has been provided generous financial  
19 support to community-based philanthropic projects  
20 and events to help beautify and promote the  
21 neighborhood. One way in which Mr. Shamlan has  
22 demonstrated that commitment is through his  
23 assistance with sustaining the New York City Clean  
24 Street's Program within the Lower East Side. The  
25 Lower East Side BID has been accepted into the

1  
2 Clean Streets Program in which the Lower East Side  
3 BID provides the same litter and graffiti removal  
4 services in selected corridors of the Lower East  
5 Side outside its boundaries.

6           The program helps improve the  
7 quality of life and small business activity in a  
8 larger portion of the Lower East Side and  
9 concretely showcases the benefits of a Business  
10 Improvement District. For the program to endure  
11 it must show grass roots financial support from  
12 merchants and property owners in the Clean Streets  
13 corridors. There are four establishments owned by  
14 Mr. Shamlian in the Clean Streets area and they  
15 have each contributed to maintaining the program.  
16 Furthermore Mr. Shamlian once hosted a meeting at  
17 Spitzer's Corner regarding the Clean Street  
18 program during which the Lower East Side BID made  
19 a Power Point presentation to further education  
20 merchants and property owners in the respective  
21 corridors about the benefits of the program and  
22 the reasons to support it.

23           Mr. Shamlian was a strong financial  
24 supporter of the 2009 Lower East Side Art Crawl,  
25 an event that took place this past April in which

1  
2 hundreds of art lovers toured many of the  
3 excellent art galleries throughout the Lower East  
4 Side and the East Village. He was also the prime  
5 supporter--a prime supporter of Pride Goes East,  
6 an initiative the Lower East Side BID sponsored in  
7 June of this year that celebrated the 40<sup>th</sup>  
8 anniversary of National Gay Pride Month in the  
9 Lower East Side and the East Village.

10 At the BID we are aware of concerns  
11 regarding the additional noise that can result  
12 from the existence of a sidewalk café in the Lower  
13 East Side, however we consider Spitzer's Corner to  
14 be not only a successful business but one whose  
15 owner Mr. Shamlian, has demonstrated that he is a  
16 responsible and committed member of the community.

17 It is my pleasure to have provided  
18 this statement to the Subcommittee on Zoning and  
19 Franchise to speak strongly in support of Robert  
20 Shamlian's efforts to establish, maintain and  
21 operate an unenclosed sidewalk café and 101  
22 Rivington Street. Thank you for your  
23 consideration.

24 CHAIRPERSON AVELLA: Thank you. I  
25 now have a speaker in opposition, Susan from

Community Board 3. Thank you.

[Pause]

MS. SUSAN STETZER: Okay. Thank you. I am testifying for Community Board 3 Manhattan. My name is Susan Stetzer [phonetic] and I'm the District Manager and I appreciate the opportunity to testify here today.

Community Board 3 has two categories of objections to the sidewalk café. The first is in regard to location. The corner of Ludlow and Rivington is one of the most overcrowded and noisy nightlife areas in the City. It's a very old section of the City with narrow streets and traditionally has been mixed residential and commercial. However until the past several years the commercial was daytime retail. The current commercial use is destination, nightlife area, that produces tensions between the nightlife businesses and residents.

The overwhelming nightlife industry in this mixed use area lacks the infrastructure to support it. It is so crowded and the streets are so congested that November 2006, at the request of

1  
2 the 7<sup>th</sup> Precinct, the Community Board voted to--I  
3 won't read the whole Reso, but they voted to  
4 remove a lane of parking on weekend nights to try  
5 and keep traffic moving.

6 In addition to crowded streets, the  
7 sidewalks are so overcrowded; pedestrians spill  
8 out into the streets. We cannot afford to lose  
9 any more sidewalk space on Ludlow.

10 On the occasions of the first  
11 application for this sidewalk café in 2007 the  
12 Commanding Officer of the 7<sup>th</sup> Precinct, Captain  
13 Dwyer, wrote a letter to this Committee saying he  
14 does not favor the addition of any venue extension  
15 of existing venues that would cause additional  
16 noise, congestion or disorder. I now have a  
17 letter from the current Commanding Officer,  
18 Captain Berry, updated this month. Both letters  
19 are attached.

20 The second issue regards the manner  
21 of operation of this establishment. This business  
22 has received penalties for serving underage  
23 customers on 6/25, 7/31 and 12/2/8 and 1/1709.  
24 the liquor license applications for this  
25 establishment are to operate a restaurant.

1  
2 However I have a notarized letter from a resident  
3 stating that she has been denied admittance to  
4 this establishment because she and her husband and  
5 children wished to eat at the establishment and  
6 she was told the policy is no children are  
7 admitted after 8:00 P.M. weeknights, and 7:00 on  
8 weekends.

9 I have since been told that this is  
10 a condition of operation by the police, not the  
11 SLA, after the nuisance abatement for selling  
12 underage. This means that it's not a restaurant  
13 serving families although it is a full service  
14 restaurant; it is a noisy bar that has not proven  
15 responsible in complying with regulations.  
16 Families would not be able to use this sidewalk  
17 café in the evenings because of nuisance abatement  
18 restrictions.

19 The establishment applied for a  
20 sidewalk café in 2007 although the Community Board  
21 requested denial, Council Member Gerson negotiated  
22 a revised application. This agreement is  
23 enclosed, dated September 14<sup>th</sup>, 2007. I also have  
24 in writing from Peter Janusic [phonetic] dated  
25 July 14<sup>th</sup>, 2007 included here, the same agreement.

1  
2 After one year the applicant reneged on the  
3 agreement as stated in the attached letter from  
4 Councilman Gerson dated August 6<sup>th</sup>, 2008. Later  
5 the sidewalk license was surrendered to DCA  
6 because of inconsistencies in the plan which would  
7 have otherwise resulted in revocation of license.

8 The current plans had to be revised  
9 after being submitted to the Community Board for  
10 compliance. The Community Board does not believe  
11 that this business has demonstrated compliance to  
12 license regulations necessary for the privilege of  
13 receiving a license nor has the owner shown good  
14 faith in negotiating agreements.

15 Community Board 3 requests that  
16 City Council vote to deny this sidewalk café. I  
17 have a list of my attachments. I have also  
18 included letters with signatures from 19  
19 residents, 1 block association and 1 business  
20 asking for denial. And I'd just like to read a  
21 few sentences from one letter from a resident.

22 She was co-chairing a scholarship  
23 fundraising committee for a preschool. She went  
24 to this restaurant and asked them to donate a  
25 Sunday brunch for four, spoke with the manager who

1  
2 said he would have to speak to the owner and get  
3 back to her. When she went back, he said he would  
4 donate the brunch in return for signatures from 25  
5 people in the neighborhood to sign the petition  
6 for a sidewalk café.

7 That's my...

8 CHAIRPERSON AVELLA: Thank you.  
9 Seeing no questions, thank you. Simcha? Yeah,  
10 Simcha, Council Member Felder, you had a question.

11 COUNCIL MEMBER FELDER: Yeah no I  
12 just wanted, really unrelated to the topic at  
13 hand--

14 CHAIRPERSON AVELLA: [Interposing]  
15 Yeah.

16 COUNCIL MEMBER FELDER: --but more  
17 related to the way things are done. Is, again,  
18 the Chair has raised this in the past and I think  
19 have as well as some of my colleagues. When  
20 people come in to testify and read somebody else's  
21 testimony, I don't know if there are any rules or  
22 anything of the sort, but I just think that if  
23 somebody's coming in and testifying themselves, we  
24 have the--and then we have the opportunity to ask  
25 them questions about what they're saying.

1  
2 If they're not testifying  
3 themselves, they're bringing in somebody else's,  
4 it should be put in the record because we can't  
5 ask them anything anyway, and despite the  
6 melodious testimony, I don't see the purpose. I  
7 don't see the point of somebody reading somebody  
8 else's testimony. It goes into the record anyway.

9 CHAIRPERSON AVELLA: We agree. In  
10 fact we've had some initial discussions within the  
11 Land Use division about this issue and we have yet  
12 to come up with an appropriate solution. But it  
13 is an issue. I mean people are reading somebody  
14 else's testimony but they can't answer the  
15 questions because they're not authorized to do so.  
16 It is a legitimate issue. So we are working on  
17 it. Thank you. Seeing no one else signed up to  
18 speak in the public hearing I will close the  
19 public hearing on this item.

20 And we will move on to  
21 Preconsidered Land Use Number--for Coney Island,  
22 20105035 RSY and a Resolution authorizing an  
23 agreement between the Mayor and Council  
24 establishing a special process for City Council  
25 review and approval of the Coney Island Amusement

Park Project Plan. What?

[Witnesses getting settled]

MS. GAIL BENJAMIN: Hello my name is Gail Benjamin. I'm the Director of the Land Use Division and I'm joined by...

MS. LYNN KELLY: Lynn Kelly from the New York City Economic Development Corporation.

MS. NENNA LYNCH: Nenna [phonetic] Lynch from the Mayor's Office.

MS. PUNI MAKAPU: Puni Makapu, Department of City Planning.

MS. BENJAMIN: And today we're here on a Preconsidered Resolution which is the last item that is part of the Coney Island Plan. As you may remember from our meeting in July, the Coney Island Plan and the amusement park area which was mapped as parkland will go through State legislation, to alienate other parkland, but will not be subject to a lease. As a result of that, the Council Member and the Administration came to a decision and agreement that is reflected in the agreement you see before you and a resolution that was introduced at the last, the July 29<sup>th</sup> meeting

1  
2 of the Council.

3           The agreement allows for a process  
4 by which the Council will have the authority to  
5 approve, disapprove or modify the Coney Island  
6 Amusement Park Plan and will be involved in the  
7 process of coming up with the plan and coming up  
8 with the RFP for the plan. There is a parallel  
9 process for a piece of property that is not part  
10 of that which is to be marked parkland and would  
11 be the subject, we know, of the RFP for the  
12 amusement park. And that refers to a piece of  
13 property known as Astroland.

14           And if Astroland is included in the  
15 park RFP, it will go through a parallel process  
16 which would result in approval, disapproval or  
17 modification by the Council and would also be  
18 subject to the requirements of 384(b)(4) of the  
19 New York City Charter which means that the Borough  
20 Board would also review the Astroland portion.

21           The process if... starts with the RFP  
22 and with a Committee that will be comprised of a  
23 number of people as required by this agreement  
24 which includes the Council Member, the  
25 Congressman, the State Senators, the Borough

1  
2 President, the Assemblyperson and the Mayor would  
3 appoint three people for a 9-person Committee.

4 The Committee would be at the  
5 latest, would be assembled prior to the  
6 development of an RFP and the Committee would be  
7 staffed by DRP and EDC. At this point I would  
8 probably turn it over, the rest of the details,  
9 I'd probably turn over to the Administration but I  
10 will say that the Council does have the authority  
11 to approve, disapprove or modify many aspects of  
12 it--they can approve, disapprove absolutely, the  
13 modification is limited to the Land Use matters  
14 basically which is our authority and that you  
15 would be approving the agreement and authorizing  
16 the Speaker to execute the agreement on behalf of  
17 the Council.

18 MS. KELLY: Hi. I'm Lynn Kelly  
19 from the New York City Economic Development  
20 Corporation. I'd just like to add that the  
21 industry, the amusement industry is a unique  
22 industry that's in the sense that they're  
23 typically when they do establish themselves  
24 throughout the US or in other areas, while there  
25 are obvious protocol and processes for safety

1  
2 controls and insurance and etcetera, there's not  
3 always Land Use processes that they're used to  
4 going through.

5                   So the creation of this special  
6 process is one by where the Council and the  
7 Administration can work together in a way that  
8 would not, to this industry, create any market  
9 barriers or be onerous in a way that they might  
10 not otherwise be used to working. These are not  
11 developers. They are interested in investing  
12 their capital in the rides and actual start-up of  
13 their amusement parks. They're generally not used  
14 to paying consultants and other things that  
15 developers would normally do in a Land Use  
16 process.

17                   So we've created this special  
18 process as a way to both facilitate integration of  
19 the Council and the Administration working  
20 together to come up with a plan but also create a  
21 process that the amusement industry would respond  
22 from a market perspective. Thank you.

23                   MS. MAKAPU: I don't have anything  
24 to add to this. If you have questions we'll take  
25 those, yeah.

2 CHAIRPERSON AVELLA: Council Member  
3 Recchia, would you like to say something at this  
4 point?

5 COUNCIL MEMBER RECCHIA: Yeah. I  
6 support this Resolution. I think it's something  
7 that where the Council is heavily involved with  
8 the Administration and that it will expedite the  
9 creation of a brand new amusement park. And  
10 hopefully in the future it will expand the  
11 amusements by--one this City gets control over  
12 Astroland 'cause that all could become amusements  
13 and this could all be put into one RFP. So I  
14 encourage everyone to vote yes. Thank you.

