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BY HAND

The Honorable Meenakshi Srinivasan
Chair
NYC Board of Standards and Appeals
40 Rector Street - 9th Floor
New York, New York 10006

**Re: Congregation Shearith Israel ("CSI")
6-10 West 70th Street/99 Central Park West
74-07-BZ /CEQR No.: 07BSA071M**

Dear Madam Chair:

This letter is written in response to comments by the Board during the November 27, 2007 Board of Standards & Appeals (the "Board" or "BSA") hearing (the "First BSA Hearing") in connection with CSI's variance application (the "Application").

Monetization

Before turning to the Board's comment, I would like to address the occasionally inaccurate and misleading use of the term "monetization" by many of the public speakers at the previous hearing. Monetization is not synonymous with "profit." In fact, it is entirely possible to monetize an asset at a significant loss. The term "monetization" refers only to a process of conversion of an economic asset from one form to another, much in the way the fields of chemistry convert solids to liquids or physics converts energy to matter. As applied to the principles in this Application, monetization refers only to the conversion of unused developed rights inherent to the zoning lot to built floor area on the same zoning lot. The conversion implies neither gain nor loss. In the case at hand, the Financial Analysis prepared by Freeman/Frazier & Associates demonstrates that the conversion of 23,000 sf of unused development rights already owned by CSI on the CSI zoning lot into 23,000 sf of built residential floor area is an economic wash, occurring without generation of either profit or loss to CSI.

BOARD COMMENTS

I. Site History & Applicability of ZRCNY Sec. 77-22

In response to the Vice Chair's question concerning the applicability of ZRCNY Sec. 77-22, the zoning lot's site history has been re-examined. While Lot 36 was acquired by CSI in 1895, the Community House was created in 1954 through the physical alterations and joining of two row houses on what is now a portion of Lot 37. The now vacant portion of Lot 37 had previously been occupied by two additional CSI-owned row houses, both of which were demolished in 1950. The remaining portion of Lot 37 was added to CSI's zoning lot in 1965, four years subsequent to the adoption of the 1961 ZRCNY. The critical dates are:

- 1 Feb. 15, 1895 99 Central Park West (Tax Lot 36); Charles E. Hoffman to Congregation Shearith Israel; CFNR 2005000416667
- 2 Aug. 30, 1949 6 West 70th Street (now part of Tax Lot 37); 70th Street Holding Co. Inc. to the Trustees of the Congregation Shearith Israel; Liber 4636 Page 510
- 3 Aug. 30, 1949 8 West 70th Street (now part of Tax Lot 37); 70th Street Holding Co. Inc. to the Trustees of the Congregation Shearith Israel; Liber 4636 Page 514
- 4 May 28, 1965 10 West 70th Street (formerly Lot 39/ now part of Lot 37); Park Seventy Improvement Corp. to The Congregation Shearith Israel; CON 5327 Page 339¹

Article VII, Chapter 7 of the Zoning Resolution governs zoning lots divided by the zoning district boundaries such as CSI's. ZRCNY Sec. 77-21 specifies the distribution of zoning floor area when the zoning lot either predates the adoption of the 1961 ZRCNY or predates a subsequent amendment to the 1961 ZRCNY that is deemed "applicable" to the calculation of zoning floor area on a specific zoning lot.

On April 9, 1984 CPC adopted a zoning map and text amendment to the 1961 ZRCNY (see attached, Exhibit B) that, *inter alia*, re-located the then-existing R8/R10 boundary line, which ran 200 ft west of Central Park West, to a point 125 ft west of CPW and further amended the zoning map to convert these two districts to R8B and R10A respectively. This legislative amendment thereby extended the midblock district 75 feet east of its previously existing boundary, thus creating a new split lot condition 47 feet into the CSI zoning lot. Uniformly, DOB, CPC and BSA have held that the re-drawing of a zoning district boundary across an existing zoning lot qualifies as an "applicable" subsequent amendment thereto for the purposes of ZRCNY Sec. 77-21, thereby

¹ The first three deeds are in the record. The 1965 deed regarding a portion of Lot 37 is attached herein as Exhibit A.

permitting the distribution of zoning floor area across the zoning lot to be calculated using the averaging method provided in ZRCNY Sec. 77-22.

Accordingly, the averaged FAR permitted anywhere on the CSI zoning lot is 8.36, allowing 105,022.50 sf zfa on the R10A portion and 39,488.46 sf zfa on the R8B portion of the CSI zoning lot. Upon completion, the New Building will contain 42,961.53 sf zfa, of which 11,197.51 sf will fall within the R10A and 31,764.02 sf will fall within the R8B. This amounts to a total New Building FAR of 4.09, well under the FAR permitted and very close to the R8B maximum permitted zfa without averaging.

II. Analysis of the As-of-Right Tower Building and the “A” Finding

In response to comments from the Chair and Commissioner Ottley-Brown, we have been asked to amplify our analysis of the as-of-right building configuration for the CSI zoning lot. The as-of-right configuration is a 37,888 sf partial tower with four lower floors (plus cellar) of community facility use and residential condominiums on floors five through sixteen, 19,755 sf of which are residential on Tax Lot 37. Due to the Lot 37's location on a split zoning lot with the eastern 27.3 percent zoned R10A and the western 72.7 percent zoned R8B, the building envelope includes a highly inefficient sixteen story residential tower with only 10,795 sf of residential sellable area (or 54.6 percent of the gross residential area.) Although the more generous R10A height and setback regulations permit a 125 ft streetwall before setting back 15 feet and a 185 ft maximum building height, the building's footprint (less the 30 ft required rear yard) is only 17 ft wide by 70 ft deep. The community facility use totals only 18,133 sf in the as-of-right building or 62.1 percent less than CSI's program requires (*i.e.*, 47,813 sf) as set forth in the Application.

The as-of-right building's inefficiency is highlighted by its requirement for two redundant circulation systems, including two elevator and stair cores located at different points in the building. A resident must first enter the lobby and take one elevator to the sixth floor; and then must walk across the building corridor to take a second residential elevator to the upper floors. While the upper residential floors have full Central Park views, they range from 685 sf on floors seven through eleven to only 375 sf on floors twelve through sixteen, which are undersized. According to the Financial Analysis for this scenario prepared by Freeman /Frazier & Associates and included as Exhibit C, a potential developer would be unable to capture the typically high residential market rates for appropriately sized apartments at this location. The core area required for these small floors would be capable of providing circulation and egress for floorplates as large as 8,000 sf. Therefore, the ratio of core costs to floor area served is extremely high. As a result of (1) the additional core construction costs attributable to the extraordinarily high ratio of core area relative to the total floor area, and (2) the reduced sales income, the Freeman/Frazier analysis results in a capital loss of \$2,654,000. Unlike the building proposed in the Application, which has received unanimous critical acclaim by the LPC as appropriate to the style and character of the Historic District, as well as appropriate to serve as a neighbor to the individually designated Synagogue, it is relatively self-evident

that the LPC would never approve an envelope so entirely inappropriate, and out of scale and context with its surroundings as the as-of-right building.

The Board correctly observed that this as-of right envelope should be the platform for a more complete evaluation of the “A” finding. In doing so, we have analyzed the findings by separating the New Building into its community facility and residential components.

The Community Facility Component. The unique physical conditions peculiar to and inherent in this particular zoning lot and the practical difficulties they present in producing a building that addresses CSI’s current programmatic hardships with regard to its use of the zoning lot for community facility purposes remain as stated in the Statement filed with the Application:

“The unique physical conditions peculiar to and inherent in CSI’s zoning lot include: (1) the presence of a unique, noncomplying, specialized building of significant cultural and religious importance occupying two-thirds of the footprint of the zoning lot, the disturbance or alteration of which would undermine CSI’s religious mission; (2) a development site on the remaining one-third of the zoning lot whose feasible development is hampered by the presence of a zoning district boundary and requirements to align its streetwall and east elevation with the existing Synagogue building; and (3) dimensions of the zoning lot that preclude the development of floorplans for community facility space required to meet CSI’s on-site religious, educational and cultural programmatic needs.”

The New Building requires lot coverage waivers (216 sf in the R10A and 477 sf in the R8B²) and rear yard waivers to remedy the improvement of the circulation space within the Synagogue and the replacement of the dysfunctional Community House with a new Community House space in the New Building which supports rather than conflicts with CSI’s programmatic functions and mission objectives.