15 CHAIRPERSON AVELLA: Any questions  
16 from Council Members? Seeing none. Thank you. I  
17 see no one signed up to speak on this public  
18 hearing item, is that correct? Seeing none, I'll  
19 close the public hearing and we will move to the  
20 last item on the agenda which is Land User Number  
21 1178, application submitted by RJM/EM, 4 East 94<sup>th</sup>  
22 Street for granting of a special permit to modify  
23 the requirements for setbacks, renovation of two  
24 buildings located at 4 and 6 through 8 East 94<sup>th</sup>  
25 Street. This application lies within Council

1  
2 Member Dan Garodnick's District and he is here  
3 with us.

4 MR. ROSS MOSKOWITZ: Good morning  
5 Chairperson Avella, Subcommittee and members of  
6 the City Council. My name is Ross Moskowitz. I'm  
7 a member of the law firm of Stick and Strick-Levan  
8 [phonetic] and we are counsel to the owners of 4-8  
9 East 94<sup>th</sup> Street.

10 I should start of by saying today  
11 you're going to hear a lot about light, air and  
12 height. And that is a common theme amongst all  
13 the presentations you will hear and those that you  
14 may hear from others and we agree. We, this  
15 proposal will create more light, it will create  
16 more air and it will reduce the height of the  
17 existing proposal.

18 Development of this property is  
19 complicated by a multitude of factors. As the  
20 Council and the Committee are aware, the project  
21 site is split-zoned, located primarily in an R8B,  
22 limited height district, and partially within an  
23 R10 Zoning District. It's also within the Special  
24 Park Improvement District as well as the Carnegie  
25 Hill Historic District.

We're here today before you regarding the owner's application for a special permit, pursuant to Section 74-711 of the New York City Zoning Resolution which allows modifications to the bulk requirements for structures in a Landmarked District if the applicant is able to demonstrate that certain conditions are met.

As you know, the application has received, thus far, the following approvals. First a Certificate of Appropriateness from the New York City Landmarks Preservation Commission. Second a report from the Landmarks Preservation Commission, as required under the special permit application. Third, unanimous approval from Community Board number 8. Fourth, conditional approval from the Manhattan Borough President. And fifth, unanimous approval from the City Planning Commission.

The owner proposes restoration and rehabilitation of two properties: 4 East 94<sup>th</sup> Street and 6-8 East 94<sup>th</sup> Street which since the 1960s have operated as a community facility, what was known as the Spence-Chapin Adoption Agency, and proposes to return them to residential use.

Our proposal includes the following: Removal of the noncontributing floors on 5, 6, and 7, above 4 East 94<sup>th</sup> Street and replacing them with new 5<sup>th</sup> and 6<sup>th</sup> floors; second a new 6<sup>th</sup> floor above 6-8 East 94<sup>th</sup> Street; and third, removal of a 1<sup>st</sup> floor rear yard addition behind 4 East 94<sup>th</sup> Street and moving the rear façade 5' back towards the real property line thereby allowing for a new complying 30-foot year yard setback.

In order to make these improvements we are seeking the following, what we believe are minimum waivers. First a 6' 8.5" waiver above the maximum height of 60', second a 10' and 1.25" front wall setback waiver of 50', and third, a 10' rear wall setback waiver above 60'.

It's important to note that this waiver applies only to the portion of the project that is within the R8B limited height district and the extent of the square footage being requested under this waiver is approximately 78 square feet in size.

As evidenced by the prior approvals, we believe that our application is a poster child for the type of applications intended

1  
2 by Section 74-711 and believe our proposal  
3 complies with all of the conditions of such  
4 special permit. Specifically the Landmarks  
5 Commission determined that the proposed  
6 improvement contributes to a preservation purpose  
7 and relates harmoniously to the Carnegie Hill  
8 Historic District.

9           Second the Landmarks Commission  
10 also stated that the proposed modification above  
11 is a benefit to the surrounding area and such bulk  
12 modifications will not detract but rather enhance  
13 the architectural and historic character of the  
14 vicinity. Additionally we believe that our  
15 requested bulk modifications, minimal, meet the  
16 required findings for the special permit.

17           As mentioned, our proposal will  
18 create additional open space in the vicinity as  
19 our proposal will yield a new 30-foot rear yard  
20 that does not exist now through the removal of a  
21 12 feet 6" existing structure which has a fence on  
22 top of it therefore 19' rear yard addition and  
23 replacing it with a 5' 7" along the southern  
24 property line.

25           This new rear yard will be a

1  
2 significant improvement in terms of light and air  
3 to the owners along East 93<sup>rd</sup> Street and 5<sup>th</sup> Avenue.  
4 Additionally and as importantly, our proposal will  
5 reduce the overall height of the existing  
6 buildings at the project site. As you will see  
7 from the drawing that you have been given, our  
8 project abuts a 14-story residential building to  
9 the west which is 8 stories taller and  
10 approximately 59 feet wider than our proposed  
11 building. And in fact there's also an alleyway  
12 between the buildings. Our proposal will not have  
13 significant impacts to the neighborhood in terms  
14 of scale and access to light and air.

15 Specifically the overall height of  
16 the building will be reduced by 13' 7" opening up  
17 those windows on the eastern wall of the property  
18 known as 1125 5<sup>th</sup> Avenue that currently faces the  
19 westerly wall of our building. Again, as  
20 demonstrated through our prior approvals, our  
21 proposal will not have any significant impacts to  
22 the neighbor; rather the resulting building will  
23 only enhance the neighborhood in terms of scale,  
24 design, light and air.

25 As I mentioned earlier, the take-

1  
2       always from our testimony today are light, air and  
3       height. We are opening up the backyard, creating  
4       a 30-foot rear yard where one does not exist. We  
5       are reducing the existing building that fronts,  
6       that is abutting the neighbor, even though there  
7       is an alleyway between it by 13' 7.5". We believe  
8       that the light, air and height will be  
9       dramatically improved in this neighborhood and  
10      that this, again, is the poster child for a 74-  
11      711.

12                       Having said that, we also recognize  
13      that like any other construction project, there  
14      may be some construction impacts to the neighbors  
15      as a result of our proposal. As such we will  
16      comply with the Department of Building's technical  
17      policy and procedure, Notice 10/88, to prevent  
18      unnecessary negative impacts on the surrounding  
19      historic district and have committed to working  
20      with Community Board 8, Council Member Garodnick,  
21      local residents and other stakeholders to address  
22      construction management issues and potential  
23      construction impacts on the surrounding area.

24                       These are just the highlights and  
25      representatives from our project team sitting

1  
2 alongside me from the architectural firm of BKSK  
3 will go into further details about the objectives  
4 and the process that led to the proposal being  
5 presented to you. Thank you for your time and  
6 consideration and I'll now turn to Harry Kendall,  
7 lead architect for the project. We're, of course,  
8 available to answer any questions and appreciate  
9 the time that you've given us.

10 MR. HARRY KENDALL: Thank you  
11 Council Members and as Ross said I'm Harry Kendall  
12 of BKSK Architects. And I'll walk you very  
13 briefly through this 7-page handout which is the  
14 visual support of the very good summary that Ross  
15 gave. The top sheet, the first sheet, is in blue  
16 you see our site, number 4 and number 6-8 East 94<sup>th</sup>  
17 Street. This can serve as just an illustration;  
18 it's a mid-block condition on a side street on the  
19 Upper East Side.

20 The second sheet provides the  
21 before and after photo that shows the primary  
22 intent of this project. On the left you see the  
23 existing building and Number 4; it goes 7 stories  
24 with an un-detailed brick top. Our proposal  
25 before Landmarks which was approved and lauded by

1  
2 the Landmarks Commission would remove those upper  
3 floors, essentially squash down the non-conforming  
4 and visually unappealing Number 4 and spread that  
5 floor area across a new 6<sup>th</sup> floor on 4 and on 6-8.

6 We did it with, I would say, a deft  
7 hand architecturally so that it appears as a  
8 historically appropriate bulk. It sets back at  
9 the 4<sup>th</sup> floor and sloped roof for the 6<sup>th</sup> floor so  
10 that the street is affected very positively. And  
11 that is part of the preservation purpose that was  
12 lauded by Landmarks.

13 The third page shows bulk diagrams  
14 and--

15 CHAIRPERSON AVELLA: [Interposing]  
16 Can I ask you to hold for a second. You have  
17 boards which are bigger than the outline, correct?

18 MR. KENDALL: Yes.

19 CHAIRPERSON AVELLA: Can we, I'm  
20 asking the Sergeant at Arms if we can get an easel  
21 so you can put them up.

22 MR. KENDALL: Sure.

23 MR. MOSKOWITZ: Absolutely. And  
24 while we're doing that Chairperson Avella, I  
25 omitted of course the most important fact and

1  
2 please don't tell anyone, there's no increase in  
3 square footage. Obviously a 74-711 goes without  
4 saying, you cannot under 74-711 increase the  
5 square footage but I just wanted to put that on  
6 record just to make sure there was no  
7 misconception. Thank you.

8 [Pause]

9 MR. KENDALL: If you like we can  
10 have a human easel hold up the boards at this  
11 corner. Okay so...

12 [Off mic] Right here?

13 [Pause]

14 MR. KENDALL: Okay so I'll start  
15 back at the beginning and be even briefer. In  
16 this board that you see up, the blue is our site.  
17 It's mid-block condition on East 94<sup>th</sup> Street. And  
18 everything to the left, to the west is  
19 significantly taller than our site. Everything to  
20 the east is of a similar size. That's generally  
21 the nature of a mid-block condition in this  
22 historic district.

23 Next sheet. This is a rendering,  
24 the existing conditions on the left; you see the  
25 7-story un-setback height of Number 4 that was

1  
2 built by the orphanage in the 1960s. We are  
3 joining, we are, as Ross said, returning this to  
4 residential use. It will be a 2-family residence.  
5 And we are removing the upper floor and blending  
6 our Number 4 into the existing fabric better than  
7 it is now. So you see on the right the rendering  
8 of the new proposed 4-story height, setback, 5<sup>th</sup>  
9 floor that continues as it does now in Number 6  
10 and 8 and then a sloped roof that's of a 6<sup>th</sup> floor  
11 that continues across all 3, or all--both  
12 buildings.

13 CHAIRPERSON AVELLA: Actually I  
14 have a question about this last drawing. And  
15 correct me if I'm wrong but you have the picture  
16 of what the new building would look like and then  
17 you have like a, like a line outline of what the  
18 old, that one remaining high building, I forget--

19 MR. KENDALL: [Interposing] Yes.

20 CHAIRPERSON AVELLA: --the address  
21 on the side. The line that goes across indicates,  
22 on your drawing, it goes across. At least the way  
23 I look at this, indicates that that top floor  
24 would be above the existing tallest part of the  
25 building, is that correct?

1  
2 MR. KENDALL: No that's the  
3 perspective vanishing..

4 MR. MOSKOWITZ: Yeah, no Council  
5 Member Avella--

6 CHAIRPERSON AVELLA: [Interposing]  
7 So your diagram is wrong, is that what you're  
8 saying?

9 MR. MOSKOWITZ: Excuse me?

10 CHAIRPERSON AVELLA: Then your  
11 diagram is wrong.

12 MR. MOSKOWITZ: No I think it's--  
13 unfortunately we worked hard with the staff of the  
14 Land Use Committee to try to depict this correctly  
15 but I'm not sure it came out correctly. At the  
16 end of the day the existing building, and I can  
17 give you the specifics, the existing building is  
18 at the top of the parapet wall is 77' 9" at the  
19 rear, at the top of the mechanical in the front is  
20 89' 8", as proposed it is 76' 1", the difference  
21 is 13' 7" and we apologize if the depiction  
22 doesn't show it correctly but we can tell you  
23 with, as you can see on the individual drawings,  
24 as you can see in some of the other drawings that  
25 we can go to right now, the existing building

1  
2 clearly is taller than what is proposed.

3           There is no question about that.  
4 And what we tried to do after a sit-down with  
5 staff was to try to show an outline, so to speak,  
6 of how the existing building looks. And I'm not  
7 sure it really captures it from what you're  
8 looking at.

9           CHAIRPERSON AVELLA: I mean yeah,  
10 if you're looking at the outline it looks like the  
11 top story is above the top story of the old  
12 building.

13           MR. MOSKOWITZ: It's because the  
14 1120 building seems to capture it and it really  
15 isn't. It's a little bit--unfortunately--

16           CHAIRPERSON AVELLA: [Interposing]  
17 Well I guess my question then is do you have  
18 something that accurately depicts what the new  
19 height of the building will be as opposed to the  
20 old building.

21           MR. MOSKOWITZ: Yeah.

22           MR. KENDALL: [Interposing] Go to  
23 the second to last sheet or Tom, put up the - -  
24 section. This is a summary of the bulk waivers  
25 but it's a section through Number 4 East 94<sup>th</sup>

Street. And you can see--

MR. MOSKOWITZ: [Interposing]

Excuse me. For the Council Members, it's A-401 in the right hand corner. In case--

MR. KENDALL: [Interposing] The second to the last page of the handout. The dotted line you see above everything else is the profile of the existing building at Number 4. So you see how high it goes. That's both the top of the existing building and the top of the existing bulkhead.

CHAIRPERSON AVELLA: Right. Right, right.

MR. KENDALL: The new floor we're proposing is the orange and yellow and a portion of the green. So it falls well below that dotted line that represents the existing. Is that good?

CHAIRPERSON AVELLA: For that one building.

MR. KENDALL: For that one building.

CHAIRPERSON AVELLA: But it would be higher for the rest.

MR. KENDALL: For the rest, now go

1  
2 back to; let's... sheet A-502 which is the third  
3 sheet of the handout. In that, the proposed is on  
4 the left and the existing is on the right. So you  
5 can see that, well I think it speaks visually for  
6 itself. There's--the colors represent, on the  
7 left, the orange is what we're adding. So that 6<sup>th</sup>  
8 floor, the yellow 6<sup>th</sup> floor on top of 6 and 8 is  
9 the additional floor. And the yellow is the 5" 5"  
10 extension in the rear of 4.

11 MR. MOSKOWITZ: Council Member  
12 Avella, if I could, your pointed question, if I  
13 could answer, is if the 6-8 East 94<sup>th</sup> Street is  
14 increasing the height. We're not suggesting  
15 otherwise. The tallest building however on this  
16 site is 4 East and that is being brought down 13'  
17 7".

18 MR. KENDALL: And that's the  
19 primary bulk waiver we're asking is the 6' 8", 6'  
20 8.5" above the maximum building height in this  
21 limited height district is the portion of the new  
22 6<sup>th</sup> floor on 6 and 8. So we'll stay on this sheet.  
23 I talked about the visual reduction of bulk from  
24 East 94<sup>th</sup> Street. If you look on the right hand  
25 side you see in red the existing bulk. The rear

1  
2 yard in Number 4 is built full back to the rear  
3 lot line. We're proposing to remove that and  
4 recreate a new rear yard across the entire site.  
5 At the same time, we add 5' 5" to the rear of 4  
6 East 94<sup>th</sup> Street, all of which is as of right  
7 except for the 78 square foot that Ross referred  
8 to at the top 6<sup>th</sup> floor.

9           The next sheet, sheet A-100 shows  
10 the existing roof plan of the building. In the  
11 darker brown on the upper left you see the 1-story  
12 structure that we're removing from the rear yard.  
13 And then you see it exists as a 5-story structure  
14 on 6 and 8 and a 7-story structure with a tall  
15 bulkhead on Number 4.

16           Moving onto the next sheet, sheet  
17 A-200 shows our proposed roof plan. And that you  
18 can identify the open rear yard as I just  
19 described, the 5' 5 and 3/8" extension onto the  
20 back of Number 4. I must emphasize all of which  
21 except for 78 feet of the 6<sup>th</sup> floor is as of right.

22           MR. MOSKOWITZ: Council Members, if  
23 I could just interrupt, I'd like to point you to  
24 the drawing that Harry Kendall is referring to  
25 which is A-200 and show you what I referred to

1  
2 earlier in my testimony. First that there is a  
3 7'4" alleyway between the westernmost property,  
4 that's 4 East 94<sup>th</sup> Street and the building known as  
5 1125 5<sup>th</sup> Avenue. Second, I'd like to point out  
6 that what's shown on the A-200 drawing as a 1-  
7 story building is actually the superintendent's  
8 apartment. The reason I bring that to your  
9 attention is that it's--there's a 40-foot distance  
10 however between 1120 5<sup>th</sup> Avenue as you can see on  
11 the drawing and our property line. So I just want  
12 to make clear as to where the other properties are  
13 situated.

14 MR. KENDALL: And with our existing  
15 and required 30-foot rear yard and then a 10-foot  
16 existing space between 3 East 93<sup>rd</sup> Street and us,  
17 that 40 feet and change remains between our rear  
18 yard structure. Sheet A-401, the second to last  
19 sheet of the handout is the--

20 CHAIRPERSON AVELLA: [Interposing]  
21 Can--I'm, I apologize. I'm--

22 MR. KENDALL: [Interposing] Not to  
23 worry.

24 CHAIRPERSON AVELLA: --going to  
25 interrupt for one second. Since we are not going

1  
2 to--at Council Member Garodnick's request, we are  
3 not going to be voting on this item today. We're  
4 actually going to lay it over until 9:45 before  
5 the Land Use vote, what I'd like to do since I  
6 have everybody back in the room is vote on the  
7 items that we will be voting on.

8 So I would just--so just bear with  
9 us. We're just going to take a vote. So we will  
10 be voting affirmatively on the Coney Island  
11 Resolution, in favor, Chair recommends in favor.  
12 Chair recommends in favor of the Sullivan  
13 Restaurant sidewalk application. And as per  
14 Council Member Gerson's request, Chair recommends  
15 denial of the Spitzer Corner sidewalk application.  
16 Chair will now ask counsel to call the vote.

17 COMMITTEE COUNSEL: Chair Avella.

18 [Pause]

19 CHAIRPERSON AVELLA: I'm going to  
20 just make a comment before I vote. And in respect  
21 to Spitzer's Corner, I just want to read something  
22 into the record since we are denying this  
23 application. Sidewalk cafes are a privilege the  
24 City bestows to private entities. They are  
25 supposed to enhance the neighborhood and be good

1  
2 neighbors. This café was approved by the City  
3 Council last year with the provision that they  
4 close the café at 10:00 P.M. every night.

5 The Department of Consumer Affairs  
6 revoked the consent of this café last August  
7 because the plans their architect self-certified  
8 were inaccurate. They didn't meet the  
9 requirements, thus the permit was revoked. Our  
10 review is also based on true plans being  
11 submitted. It is very serious when they aren't.  
12 This location has many 311 complaints for noise,  
13 rowdy bar. They were found guilty on 4 occasions  
14 of serving alcohol to minors and paid a \$6,000  
15 fine. Additionally they haven't been closing the  
16 café at 10:00 P.M. as per their agreement with the  
17 Council last year.

18 The local Police Department  
19 Commander has submitted a letter stating this  
20 applicant is a problem location and requests not  
21 to be approved. Community Board 3 has also asked  
22 for disapproval citing all the above reasons.  
23 Based upon all of these circumstances Council  
24 Member Gerson requests a disapproval.

25 All we ask from the restaurant who

1  
2 have cafes is to be a good neighbor and in this  
3 case the restaurant has not been a good neighbor.  
4 Based upon those reasons I am voting to deny the  
5 application for Spitzer's Corner.

6 And I would just make an additional  
7 comment with respect to the Coney Island  
8 application, even though I did vote against the  
9 Coney Island original application, I am voting for  
10 this because it obviously gives more power to the  
11 City Council to review the applications as they  
12 come down the pike. I vote yes on the motion.

13 COMMITTEE COUNCIL: Council Member  
14 Rivera.

15 COUNCIL MEMBER RIVERA: I vote aye  
16 on all.

17 COMMITTEE COUNCIL: Council Member  
18 Felder.

19 COUNCIL MEMBER FELDER: Aye.

20 COMMITTEE COUNCIL: Council Member  
21 Gioia.

22 COUNCIL MEMBER GIOIA: Yes.

23 COMMITTEE COUNCIL: Council Member  
24 Katz.

25 COUNCIL MEMBER KATZ: I vote aye on

1  
2 all but just the caveat that, you know, we've  
3 spoken quite a bit about sidewalk cafes. Sidewalk  
4 cafes are--if I can't think of any other  
5 application that this Council does, that is more  
6 local than a sidewalk café. So I just want to  
7 vote aye on all, nothing that the Council Member  
8 is vehemently against it and the previous  
9 violations.

10 COMMITTEE COUNCIL: Council Member  
11 Seabrook.

12 COUNCIL MEMBER SEABROOK: Aye on  
13 all.

14 COMMITTEE COUNCIL: Council Member  
15 Sears.

16 COUNCIL MEMBER SEARS: Just to  
17 kind-I vote aye on all but I brought up before  
18 about sidewalk cafes. We should have a very  
19 specific time when they stop serving. And then at  
20 that time they may be able to close at the  
21 requested time. And I thought that this Committee  
22 was going to look into that. And I understand  
23 Spitzer's Corner but I do think that was pointed  
24 out by Councilwoman Katz that they are very, very  
25 local and I think we need to look at that and be

standard throughout. I vote ay.

COMMITTEE COUNCIL: Council Member Vann.

COUNCIL MEMBER VANN: Aye.

COMMITTEE COUNCIL: By a vote of eight in the affirmative, none in the negative and no abstentions, LU 1181 and Preconsidered 20105035, a motion is to approve, they're referred to the full Land Use Committee. And LU 1183, a motion to disapprove is referred to the full Land Use Committee.

CHAIRPERSON AVELLA: Thank you. I'm sorry but that needed to be done. Please proceed.

MR. MOSKOWITZ: Thank you Chairperson Avella. We're actually going to wrap up now and we're just going to go to the last page which kind of depicts exactly what we're talking about as well.

MR. KENDALL: The last page gives you two different views into the rear yard of this area. The first on the left is a view down the alley that Ross has referred to. We have, of course, are not encroaching on this alley. It's

1  
2 not our property so we would have no right to do  
3 so. What you see looking back down this alley,  
4 the 1-story brick structure in the relative  
5 foregoing is the Super's apartment which we are--  
6 proposal affects in no way.

7 And what you see in the ivy covered  
8 lighter brick building beyond is 1 East 93<sup>rd</sup>  
9 Street. Now looking--that gives you orientation  
10 for looking at the right hand photograph where on  
11 the roof of 6-8 East 94<sup>th</sup> Street and we're looking  
12 down onto the rear yard extension that we are  
13 removing. You can see it has a 19 foot high  
14 stockade fence, also, ivy covered. All that will  
15 go.

16 The brick you see in the far right  
17 hand side of the corner is the portion of 4 East  
18 94<sup>th</sup> that we are extending 5' 5" to the south. You  
19 can see that that gets slightly closer to Number 1  
20 and Number 3 East 94<sup>th</sup> Street, leaving  
21 approximately 40 feet between it and 3 East 93<sup>rd</sup>  
22 Street. So I think that's our summation.

23 CHAIRPERSON AVELLA: Since light  
24 and air are an issue in this application, do you  
25 have any shadow studies that show how the

1  
2 addition, the new portion of the building will  
3 affect the light and air, at least the shadow?

4 MR. KENDALL: We prepared shadow  
5 studies. I didn't bring them with us here but  
6 they showed that the effect was overwhelmingly  
7 positive in the rear yard. As you would expect  
8 when you're adding a 6<sup>th</sup> floor there are some areas  
9 that shadowed more than before and as you would  
10 also expect, when you're removing the 7<sup>th</sup> floor and  
11 a large bulkhead, also a bulkhead on Number 6 and  
12 8, a very large mechanical bulkhead, there are  
13 areas that are shadowed less. The balance is not  
14 even close. It's an improvement.

15 CHAIRPERSON AVELLA: Well I think  
16 that since we're not voting on this today, if you  
17 could get us that information I think that would  
18 be extremely helpful. And not--not for anything  
19 but I think it would have been a good idea to  
20 bring that information with you today. Council  
21 Member Garodnick?

22 COUNCIL MEMBER GARODNICK: Thank  
23 you Chair Avella. And thank you for your  
24 presentation. I do want to say at the outset that  
25 I think we all realize that this is a difficult

1  
2 issue for some of the neighbors who live in the  
3 immediate vicinity. In fact I have been to their  
4 apartments myself to take a look what this means.  
5 And many of them are here today and we want to  
6 thank them for their presence and what I expect  
7 will be their testimony.

8 The purpose of this hearing today  
9 is really to make sure we dig in and make sure we  
10 understand for the record what exactly is  
11 anticipated. So I just want to straighten out a  
12 few things. You may have made them clear but they  
13 may not be clear to me and others. So let me just  
14 make sure I get them out.

15 The first is on the mechanicals on  
16 the top of 4 East 94<sup>th</sup> Street. Mr. Moskowitz, as I  
17 understand it from what you said, it's now 77 feet  
18 and 89 feet with the mechanicals. Is that  
19 correct?

20 MR. MOSKOWITZ: Existing, if I  
21 could Council Member Garodnick, the existing now  
22 with the mechanicals is 89' 8".

23 COUNCIL MEMBER GARODNICK: Okay.  
24 89' 8" and the proposed at 4 East 94<sup>th</sup> Street.

25 MR. MOSKOWITZ: At the top of the

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mechanicals.

COUNCIL MEMBER GARODNICK: At the top of the mechanicals is what?

MR. MOSKOWITZ: 76' 1".

COUNCIL MEMBER GARODNICK: 76'1"--

MR. MOSKOWITZ: [Interposing] 1".

COUNCIL MEMBER GARODNICK: --okay.

So your figure of 76' and 1" includes the mechanicals.

MR. MOSKOWITZ: Correct.

COUNCIL MEMBER GARODNICK: Okay. I wanted to be certain of that.

MR. MOSKOWITZ: And if--well sorry.

COUNCIL MEMBER GARODNICK: Each of the buildings, let's just go through them one more time 'cause I want to understand it. 4 East 94<sup>th</sup> Street will be reduced in height by 13' and 7" is what you said.

MR. MOSKOWITZ: Correct. And again, that's from the top of the mechanicals. I can give you--

COUNCIL MEMBER GARODNICK:  
[Interposing] From top of mechanical to top of mechanical in the--

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MR. MOSKOWITZ: [Interposing]  
Applies to applies, it's 13'7" correct.

COUNCIL MEMBER GARODNICK: So  
that's a reduction of 13' and 7". And then on the  
other buildings, they are going to come up by how  
many feet?

MR. KENDALL: Approximately 10  
feet.

COUNCIL MEMBER GARODNICK: 10 feet  
and that's part, at least of this special permit  
application that we're talking about today.

MR. KENDALL: Correct.

COUNCIL MEMBER GARODNICK: Okay.  
At the back of 4 East 94<sup>th</sup> Street--

MR. MOSKOWITZ: [Interposing]  
Right, everything at 6-8 is left unchanged.

COUNCIL MEMBER GARODNICK: Right.  
Okay. So at the back of 4, you're proposing to  
add 5 feet.

MR. KENDALL 5' 5 and 3/8".

COUNCIL MEMBER GARODNICK: Okay  
good. Thank you for keeping me correct here. 5'  
5 and 3/8" which I can call for the moment  
approximately 5'. All right. So explain to us

1  
2 the need for those additional 5' in the back. We  
3 realize you're taking down, you're proposing to  
4 take down the overall height of that building.  
5 But why is there a need for you to actually move  
6 it 5' backwards? I should say 5' to the south?

7 MR. KENDALL: First of all,  
8 reiterate that all of that 5' 5" is as of right,  
9 except for on the small portion of the top floor.

10 COUNCIL MEMBER GARODNICK: Okay  
11 well let's talk about that for a second. So how  
12 much of this 5'?

13 MR. MOSKOWITZ: 78 square feet.

14 COUNCIL MEMBER GARODNICK: I'm  
15 sorry. Let me finish the question because I want  
16 to make sure we're answering--

17 MR. MOSKOWITZ: [Interposing]  
18 Sorry. I'm sorry.

19 COUNCIL MEMBER GARODNICK: --the  
20 right question.

21 MR. MOSKOWITZ: I'm sorry.

22 COUNCIL MEMBER GARODNICK: I was  
23 going to say how much of it is as of right?

24 MR. MOSKOWITZ: Everything but 78  
25 square feet [chuckling]--

COUNCIL MEMBER GARODNICK:

[Interposing] Okay right. Okay. So everything but--so how much is the total 5 foot extension without the 78 feet? The 78 square feet?

[Off mic discussion]

MR. MOSKOWITZ: We're actually looking at A-502 so we're just doing the calculation quickly.

[Off mic discussion]

MR. MOSKOWITZ: Yeah. If you look at A-502, I'm going to do the math quickly although I didn't do well in math; it's 644 square feet minus 78 feet, so roughly 570 I guess. Am I doing that right? A little--560. If you look at the calculation, Council Member Garodnick on A-502, third--last column at the end. It gives you a total number of the rear yard, so if you just take that number and deduct out 78 square feet. The 644 number you see in the last column, the total--

COUNCIL MEMBER GARODNICK:

[Interposing] Yeah the 644 minus 78.

MR. MOSKOWITZ: Right.

COUNCIL MEMBER GARODNICK: Okay so

1  
2 if you did not get, let's just understand, you  
3 know, where the contour of authority is here in  
4 the City Council, if you were not granted that  
5 smidge, which is 78 feet of the 644 which is not--  
6 it's not the vast majority of what you would be  
7 doing there, what would be the impact on the  
8 project?

9 MR. KENDALL: Well that's an  
10 important living space up there so that 78 square  
11 feet is key to making the plan work in this  
12 reduced height area. Secondly, we would go back  
13 to Landmarks to show them a change in the rear  
14 yard condition. And part of the interesting  
15 complexity of this project, this project which is  
16 conceptually simple is regulatorily complex.

17 And Landmarks likes to make a  
18 distinction between new-old and old-old and the  
19 rear yard of Number 6-8 East 94<sup>th</sup> Street has a  
20 couple of special features. It's round bay and a  
21 kind of wrought iron porch. And it also has, in  
22 the new condition, a setback floor above the 4-  
23 story height. It sets back.

24 Number 4 is a newer addition; both  
25 the orphanage added part and now we are

1  
2 transforming that part added by the orphanage.  
3 They liked that our rear elevation differentiated  
4 itself from the rear elevation of 6 and 8 by not  
5 setting back. I don't think it's unapprovable but  
6 it's a complexity. It works best both in plans,  
7 both in, you know, we are reducing the level of  
8 nonconformance and not--our goal from the  
9 beginning was to not gain but not lose floor area.

10           Where we were able to not lose  
11 floor area as in the extension of the 5' 5"  
12 extension to the legal limit of the rear yard, we  
13 needed that little extra 78 square feet, both to  
14 make the top floor work as a living space and in  
15 order not to drop floor area overall. As you can  
16 imagine this project as been pretty long in the  
17 approval process and it seems to me fairly heroic  
18 of our client to be doing all of this for the  
19 benefit of the historic district and the  
20 neighborhood without losing square feet. So.

21           COUNCIL MEMBER GARODNICK: Okay  
22 well.

23           MR. MOSKOWITZ: It's obviously a  
24 relevant point Council Member, we're not  
25 suggesting otherwise, but this is a balance. We

1  
2 think that overall the proposal, what it brings  
3 back into the neighborhood and what it opens up  
4 and I go to my original point on terms of light  
5 and air and height, that, you know, the balance  
6 here, we think what is being given by the proposal  
7 and the applicant outweighs this. And considering  
8 that there's still 40 feet distance between 1120  
9 and this property, a huge amount of space given,  
10 we think that overall this proposal benefits the  
11 neighborhood.

12 COUNCIL MEMBER GARODNICK: Okay.

13 And I understand, you know, what is the perceived  
14 heroism of your client and--

15 MR. MOSKOWITZ: [Interposing]

16 Heroism is perhaps too dramatic.

17 COUNCIL MEMBER GARODNICK: Perhaps.

18 But I want to make sure that I understand though  
19 the need for the 5' 3/8" at the back. I'm sorry  
20 5' 5 and 3/8" inches, thank you. I knew I was  
21 going to be corrected--

22 [Crosstalk]

23 MR. MOSKOWITZ: [Interposing] I  
24 wasn't going to correct you again. At the 6<sup>th</sup>  
25 floor, right.

COUNCIL MEMBER GARODNICK: At the  
6<sup>th</sup> floor, exactly.

MR. MOSKOWITZ: Only on the 6<sup>th</sup>  
floor.

COUNCIL MEMBER GARODNICK: Now  
could you accomplish what you need to accomplish  
with a--putting aside the Landmarks issue for a  
second 'cause I understand that you, one of the  
criteria or one of the issues that Landmarks  
raised, what they liked that was there was a  
differential there--

MR. MOSKOWITZ: [Interposing]  
Correct.

COUNCIL MEMBER GARODNICK: --right?  
And I understand that. But could you accomplish  
what you need to accomplish here with a smaller  
extension at the back of that building, whether  
it's 4 feet or 3 feet or 2?

MR. MOSKOWITZ: It obviously--

COUNCIL MEMBER GARODNICK:  
[Interposing] Or 1.

MR. MOSKOWITZ: It obviously  
wouldn't be idea. I mean we couldn't sit here  
with a straight face and tell you we couldn't. It

1  
2 would require a change in design, forget about the  
3 regulatory issues. It would require a change in  
4 design by the architects. Are we looking at the  
5 living space, it's hard for me to sit here and  
6 tell you absolutely that we couldn't do it though.  
7 But we would, obviously if that's the suggestion  
8 we would certainly look at that.

9 COUNCIL MEMBER GARODNICK: Okay.  
10 Let's talk about the rear extension wall, the 19  
11 feet in the back.

12 MR. MOSKOWITZ: AS exists--

13 COUNCIL MEMBER GARODNICK:  
14 [Interposing] As exists.

15 MR. MOSKOWITZ: --right.

16 COUNCIL MEMBER GARODNICK: The  
17 existing 19 foot rear extension wall. That now,  
18 it goes back 19 feet--

19 MR. MOSKOWITZ: [Interposing] No--

20 COUNCIL MEMBER GARODNICK: --or it  
21 goes up 19 feet.

22 MR. MOSKOWITZ: No, no, no. If you  
23 look at the last page, the picture, in this case,  
24 unlike before with Council Member Avella's  
25 comment, this one actually shows, depicts it

1  
2 accurately. If you look at the last page in your  
3 package, in the build--in the picture on the  
4 right, that shows two things. That shows first  
5 the 1-story structure which is 12 and change and  
6 then it shows on top of it the ivy fence which  
7 goes up a total of 19 feet.

8 COUNCIL MEMBER GARODNICK: Okay.  
9 So we're talking about 19 feet in height.

10 MR. MOSKOWITZ: Correct.

11 COUNCIL MEMBER GARODNICK: Okay and  
12 then--

13 MR. MOSKOWITZ: [Interposing] IN  
14 terms of depth it's the full rear yard.

15 COUNCIL MEMBER GARODNICK: It goes  
16 all the way over to 1-3 East 93<sup>rd</sup> Street--

17 MR. MOSKOWITZ: [Interposing]  
18 That's--you're looking at the property line there.

19 COUNCIL MEMBER GARODNICK: Right.  
20 And I have seen it with my own eyes. So now in  
21 your proposal what will happen with that rear yard  
22 extension is what?

23 MR. MOSKOWITZ: It comes down. The  
24 whole thing comes down and what's replaced is per  
25 code a 5'7" fence--

COUNCIL MEMBER GARODNICK:

[Interposing] Okay.

MR. MOSKOWITZ: --along the property line. That now is all open and if you're going south to north, you'll have 30 feet of uninterrupted rear yard light and air. And then at that point you'll hit the rear yard, what we were just talking about.

COUNCIL MEMBER GARODNICK: Okay.

So you--so for those who live at 1 or 3 East 93<sup>rd</sup> Street, they would see a 19 foot barrier become a 5'7"--

MR. MOSKOWITZ: [Interposing]

Right.

COUNCIL MEMBER GARODNICK: --

barrier, it's a fence--

MR. MOSKOWITZ: [Interposing] And--

COUNCIL MEMBER GARODNICK: --as a result, is that right?

MR. MOSKOWITZ: We prefer not to call it a barrier but we also use--

COUNCIL MEMBER GARODNICK:

[Interposing] I prefer not to call it heroism--

MR. MOSKOWITZ: --we call it

heroic, right.

[Laughter, crosstalk]

MR. MOSKOWITZ: Right, right. So I agree. We--that's correct. And 5' 7" is per code. It's not something that we magically came out of thin air with.

COUNCIL MEMBER GARODNICK: Okay. The mechanicals on the roof of 4 East 94<sup>th</sup> Street, I'd like to go back to that for a second. There are currently, as I understand it, two sets of mechanicals. Actually I'm trying to see here. In the proposal there are two sets of mechanicals located on the top of the roof, is that right?

MR. MOSKOWITZ: That's correct. On 4 East 94<sup>th</sup>--

COUNCIL MEMBER GARODNICK:  
[Interposing] Right.

MR. MOSKOWITZ: --yes.

COUNCIL MEMBER GARODNICK: Okay.

MR. MOSKOWITZ: And the mechanicals, if I could, are divvied up between sort of in the middle of 4 East which is the stair and bulkhead which is exactly where one exists now, it's just going to be brought down obviously.

1  
2 And the second, the mechanicals which are closer  
3 to the rear, although not at the rear, are the  
4 chillers and compressors and we should add, the  
5 current building has a boiler on top and we will  
6 be moving the boiler down to the cellar.

7           So in terms of the mechanicals that  
8 currently exist, we are changing the makeup in  
9 that the boiler will be going down to the cellar  
10 so the two sets of mechanicals that are remaining  
11 on 4 East 94<sup>th</sup> Street in the middle, again, is the  
12 stair bulkhead which you see and it stays within  
13 the same framework of what exists and the new  
14 mechanicals are back towards the rear are the  
15 chillers and compressors.

16           COUNCIL MEMBER GARODNICK: Okay I'd  
17 like to, if we can take a look at A-502 for a  
18 second 'cause I just want to make sure that I am  
19 understanding you correctly on this. And by the  
20 way, I think we should find a way to formalize  
21 what you're talking about moving the boiler to the  
22 basement I think that's a positive thing. I don't  
23 know if that's formally included in any of the  
24 plans or papers that we have--

25           MR. MOSKOWITZ: [Interposing] We'd

1  
2 be happy to make it part of any formal--

3 COUNCIL MEMBER GARODNICK:

4 [Interposing] Right. I'd like to discuss that  
5 with you between now and tomorrow. But let's take  
6 a look at this image here for a second. The blue  
7 or the left half, the left side of this page here  
8 is the proposed construction. And it looks to me  
9 like there is only one box-like--

10 MR. MOSKOWITZ: [Interposing]

11 Right.

12 COUNCIL MEMBER GARODNICK: --

13 structure in the--essentially in the middle of the  
14 roof of 4 East 94<sup>th</sup> Street.

15 MR. MOSKOWITZ: Yeah if I could,  
16 for a massing diagram, the mechanical--the  
17 compressors, the chillers are not shown because  
18 they're not considered the same for a massing  
19 diagram. So if you go to actually A-200 that  
20 would probably give you a better, give you a  
21 better depiction of what I think you're looking to  
22 talk about. So if you see right there in the  
23 middle it says HVAC-1, HVAC-2, HVAC-3, HVAC-4,  
24 those are the mechanicals. The drawing you were  
25 just looking at, you can see in the middle, it

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says stair and elevator bulkhead.

COUNCIL MEMBER GARODNICK: Oh okay.  
so what I was looking at in the last image was  
stair and elevator bulkhead.

MR. MOSKOWITZ: Correct.

COUNCIL MEMBER GARODNICK: The  
HVACs were not actually visible on the last image.

MR. MOSKOWITZ: Right. Because  
they typically are not shown on a massing diagram.

COUNCIL MEMBER GARODNICK: Okay now  
the HVAC system today? These are right where it  
is as proposed?

MR. MOSKOWITZ: No there is none.

COUNCIL MEMBER GARODNICK: Where is  
it? Oh did you say there is none?

MR. MOSKOWITZ: I'm not sure if  
there is one.

MR. KENDALL: There's loose  
equipment scattered on the roof of 6 and 8 that  
we're all consolidating.

[Off mic question]

MR. MOSKOWITZ: I don't think we  
have a drawing that shows that.

COUNCIL MEMBER GARODNICK: Okay so-

1  
2 -and these HVAC systems, since they're not  
3 pictured on any elevations or anything and they're  
4 not--and certainly they're lower than your stair  
5 and bulkhead--

6 MR. MOSKOWITZ: [Interposing] Oh of  
7 course.

8 COUNCIL MEMBER GARODNICK: --what  
9 I'm trying to understand here, just to--so I'm  
10 clear, is how big are these structures relative to  
11 the stair and elevator bulkhead? Is there an  
12 issue here that we're not even aware of because  
13 it's not pictures as part of an elevation? I'm  
14 thinking about the people who live right there at  
15 1125 5<sup>th</sup> who may suddenly be looking out over an  
16 HVAC system, depending on the side, and frankly  
17 these may be smaller than I think. They may be  
18 small I don't really have a sense--

19 MR. MOSKOWITZ: [Interposing] We  
20 can give you the dimensions but just to be clear  
21 here at 1120 5<sup>th</sup> Avenue, there's a 40-foot distance  
22 from--

23 COUNCIL MEMBER GARODNICK:  
24 [Interposing] All right.

25 MR. MOSKOWITZ: --that.

1  
2 COUNCIL MEMBER GARODNICK: --you're  
3 right to say that where these HVAC systems are  
4 proposed, the impact would be, if any, would be on  
5 1120 5<sup>th</sup>, not at 1125 5<sup>th</sup> Avenue, you're correct to  
6 say that. And yet still I think we should set  
7 that out as to the size of those systems and  
8 whether they would even peek above the..

9 MR. MOSKOWITZ: Parapet wall?

10 COUNCIL MEMBER GARODNICK: Parapet  
11 wall.

12 MR. MOSKOWITZ: Which is going--  
13 and, yeah please.

14 MR. KENDALL: They do peek above  
15 the parapet wall. They're four independent units.  
16 They each stand--

17 MR. MOSKOWITZ: [Interposing] Can  
18 you tell the Council Member how far up they peek  
19 above the parapet wall?

20 MR. KENDALL: Yes. They are--well  
21 John you want to describe this precisely?

22 MR. MOSKOWITZ: What's the--if it  
23 could, what's, I believe they're only--are they 2  
24 feet above the parapet wall?

25 MR. JOHN ENGLAND: Yes that's

1  
2 right. I'm John England. I'm with BKSK  
3 Architects. Including the curb on which the  
4 mechanical equipment is standing, the top of a  
5 unit will be about 6 feet above the roof slab and  
6 the parapet wall is 4 feet above the roof slab so  
7 we're left with 2 feet.

8 COUNCIL MEMBER GARODNICK: Okay.

9 There will be concern about noise of the HVAC  
10 systems. It sounds like today they're scattered  
11 equipment. Maybe it's used, maybe it's not used.  
12 But if you have an active building with HVAC that  
13 is functioning and used, tell us what steps you  
14 may be able to take here to enclose them or to try  
15 to limit sound coming from those units.

16 MR. MOSKOWITZ: Well to the latter  
17 in particular, and we'd be happy to provide this  
18 in writing but the manufacturer's literature in  
19 particular discussed the fact that at a distance  
20 of 3 feet, which is basically speaking, there is  
21 60 decibels. So 60 decibels being what we speak  
22 at, at 3 feet. So in terms of distance from any,  
23 anyone's window is considerably more. So we think  
24 this is a state of the art equipment and it's been  
25 designed specifically to reduce noise at all

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times.

COUNCIL MEMBER GARODNICK: Okay.

And well then we certainly would want you to set that out.

MR. MOSKOWITZ: We can--yes.

COUNCIL MEMBER GARODNICK: Thank you. And also, let me just understand this, it seems like there may be some outstanding violations on the building on the Department of Buildings website.

MR. MOSKOWITZ: Well if there are, they would be, have been inherited and as we know, and this is no disrespect to the Department of Buildings, since we haven't filed any plans because we haven't gotten any approvals obviously of any substance, that those violations, and I'm not aware of the specifics Council Member Garodnick, those would have to be dismissed ultimately or we wouldn't get an approved building permit.

So any--there has been no one living there. There has been no physical operation there. So any of those violations probably have been inherited. And we're going to

2 have to deal with them ultimately when we go for  
3 our building permit.

4 COUNCIL MEMBER GARODNICK: Okay  
5 let's take--why don't we put that on our list to  
6 take a look at today. Last, you were approved, as  
7 you noted, unanimously or by a vote of 35 to 0  
8 with 2 abstentions by the Community Board, 35 to  
9 0, 2. And you were approved with conditions by  
10 the Borough President. Can you discuss those  
11 conditions and what steps you took to address the  
12 concerns raised? And I believe they were  
13 construction related--

14 MR. MOSKOWITZ: [Interposing]  
15 Right.

16 COUNCIL MEMBER GARODNICK: --raised  
17 by the Borough President.

18 MR. MOSKOWITZ: And I sort of  
19 highlighted them in our testimony but besides  
20 agreeing, obviously at the Building Department  
21 level, there are certain procedures we always have  
22 to do. Any applicant has to do it, as an of right  
23 project or otherwise.

24 But we also agreed to set up  
25 certain protocols, have a person onsite who anyone

1  
2 could talk to, anyone could come to with concerns,  
3 give advance notice. Basically be in front of any  
4 issue as much as we could be, limit noise,  
5 etcetera and work early on with the stakeholders,  
6 neighbors, etcetera, your office, Community  
7 Board's office, Borough President's office too.

8 COUNCIL MEMBER GARODNICK: Okay.

9 Last couple of questions and thank you Chairman  
10 for the time here. There is in this project and  
11 is in any project which involves special permits,  
12 a concern about what would happen if there were  
13 permits granted and the building is sold.

14 And what the obligations would be  
15 of a future owner of that site to comply with the  
16 restrictions that are set relative to these  
17 special permits. Tell us what the applicability  
18 of the special permit to the owner and what they  
19 would need to do if they wanted to amend it.

20 MR. MOSKOWITZ: Well once again  
21 Council Member Garodnick you've outlined where I  
22 didn't enlighten the rest of the Committee. As  
23 part of the special permit findings, a Restrictive  
24 Declaration is required to be executed by this  
25 owner. So in the change that sometime down the

1  
2 road whether, you know, it's 10 years, 15 years,  
3 there is going to be a Restrictive Declaration  
4 that would be recorded against the property. As  
5 any other title issue, anyone who would purchase  
6 the property would be subject to that Restrictive  
7 Declaration.

8 So the maintenance and the  
9 continued restoration and anything else regarding  
10 this special permit as well as the Certificate of  
11 Appropriateness as well as the report would have  
12 to be maintained by that new owner in the event  
13 there is a new owner. And should that new owner,  
14 he or she, want to change anything that has been  
15 approved by ultimately the Council, they would  
16 have to come back.

17 COUNCIL MEMBER GARODNICK: To the  
18 Council.

19 MR. MOSKOWITZ: Correct.

20 COUNCIL MEMBER GARODNICK: Through  
21 another full process as--

22 MR. MOSKOWITZ: [Interposing] I  
23 couldn't tell you. I think I would be  
24 disingenuous to say automatically but I think it  
25 would depend on the degree of the change.

1  
2 COUNCIL MEMBER GARODNICK: Well  
3 let's say instead of taking out the 19 foot  
4 structure at the back, they wanted to leave it.

5 MR. MOSKOWITZ: I think that is  
6 such a clear change from what we ultimately we  
7 hope to be approved and that would have to be a  
8 full brand new special permit application.

9 COUNCIL MEMBER GARODNICK: And what  
10 of instead of taking down the height of 4 East 94<sup>th</sup>  
11 Street, they wanted to leave it and add the height  
12 to 6-8 East 94<sup>th</sup> Street?

13 MR. MOSKOWITZ: That would violate,  
14 it certainly would violate what I was talking  
15 about my parents [phonetic], but in particular it  
16 would violate the special permit. It would  
17 violate the Certificate of Appropriateness. It  
18 would violate the report. So that would clearly  
19 be something that would have to come back.

20 There are, you know, many bells and  
21 whistles along the way that are checkpoints, not  
22 only at the Department of Buildings, but in  
23 particular at the Council, at the Planning  
24 Commission.

25 COUNCIL MEMBER GARODNICK: Okay.

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Thank you Mr. Chairman.

CHAIRPERSON AVELLA: Council Member Felder.

COUNCIL MEMBER FELDER: I, with all due respect to the member in Council Member Garodnick, since the property is in your District, I would just, with your permission, just wanted to mention some things that come to mind. The details were very, very interesting but I would say is that irrespective of everything, to me it would be--for me it would be interesting to know about the home owners that live there. Right now they've been living there or I don't know how long they've been living there.

That's an issue for me. They moved into the neighborhood with a condition that existed. Even if the condition isn't great and even if the proposal is much better, that's the condition that they moved into. So even with the proposal, even if it's going to look, you know, it looks a lot better, the new picture or the proposed picture, it looks, I mean I don't think that you can argue that if you're facing the front of the building it looks 1,000 times better than

1  
2 what's there.

3 Even though the proposed picture  
4 took away the trees. I was very upset about that.  
5 But I know that was a mistaken. And the air  
6 conditioners, the air conditioning units, I don't  
7 know whether there are not going to be any air  
8 conditioning units sticking out of the building or  
9 you just forgot to put those in as well. But  
10 that--there's no question about that.

11 But the issue to me, 'cause I've  
12 had some similar, one particular similar kind of  
13 issue is that whether there's a compelling public  
14 good to be able to say to the people in the back  
15 that even though when you came here and you were  
16 living here, this is the condition that existed  
17 and overall things will be much better, far better  
18 as you said, paraphrasing, than they were, but  
19 it's going to be far better for most of the people  
20 but some people it's not going to be.

21 Clearly some people--there's no  
22 question based on your testimony, I think, that  
23 some people it's not going to be as good as it  
24 was. That's what I think. You said--I don't  
25 remember which one of you said something about the

1 shadowing or something that it's clear that some  
2 people, it's not going to be as good as it was.  
3 So, you know, all I wanted to say is that I don't  
4 feel that it's fair for me to, you know, I respect  
5 Council Member Garodnick's decision about whatever  
6 he feels is appropriate.  
7

8 On a personal level I would just  
9 say is that unless there's a really compelling  
10 argument, you know, we understand the financial  
11 aspects of not having the extra 78 feet and that  
12 you do a project it has all these components and  
13 when you start pulling it apart then obviously it  
14 loses some of that. But in terms of the human  
15 face on this, is that what seems to me, at the end  
16 of the day is that despite the fact that maybe  
17 many people who are living behind or nearby will,  
18 may benefit, the question again is your changing a  
19 situation for some, to their detriment of some  
20 aspect and is there a compelling reason to do so.  
21 That's all.

22 CHAIRPERSON AVELLA: Thank you  
23 Councilman. I just have one question. And I  
24 don't know if you said it already. Is this going  
25 to be owner occupied?

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SUBCOMMITTEE ON ZONING AND FRANCHISES 86

MR. MOSKOWITZ: Yes. I didn't not,  
but yes.

CHAIRPERSON AVELLA: Okay. What  
I'd like you to do is sort of hang around because  
we obviously have some public testimony and then  
maybe--

MR. MOSKOWITZ: [Interposing]  
Absolutely.

CHAIRPERSON AVELLA: --an  
opportunity where we might call you back to  
discuss some of the issues that have been brought  
up.

MR. MOSKOWITZ: Absolutely. Thank  
you.

CHAIRPERSON AVELLA: Thank you. We  
have 2, 4, 6 people to speak in opposition. I'll  
call them up in 2 panels of 3. Lynn Jarowitz  
[phonetic], Barbara Walder and Claire Lord will be  
the first panel.

[Pause]

FEMALE VOICE 1: No I don't.

MS. LYNN JOWITZ: I'm ready when  
you are.

[Witnesses getting settled]

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SUBCOMMITTEE ON ZONING AND FRANCHISES 87

MS. JOWITZ: I'm ready. Should--  
okay.

CHAIRPERSON AVELLA: Is there--if  
there's a particular panel you guys want to do--

MS. JOWITZ: [Interposing] I think  
we're each speaking as individuals.

CHAIRPERSON AVELLA: Okay. I mean  
I don't care about the order.

FEMALE VOICE 2: Excuse me; she has  
to go to a doctor's appointment--

CHAIRPERSON AVELLA: [Interposing]  
Okay. Sure.

MS. JOWITZ: Go ahead.

CHAIRPERSON AVELLA: Well we can  
make the first panel 4 people it doesn't matter.

[Witnesses getting settled]

[Pause]

MR. ARTHUR KING: Okay. Thank you  
and good morning. My name is Arthur King. My  
wife and I live a 1 East 93<sup>rd</sup> Street. We're  
directly behind the property. I'm, as many of my  
questions were just answered, most of them  
positively, 32" from our bedroom window we have a  
15 foot high brick wall which is cracked and it

1  
2 looks unstable.

3                   So I'm really pleased to hear we'll  
4 have a lower garden wall in front of us. And I  
5 also think that there is no question that the 94<sup>th</sup>  
6 Street façade will be much improved when all this  
7 is over. But we are, our major concern is this 5  
8 foot rear, 5-story rear extension at the back of  
9 the building because that brings the bulk of the  
10 building--

11                   CHAIRPERSON AVELLA: [Interposing]  
12 Can you hold on one sec? Can we leave the easel  
13 just in case because this isn't over yet? Thanks.

14                   MR. KING: Yeah that brings the  
15 bulk of the building 5 feet closer to us. And at  
16 the same time it extends then or restricts the  
17 view from both 1125 and 1120 5<sup>th</sup> Avenue. Another 5  
18 foot of brick wall facing them. We have a number  
19 of photographs.

20                   I'll just show you these. These  
21 two show views from 1120 and 1125. And the--thank  
22 you. And the residents there will give you their  
23 own view but we--it means the bulk of the building  
24 advances on our residence and it restricts the  
25 view from theirs. And that is our major concern

1  
2 with the permit application.

3 I think the roofline; they've  
4 answered most of the questions about the roofline.  
5 Because we were concerned about going up one floor  
6 and then having another floor of mechanicals. I  
7 think most of that has been answered as well. So  
8 I'm sorry my time is short but I just wanted to  
9 express our opposition to the extension at the  
10 rear.

11 CHAIRPERSON AVELLA: I know you  
12 have to leave but is that, if there's an  
13 opportunity for compromise here and this would go  
14 for each of the speakers, what would it be? How  
15 would you want to make this proposal better if you  
16 had your druthers, so to speak?

17 MR. KING: Well. As I say, if I  
18 had my druthers all the mechanicals would be in  
19 the basement and not on the roof because that's  
20 noise going through the whole neighborhood. And  
21 the new story at the top would have a sufficient  
22 setback so it wouldn't be visible, it would be  
23 more of a penthouse. And the rear extension  
24 wouldn't exist at all. That would be it.

25 COUNCIL MEMBER GARODNICK: Thank

1  
2 you by the way for being here today and I have  
3 seen from your apartment exactly how close that  
4 wall is and I do believe that the proposed  
5 reduction of that wall in the back yard there will  
6 be a significant net positive for you. But what I  
7 wanted to ask you was on the subject of noise in  
8 the neighborhood 'cause I'm certainly concerned  
9 about that as well.

10 You heard the testimony from the  
11 attorney for the developer saying that the HVAC  
12 equipment would be high tech and would only be  
13 able to be heard at the sound of the human voice  
14 at 3 feet distance. Now my question for you is  
15 what would satisfy you that that is accurate and  
16 true and fair because I'm not a technical expert  
17 and I don't know if you all are or you may be,  
18 what level of comfort would you need to have there  
19 that that is in fact true? Because presumably if  
20 that is true, it's very hard to argue with that.

21 It's very hard to argue with it  
22 because nobody is within 3 feet of those HVAC  
23 machines. So my question for you is how do we  
24 satisfy ourselves that that is accurate and that  
25 that is something that will not do any harm to

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you?

MRS. SARA BARTON KING: By hearing an existing--sorry, forgive me.

MR. KING: Okay.

MRS. BARTON KING: Sorry. Sara Barton King. Sorry, Sara Barton King, Arthur's wife.

MR. KING: No I think the main impact would obviously be on the residents of the taller buildings around this site. Being on the ground floor we do have a lot of machinery noise already but I don't think it would impact us directly. It would be on other people at a higher level.

MRS. BARTON KING: Perhaps if there's an existing installation, there's a possibility we could hear. And if then we could hear, we can make an assessment. Without any of us knowing because we're not technically aware, without--

COUNCIL MEMBER GARODNICK:

[Interposing] Okay. Understood. I don't know if we'll have the ability to do in person tests before the moment of truth here but I hear what

1  
2 you're saying. I think we're going to look to try  
3 to find the appropriate level of comfort and  
4 assurance that this is not something that will be  
5 heard by you and certainly not something that will  
6 be heard by the other folks who are here because I  
7 think, you know, certainly if accurate, it would  
8 not be. But the folks who live at 1125--

9 MRS. BARTON KING: [Interposing]  
10 Um-hum.

11 COUNCIL MEMBER GARODNICK: --  
12 although it's not immediately in front of their  
13 windows. The folks who are at 1120 are 40 feet  
14 away but they're most in line. So this is  
15 something that I think we will try to address and  
16 get comfortable with so thank you.

17 MR. KING: Thank you.

18 MRS. BARTON KING: Thank you.

19 MS. JOWITZ: Hi. My name is Lynn  
20 Jowitz. I'm the owner of the hidden house in this  
21 whole business, nobody has mentioned 5 East 93<sup>rd</sup>  
22 Street and that's the building that I own. And  
23 yes we do live there. And with all due respect to  
24 Mr. Moskowitz, he can tear down half of 4 East 94<sup>th</sup>  
25 Street and it still doesn't give us any light and

1  
2 air because we are the property that directly  
3 abuts the rear yard of 6 through 9 East 94<sup>th</sup>  
4 Street, 5 East 93<sup>rd</sup> Street.

5           Before I get into my remarks, I  
6 want to sincerely thank the Committee and Council  
7 Member Garodnick and his concerned staff for  
8 endeavoring to hear our concerns. Again for your  
9 information and the information of the Committee,  
10 I did a large renovation on my property which is a  
11 miniscule fraction of the size of the building  
12 here in question.

13           And my HVAC unit for only two  
14 floors of my building is the size of a giant Buick  
15 placed on top of a steel beam which was necessary  
16 to hold its weight. And even though it was  
17 perfectly legal and our neighbors, it was all done  
18 perfectly properly in 1999 to 2000, when you put  
19 it on it shakes the entire building.

20           So when I first saw it in all  
21 honesty I cried because what it did to my own  
22 sightlines on my own roof was... created a situation  
23 beyond remorse. And quite a level of animosity in  
24 my towards my mechanical engineers who minimized--  
25 and architects who minimized its impact on my life

1  
2 in my own building on my own roof.

3           It's not up for debate that any  
4 extension upwards beyond the 5<sup>th</sup> floor roofline of  
5 Number 6 through 8 East 94<sup>th</sup> Street negatively  
6 impact the light, view, air and open aspect of my  
7 building and thusly shrouds and darkens the entire  
8 rear of my structure, probably even without the  
9 mechanicals. Put the mechanicals on, forget it.

10           What is open for debate is whether  
11 the special permit variance that the developer  
12 requests is a special permit variance of a law  
13 drafted to protect home owners like me or  
14 developers like them. Why aren't New York City  
15 residents allowed to erect 50-foot fences on the  
16 property line between themselves and their  
17 neighbors? Why does the law state that one can't  
18 create a public nuisance?

19           For argument's sake, I badly would  
20 like a private parking space, just for me, in  
21 front of my house on East 93<sup>rd</sup> Street. Why is that  
22 laughable and this special permit application not  
23 laughable? Why did the law give the developer a  
24 pre-existing specified parameter to build in?  
25 Because it's not fair to the neighbors.

1  
2 I know where my property rights  
3 come from. They come from the US Constitution.  
4 I'm not actually asking for any gifts or personal  
5 favors. I paid; I paid a lot for the little  
6 sliver of sky that I can see from my kitchen  
7 window. That's my property right. That's  
8 protected by the Federal government and by New  
9 York State.

10 It's also an implied doctrine that  
11 the people who say they're going to move into East  
12 94<sup>th</sup> Street are not inherently more important, nor  
13 have more vital or impressive property rights than  
14 the people that you've seen today and will see who  
15 have already lived on East 93<sup>rd</sup> Street for decades.

16 I ask that the pre-existing  
17 building rules not be considered as just something  
18 to be amended or broken if one simply recites the  
19 prescribed set of verbiage and get to adjust the  
20 laws on a whim but respect it as a law that  
21 actually had a purpose, a meaning and a protective  
22 quality for the benefit of the people of the City  
23 of New York and their representatives who actively  
24 approved the existing building rules.

25 Of all the people who I would hope

1  
2 and expect would respect the law, enforce it and  
3 see to its compliance, it's you, my lawmakers.

4 Please do not issue special variances that steal  
5 my property rights. Think outside the box and do  
6 not rubber stamp this injustice. I'm relying on  
7 you to please protect all of us by not issuing a  
8 special variance and by making the developer build  
9 to his pre-existing legal parameters. Just say  
10 no. Please. Thank you so much.

11 MS. CLAIRE CINDY LORD: Hello my  
12 name is Claire Cindy Lord [phonetic] and I live at  
13 1120 5<sup>th</sup> Avenue and I'm here today to represent  
14 myself and our B and C line and all our neighbors.  
15 The developer's plan to push out and add 5  
16 extended new feet to the wall at the back of 4  
17 East 94<sup>th</sup> will irreparably damage the sense of  
18 companionable green we in the neighborhood have  
19 shared for years.

20 This invasive expansion at the back  
21 of 4 East 94<sup>th</sup> in this building on a side street as  
22 well as the changes that the developer plans for 6  
23 and 8 East 94<sup>th</sup>, constitute a calculated disregard  
24 and possibly a malicious lack of concern for the  
25 surrounding large community which for decades has

1  
2 lived around this full block garden. We implore  
3 you to deny this special permit. Thank you.

4 CHAIRPERSON AVELLA: Hold on one  
5 second. Council Member Felder has a question.

6 COUNCIL MEMBER FELDER: I'm just  
7 curious 'cause you mention that you're speaking on  
8 behalf of the tenants or the owner--other owners  
9 at 1120--

10 MS. LORD: [Interposing] No, some  
11 of those in the B and C line--

12 COUNCIL MEMBER FELDER:  
13 [Interposing] I'm sorry?

14 MS. LORD: The B and C. The B and  
15 C line at 1120.

16 COUNCIL MEMBER FELDER: What--the B  
17 and C line? You're speaking on behalf of the  
18 train line?

19 MS. LORD: [Laughing] No. It's the  
20 line of people who are particularly affected by  
21 this.

22 COUNCIL MEMBER FELDER: Well the  
23 only question I have Mr. Chair is that I don't--  
24 maybe I missed it, I--do we--is there anyone else  
25 that you're speaking on behalf that signed

1  
2 anything? I trust you but do we have anything on  
3 record--

4 MS. LORD: [Interposing] Yes, John  
5 Stewart has written--you mean who's written in the  
6 building?

7 COUNCIL MEMBER FELDER: In other  
8 words how many people live in that building?

9 MS. LORD: I have no idea honestly.

10 COUNCIL MEMBER FELDER: About 5,  
11 10, 20, 100? About? What's the least--?

12 MS. LORD: [Interposing] I would  
13 guess... a lot of families, 15 floors.

14 COUNCIL MEMBER FELDER: All right.  
15 So a lot of people. I'm just curious how many  
16 people signed anything.

17 MS. LORD: I would think that...

18 [Off mic] - - 16.

19 COUNCIL MEMBER FELDER: Well no,  
20 no. So if--I'm curious, I implicitly trust the  
21 witness but I'd like to know whether people really  
22 are concerned about the issue .Whether they've  
23 signed anything and addressed it so that's--

24 CHAIRPERSON AVELLA: [Interposing]  
25 It's a good question. We still have two other

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speakers--

COUNCIL MEMBER FELDER:

[Interposing] Okay thank you.

CHAIRPERSON AVELLA: --so maybe that question can be answered. I'd like to call up the two final speakers on this item. Barbara and Joan.

[Pause]

[Witnesses getting settled]

MS. JOAN JACOBSON: Which should go first--?

CHAIRPERSON AVELLA: [Interposing] It doesn't matter.

MS. BARBARA WALDER: Why don't you go first?

MS. JACOBSON: Hum? Okay. I'm Joan Jacobson. Am I--hear? Okay? I'm Joan Jacobson. I'm the owner of the 8<sup>th</sup> floor apartment at 1125 5<sup>th</sup> Avenue. I represent the other 14 owners in this cooperative building which is adjacent to 4 East 94<sup>th</sup> Street. And our bedrooms face Number 4 and are separated by only a few feet from the wall that is at 4 East 94<sup>th</sup>.

We all have apprehensions about the

1  
2 damaging effect that these special permits would  
3 have on our homes and the surrounding  
4 neighborhood. They've been requested by a  
5 developer who professes that it will be his  
6 residence but who has already put it on the market  
7 for resale. If allowed to go ahead with the  
8 plans, grim walls would block the sunlight and air  
9 that now come into our bedrooms and kitchens. And  
10 the massive bulk of the building that would  
11 intrude upon the core of our block. The access to  
12 air and light that make for the healthful  
13 environment of this community would be destroyed.

14 I was told to make this short so I  
15 made it short but I'm leaving out a lot of things.  
16 When the... proximity of the 4 to our building and  
17 our bedroom windows would block light. As it is  
18 now light comes down from east, west, north,  
19 south, and but it filters down, my own bedroom, I  
20 waken to sunlight.

21 But all the--there are apartments  
22 below mine. And if the taller, the more bulk that  
23 they have around it, the more difficult it is for  
24 the light and the air to get down there.

25 At any rate, it's the access to the

1  
2 air and the light that make for the healthful  
3 environment of this entire community. We  
4 respectfully request that the special permits be  
5 denied and that 4 East 94<sup>th</sup> Street be left as it is  
6 or perhaps restored to what it was before they  
7 began the previous reconstruction.

8 If however the special permits are  
9 to be granted, we suggest some modifications that  
10 would to a degree alleviate the offense to this  
11 community's way of life. And I've appended them  
12 in an attachment to this statement.

13 But now if this is out of order I'm  
14 sorry but I cannot help wanting to ask the  
15 question of why the special permits have to be  
16 requested. What is the necessity for this  
17 building? Is one man, who professes that he's not  
18 going to sell it, that he's going to live there?  
19 He's got--bought a house, why does he need to make  
20 it bigger? Why does he need to--like--he bought  
21 it as it is, why does he have to destroy what we  
22 have because he's saying I want. That's all. Can  
23 you answer that? Bless you. I'm done.

24 MS. WALDER: Thank you, can you  
25 hear me?

CHAIRPERSON AVELLA: Yes.

MS. WALDER: Thank you. I'm just going to read my statement.

[Off mic]

MS. WALDER: Okay. Thank you. I'm just going to read my statement. My name is Barbara Walder [phonetic] and I live in the 2<sup>nd</sup> floor rear apartment at 1 East 93<sup>rd</sup> Street. I want to thank you for this hearing today and thank the Council Members and their staffs who talked with us and toured the site.

It is much more than the other agencies in this flawed review process have done but the neighbors at 1, 3 and 5 East 93<sup>rd</sup> and 1120 and 1125 5<sup>th</sup> came to this very late, just as CB8 was voting. And if a few of us hadn't spotted an inconspicuous flyer briefly affixed to a lamppost, this flyer, we wouldn't have heard anything about this development plan until the jack hammers started.

With little time to understand the process and become part of it, it's not surprising that a group of amateur neighbors haven't made much headway against the professional "team" of

1  
2 one of the richest developers in New York.

3           Before--I was going to show you  
4 pictures, maybe I will still. I was going to say  
5 before I showed you, you know, pictures that  
6 Arthur took, I just want to point out one thing  
7 that we think is essential. If you could overlay  
8 a sketch of the building, now at 4 East 94<sup>th</sup>, with  
9 an outline conforming to the current zoning laws,  
10 it would be clear how grossly overbuilt this 1960s  
11 building already is. We understand that somehow  
12 the dimensions of this community institution are  
13 being grandfathered into what the developer  
14 insists will be a personal residence.

15           We don't understand why the  
16 developer would be considered for special permits  
17 in a building that already violates existing  
18 zoning laws. It would be devastating to the light  
19 and air of so many people, possibly 16 apartments  
20 in 1120 alone, and compounds the 60s mistake.  
21 It's not fair. It's not logical. And it's not in  
22 compliance with the laws. And what Landmarks so  
23 prizes in the plan for the building front would be  
24 done routinely by any developer in these choice  
25 blocks.

1  
2 We live in the neighborhood and  
3 love it. The developer is just passing through  
4 trying to squeeze as many square feet and as much  
5 money out of the property as he can. That's fine  
6 except it's doing it at our expense. We don't  
7 want our quality of live diminished. We don't  
8 want the zoning regulations chipped away. We  
9 don't want to endure years of construction and end  
10 up with something worse than what was there  
11 before.

12 As a writer, I hope to inform the  
13 public about this review process and suggest ways  
14 to reform it. Right now City Council can deny the  
15 special permits and uphold the laws that protect  
16 New York. I hope you do so. And thank you very  
17 much.

18 And I do have other pictures if you  
19 want to see them, I don't know. It's not--we  
20 don't have the fancy drawings but pictures that  
21 Arthur took just to show you, you know, how this  
22 works and how we feel about it if you want to see  
23 them. You know, we put them together and worked  
24 hard on it. [Chuckling]. And they have  
25 explanations. They're not fancy. But just to

1  
2 show you, if I can--am I allowed to say this?

3 [Off mic]

4 MS. WALDER: Oh okay. Just to show  
5 you how vast Number 4 is already, it's humongous.  
6 It's huge. This will be, apparently what, 25,000  
7 square feet? So the rest of the south side of 94<sup>th</sup>  
8 Street which some of you have seen, is low. And  
9 to raise 6 to 8 up, you know, we don't understand  
10 that. We don't understand that.

11 MS. JACOBSON: Barbara, show them  
12 the adjacent -- where we are.

13 MS. WALDER: Yeah they can see  
14 that. And here this shows--I mean this building  
15 is more like a 5<sup>th</sup> Avenue building than it is like  
16 a mid-block building, this Number 4. And this  
17 shows the alley, how close it is to--

18 CHAIRPERSON AVELLA: - - the mic.

19 MS. WALDER: Ooo. Sorry. This  
20 shows how close 1125 is. And then here's the  
21 question. When they talk about the 13'6" that  
22 they're going to raise it, are they measuring it  
23 from the top of the mechanicals, the 13'6", I mean  
24 how much lower in actuality is the real building  
25 going to be than the building that's there now.

MS. JACOBSON: - -

MS. WALDER: Yeah this is from Joan's window. Joan's on the 8<sup>th</sup> floor and she's looking up to the 7<sup>th</sup>. So we don't really know. When they say the 13' 6" are they measuring from the top of that narrow mechanical? Is that the 13' 6" that they're getting? Where are they measuring that from? How much lower is it going to actually be?

Okay. And again this is Joan's; this is from Lynn's back yard if you want to see it. I don't know, maybe it's too confusing. Huh. This is Sara showing how close the, you know, the wall. We've dealt with the wall thing.

[Off mic]

MS. WALDER: Right. This is the wall. This is how close it is.

MS. JACOBSON: [off mic] 293, to 1125.

MS. WALDER: No that has nothing to do with 1125.

[Ladies discussing the photos off mic]

MS. WALDER: Okay. And this again

1  
2 shows how close the properties are. But you're  
3 dealing with the wall thing it sounds like. But  
4 again, look, I'll stop now but I'm just saying we  
5 don't understand how anyone could give the special  
6 permits. And in the earlier agencies, no one  
7 cared about is. No one cared about us. We were  
8 not on board to defend it.

9 And even when we did come onboard,  
10 we were so naïve that we didn't know what to do.  
11 And just no one cared about it. No one cared  
12 about laws, us, we were a bother to the people.  
13 They didn't want to hear from us. They pretended  
14 they did, but they didn't. Thank goodness the  
15 City Council wants to hear from us and we very  
16 much, all of us, appreciate the enormous  
17 difference here. Thank you.

18 CHAIRPERSON AVELLA: I have one  
19 question and then Council Member Garodnick has a  
20 question I think. Council Member Felder has a  
21 question as well. And I think it's in your  
22 testimony some place that the property is for  
23 sale? And where did you find that out?

24 MS. WALDER: It's--it was--

25 CHAIRPERSON AVELLA: [Interposing]

1  
2 Speak into the mics so we can hear you.

3 MS. WALDER: [Interposing] Excuse  
4 me. I'm sorry. It was in--we were--you can--just  
5 Google 4 through 8 East 94th Street, yourself, but  
6 it was written about in The Observer in '08 which  
7 they keep denying that it was--as soon as they got  
8 the Landmarks approval which none of us knew  
9 about, we don't believe it was posted in the  
10 neighborhood because we see things.

11 This was posted, even though it was  
12 this pale yellow thing wrapped around things,  
13 lampposts. We all saw this and went to the CB8  
14 meeting. We don't think the Landmarks, any  
15 Landmarks stuff was posted.

16 But if you read, we've included,  
17 it's--I've given it in the handout, the two  
18 Observer articles. The one that was written in  
19 July of '08 and explained how they bought it for  
20 \$23 million and tried to sell it, as soon as they  
21 go the Landmarks for \$52 million in March and it  
22 was listed with Corcoran.

23 It has its own website. It says  
24 it's going to be a palatial residence, two and a  
25 half times the size of a mansion, 25,000 square

1  
2 feet, or fabulous, it could be a school or a  
3 diplomatic residence or whatever. It has--it was  
4 advertised, it was shown in the New York Times.  
5 It's in there.

6 And then there was another article  
7 about a month or so ago saying that they pulled it  
8 off the market temporarily. And it was one of the  
9 things; they were talking about all the unsold  
10 properties. This is one of the great mansions.  
11 And I think they pulled it off and it's only  
12 temporary they pulled it off the market because  
13 they want to get through City Council.

14 That's why they pulled it off the  
15 market because we've been raising a fuss about it.  
16 You know, they keep saying they're going to live  
17 there because then they won't seem like they're  
18 just a developer making a deal. You know. So  
19 they'll just get their permits because it isn't--  
20 they're not just, you know, a hit and run  
21 developer.

22 We don't care, you know, that's  
23 fine but they're doing it at our expense. That's  
24 the problem. And, you know, everybody, you know,  
25 they can make their money but don't make it off

1  
2 us. You know. And they never cared about is at  
3 all.

4 CHAIRPERSON AVELLA: Council Member  
5 Garodnick and then Council Member Felder.

6 COUNCIL MEMBER GARODNICK: Thank  
7 you. I just wanted to say thank you for your  
8 advocacy on this issue and I'm glad that you feel  
9 that you are being heard by the--

10 MS. WALDER: [Interposing] Yes.

11 COUNCIL MEMBER GARODNICK: --the  
12 City Council 'cause you are--

13 MS. WALDER: [Interposing] Yes.

14 COUNCIL MEMBER GARODNICK: --  
15 certainly being heard by the--

16 MS. WALDER: [Interposing] Yes.

17 COUNCIL MEMBER GARODNICK: --City  
18 Council--

19 MS. WALDER: [Interposing]  
20 Absolutely.

21 COUNCIL MEMBER GARODNICK: --and  
22 we appreciate the time that you have taken to, to  
23 show me around, and Council Member Avella and  
24 others, the staff of Chair Katz. And we do take  
25 this extremely seriously--

2 MS. WALDER: [Interposing] We know  
3 you do.

4 COUNCIL MEMBER GARODNICK: --and we  
5 are looking to try to find a resolution to this  
6 issue as you know that is respectful of the  
7 neighbors, the neighborhood. We have a Community  
8 Board that obviously voted for it overwhelmingly  
9 and a Borough President that approved. We will do  
10 our best to try to address these various concerns  
11 that you are raising but we really do appreciate  
12 what you're here saying and doing--

13 MS. WALDER: [Interposing] Well.

14 COUNCIL MEMBER GARODNICK: --so I  
15 just wanted to thank you for that.

16 MS. WALDER: Thank you. Thank you.  
17 And again, no one, no one even cared to read the  
18 application before you came along much less vet  
19 it. Didn't want to hear--didn't even look--

20 MS. JACOBSON: [Interposing] Yeah.

21 MS. WALDER: --at the application.  
22 Okay. Didn't care what we had to say. Just  
23 fluffed us off. No one cared. You guys have  
24 actually cared. And your staffs have been  
25 wonderful. Thank you.

1  
2 MS. JACOBSON: You have, you have  
3 been exactly what we hoped for from our  
4 government.

5 MS. WALDER: That's right. What  
6 Joan said.

7 COUNCIL MEMBER FELDER: Well I'm  
8 delighted that you have Council Member Garodnick  
9 because I don't know if you would have felt the  
10 same way if I was your Council Member so--

11 [Laughing]

12 COUNCIL MEMBER FELDER: --so you  
13 are very lucky. No you really are very lucky.  
14 And certainly the Chair, I just want for the  
15 record, unless, unless somebody corrects me  
16 otherwise, the only--I have in front of me three  
17 letters. One from Joan Jacobson--

18 MS. JACOBSON: [Interposing] Um-  
19 hum.

20 COUNCIL MEMBER FELDER: --and it  
21 says in your letter that you represent the other  
22 14 owners. For the record I just want to say is  
23 that that may be the case. I don't see any  
24 indication of that. It may be so but lacking  
25 anyone else signing this or indicating that to us,

1  
2 we have to assume that you're representing  
3 yourself. We don't have--unless the Committee has  
4 that--

5 MS. JACOBSON: [Interposing] Well.

6 COUNCIL MEMBER FELDER: --and  
7 that's in terms of 1125 and I just want to  
8 emphasize that it may very well be that all 14  
9 owners feel the same way you do. But I don't--if  
10 it's not in writing, and if they're not here, we  
11 can't--

12 MS. JACOBSON: [Interposing] Well.

13 COUNCIL MEMBER FELDER: --despite  
14 the fact that you look like a very honest,  
15 trustworthy person, we cannot make that  
16 assumption. And in terms of 1120, that was 1125,  
17 in terms of 1120, I don't know how many people  
18 live there. There are two letters. There's one  
19 on the record from Claire Lord and from J. G.  
20 Frizinger [phonetic].

21 MS. WALDER: Fritzsinger

22 [phonetic].

23 COUNCIL MEMBER FELDER: Fritzsinger  
24 and you just spoke. Right? Where are you at?

25 MS. WALDER: No I'm at Number 1.

1  
2 COUNCIL MEMBER FELDER: You're  
3 Number 1. So all I want to make sure is that the  
4 record reflects that the only, the only testimony  
5 or written testimony we have are the things that  
6 have been presented. And even if people feel very  
7 strongly that's not what we have on record.

8 MS. WALDER: Can--may I say  
9 something?

10 COUNCIL MEMBER FELDER: You have to  
11 ask the Chair permission.

12 MS. WALDER: May I say--?

13 CHAIRPERSON AVELLA: [Interposing]  
14 Yes.

15 MS. WALDER: What you also have  
16 there, I believe was passed out was a letter from  
17 John Stewart who is the Board President of 1120  
18 who is away and also is not well. Right Cindy?  
19 He's away and he's ill. But he sent a letter  
20 that's signed. Do you see that there? Right.

21 And I believe also that Councilman  
22 Garodnick, I understand has gotten a letter from  
23 Angela Haynes, who lives across the hall, I mean  
24 she wrote to me that it was sent to your office,  
25 maybe you didn't get it yet from Angela Haynes.

COUNCIL MEMBER FELDER: If in fact there is one more letter--

MS. WALDER: [Interposing] Right.

COUNCIL MEMBER FELDER: That's wonderful. I'm not--remember I'm not debating with you--

MS. WALDER: [Interposing] Right.

COUNCIL MEMBER FELDER: --how people in these properties feel. All I'm saying to you is for whatever reason, right now, the only thing that we--

MS. WALDER: [Interposing] Right.

COUNCIL MEMBER FELDER: --can reasonably look at, despite your--is what we have, not what you're saying.

MS. WALDER: Right.

COUNCIL MEMBER FELDER: Okay?

MS. WALDER: We don't disagree but there are other people. It's just; again as I said, we're amateurs.

COUNCIL MEMBER FELDER: No we believe you. We believe you--

MS. WALDER: [Interposing] And we're learning how to do this.

COUNCIL MEMBER FELDER: --and we believe you're amateurs as well.

[Laughter]

COUNCIL MEMBER FELDER: That's not a problem. That's not the issue--

MS. JACOBSON: [Interposing] That - - not a problem for you.

COUNCIL MEMBER FELDER: --I just wanted to be..

MS. WALDER: No it's fine. We're learning how to do this on the fly [chuckling] but we feel it passionately.

CHAIRPERSON AVELLA: Thank you. Seeing no one else to speak on this item, I will close the public hearing but I will ask the representatives of the owner to come back.

MS. WALDER: Okay, we'll get out.

CHAIRPERSON AVELLA: And Council Member Garodnick has some follow-up questions.

COUNCIL MEMBER GARODNICK: Very briefly.

[Pause]

COUNCIL MEMBER GARODNICK: Mr. Moskowitz, welcome back.

1  
2 MR. MOSKOWITZ: Thank you Council  
3 Member.

4 COUNCIL MEMBER GARODNICK: I just  
5 wanted to clarify a couple of points which came  
6 up. One of the witnesses who came up suggested  
7 that this development or what you're proposing is  
8 going to be bigger. I believe you had addressed  
9 that in your initial testimony but I just wanted  
10 to make sure because obviously we are all  
11 concerned about something which adds bulk to the  
12 neighborhood or to this particular block. So can  
13 you address whether this will be, at the end of  
14 the day, if we approved as proposed, whether this  
15 would be bigger?

16 MR. MOSKOWITZ: No. It would not  
17 be bigger in terms of square footage and in fact  
18 as I stated earlier this Committee cannot approve  
19 any increase in square footage under the  
20 application before you. So that if indeed for  
21 some reason it was suggested that we were going to  
22 build bigger than currently exists, that would--we  
23 wouldn't get an approval at the Department of  
24 Buildings. It would be a different process. We'd  
25 have to actually come back through. So the answer

1  
2 is unequivocally no.

3 COUNCIL MEMBER GARODNICK: Okay.

4 Another question is on the subject of the HVACs  
5 and their placement. I understand from the  
6 earlier testimony from you and your team that they  
7 will, as proposed, peek out two feet over the  
8 parapet wall. The question here is whether there  
9 would be any room to move the HVAC systems into a  
10 place which is not on the roof.

11 MR. MOSKOWITZ: We have looked at  
12 that. From--for design purposes, cost purposes  
13 and efficiency purpose, we, it is quite difficult  
14 to do. We will re-look at it again but we think  
15 that it's quite difficult. We actually looked at  
16 even moving it from where it is to another place  
17 on the roof.

18 And because of the location and  
19 where the piping and the cooling units have to be,  
20 the only other possible place would actually be in  
21 the front of the bulkhead on 94<sup>th</sup> Street.

22 And one of the constant themes  
23 we've heard today, you know, my own interpretation  
24 is that everyone seems to like what is being done  
25 on 94<sup>th</sup> Street. I can tell you unequivocally,

1  
2 Council Member Avella would probably chime in as  
3 well, that if we were to suggest putting the HV  
4 units on the front on 94<sup>th</sup> Street, Landmarks  
5 Commission would not be happy. And for that  
6 matter many of the people have supported this  
7 project. And perhaps those who are opposed to it  
8 would not be happy.

9 COUNCIL MEMBER GARODNICK: Okay  
10 well I would like you to consider that as a  
11 request as to the possibility of moving them down  
12 into the building somewhere. And if that is not  
13 possible at the end of the day I would like to  
14 discuss ways to limit the emission of sound from  
15 those mechanical, from the mechanicals up there,  
16 the HVAC system and we would like to talk to you  
17 about that further.

18 MR. MOSKOWITZ: Absolutely.

19 COUNCIL MEMBER GARODNICK: Thank  
20 you.

21 MR. MOSKOWITZ: Chairperson Avella,  
22 if it's okay, I know it's been a long morning  
23 already. I'd just like to correct, purely for the  
24 record, there was a--comments made about  
25 mechanicals being on 6-8 East 94<sup>th</sup> Street. The

1  
2 mechanicals are just on 4.

3           And in terms of, I really don't  
4 want to get into the debate because a lot of this  
5 subjective and personal and can get emotional but  
6 as we showed you in our drawings, the, bringing  
7 down the 4 East 94<sup>th</sup> Street, we think actually  
8 opens up the windows on the floors that were  
9 discussed at 1125 5<sup>th</sup> Avenue.

10           And so we're not quite sure how  
11 that testimony came out that way. But as we've  
12 shown you, it does indeed come down. And I think  
13 we've already explained how the measurements have  
14 been taken in terms of the mechanicals.

15           CHAIRPERSON AVELLA: Yeah. You  
16 know, in addition to Council Member Garodnick's  
17 concerns, I also have, you know, some concerns  
18 about the 5 feet extending into the back yard.  
19 And how the light will be affected by that  
20 additional, you know, story on the rest of the  
21 buildings. I'm just like actually surprised that  
22 you don't have those studies with you in terms of  
23 shadows, in terms of the light. So I'd like to  
24 see them before I vote. And--

25           MR. MOSKOWITZ: [Interposing] We

1  
2 will provide them and we apologize for not having  
3 don them. They were not part of any official  
4 request or review process prior. But we  
5 understand your concern and or dis-concern that  
6 they weren't here and we will address that.

7 CHAIRPERSON AVELLA: What's the  
8 setback for that additional floor from the back?  
9 I know there's a setback in the front, is there  
10 any setback in the back?

11 MR. MOSKOWITZ: Well 6 and 8 is not  
12 being touched. You're talking about at 4?

13 CHAIRPERSON AVELLA: Right.

14 MR. MOSKOWITZ: Correct?

15 CHAIRPERSON AVELLA: Yeah. The  
16 additional story I'm talking about--

17 MR. MOSKOWITZ: [Interposing] Yeah.  
18 The setback, there is no setback, we're bringing  
19 everything out the 5' 5.5"--

20 CHAIRPERSON AVELLA: [Interposing]  
21 Right. Okay. So in effect you're just--for those  
22 other buildings, you're adding an additional floor  
23 with no setback in the back.

24 MR. KENDALL: Well for 6 and 8  
25 we're adding an additional floor, it's set back

1  
2 approximately 10 feet from the existing rear wall.

3 CHAIRPERSON AVELLA: Okay. That  
4 was my question.

5 MR. MOSKOWITZ: Right. And--

6 CHAIRPERSON AVELLA: [Interposing]  
7 Okay

8 MR. MOSKOWITZ: --again, just of  
9 that 5' 5.5" from top down, the only portion of  
10 the request here before this Committee is for the  
11 78 square feet that sits in the R8B portion of the  
12 site.

13 CHAIRPERSON AVELLA: Okay.

14 MR. MOSKOWITZ: Which is furthest  
15 away from the adjoining neighbors.

16 CHAIRPERSON AVELLA: Any other  
17 questions? Thank you.

18 MR. MOSKOWITZ: Thank you.

19 CHAIRPERSON AVELLA: We will recess  
20 this meeting until 9:45 before the 10:00 o'clock  
21 meeting tomorrow of Land Use at which time we will  
22 take this matter up again. Thank you. This  
23 meeting is recessed--

24 [Gavel banging]

25 CHAIRPERSON AVELLA: --until 9:45

1

SUBCOMMITTEE ON ZONING AND FRANCHISES123

2

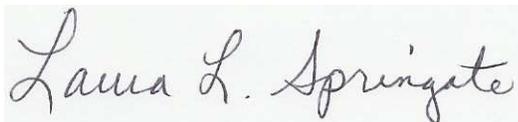
tomorrow morning.

3

[END 1002.MP3]

C E R T I F I C A T E

I, Laura L. Springate certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

A handwritten signature in cursive script that reads "Laura L. Springate". The signature is written in black ink on a light-colored background.

Signature \_\_\_\_\_Laura L. Springate\_\_\_\_\_

Date \_\_\_\_\_September 6, 2009\_\_\_\_\_