Inasmuch as the first floor is permitted full lot coverage and effectively no rear yard, the source of all four objections is in reality the provision of a 20 ft rear yard for floors 2 - 4 rather than the required 30 ft rear yard, which adds approximately 640 sf to the footprints of those three floors. The provision of the 20 ft rear yard is required to meet CSI’s educational purposes, specifically the Toddler Program, the Hebrew School

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R8B		R10A	
Max Lot Coverage Allowed	Lot Coverage Provided	Max Lot Coverage Allowed	Lot Coverage Provided
3,306.45	3,783.5 (477.05)	1,758.75	1,974.9 (216.15)

and the Adult Education Program. The current deficiencies of the spaces in which these three programs are forced to exist are detailed below (see page 12).

The floorplate configuration proposed in the Application for classrooms housing these three functions is the minimum response to the zoning lot's unique conditions on the CSI zoning lot, which must also accommodate on a 64 ft wide development footprint the intricate and interconnected needs of the landmarked Synagogue as well. If the groundfloor were available for school uses, a community facility school might well be able to fit the 15 classrooms called for in this Application with an allowable rear yard. However, the floor usually providing the most flexibility for community facility schools, the groundfloor, is entirely unavailable for educational purposes because the Synagogue must "take" all of the groundfloor and portions of floors 2 – 4 for an elevator and landing as well for its own remedial purposes. There are no reasonable alternatives to dedicating nearly the entire first floor of the New Building to Synagogue use because (1) both the CSI community and the Landmarks Commission agree that the Synagogue envelope cannot and should not be compromised to provide new necessary space for Synagogue purposes and (2) the Synagogue's continued use as a house of worship can no longer be compromised by accessibility issues which can only be addressed by "taking" the full footprint on the New Building's first floor.

Thus the question becomes: Can the 15 classrooms and necessary ancillary space required to meet CSI's programmatic needs and mission objectives be accommodated within a bulk envelope that is essentially the allowable footprint above the first floor, which is 64 ft wide by 70.5 ft deep, minus approximately 100 sf from each floor "taken" by the Synagogue for its elevator shaft on each floor?

The answer is no. When taking into account that each floor must provide for adequate circulation and two egress points to stairs, separate lavatories and an adequate total number of offices, it becomes impossible to provide the required classrooms at a standard size within a 64 ft by 70ft footprint, times 3. When one adds the individual bathrooms that must be directly accessed from within each of the six Toddler classrooms, the impossibility becomes even more evident. While a wider site might permit the classrooms to be shifted 90 degrees so that their length could run parallel to the front and rear property lines, the narrowness of the site requires that the classrooms be stacked with their length running north and south, thus generating the noncomplying rear yard condition on floors 2 – 4.

The opponents have suggested that the hardship could be overcome by building another floor to accommodate the two or three classrooms that could not be made to fit on three floors, but the otherwise unnecessary high costs associated with extending the core and mechanicals to another floor to remedy a 640 sf zoning deficiency which exists only in plan (there being sufficient zoning floor area) is a hardship unto itself. Since in this case the hardship has been created solely by the unique conditions of the site, it is clear that an application for these four variances to overcome CSI's programmatic and mission difficulties is appropriate and should be forthcoming.

The Residential Component. Residential use is as of right and the zoning floor area is available on the CSI zoning lot. What is not available is any volume of space below the highest elevation of the New Building's fourth floor, which is shown in the Application to occur at El. 49.1. With the entire development footprint of the site consumed by the community house volume within the New Building for four stories, the otherwise fully legal as-of-right residential floors cannot begin until the fifth floor and, in the R8B portion of the site, can only rise 11 feet before hitting the 60 ft maximum streetwall height, and then after taking a 15 ft setback, hitting the building height limitation 26 ft later. On the other hand, the streetwall height is much more generous on the R10A portion of the site. Nonetheless, the resulting 16-floor tower, with a 17 ft by 70 ft footprint, could not, as the Freeman/Frazier analysis indicates, generate a feasible project. That is assuming the LPC would approve such an envelope.

The LPC was willing, unanimously, to permit a building height up to the height of the adjacent 18 West 70th. Mindful of the Board's interest in assuring that the approval of a nonprofit's application including a profit-motivated component be restricted to guard against returns beyond the minimum necessary to assure overall project feasibility, this Application proposes to "monetize" only 23,000 sf out of an available 116,751.76 sf of otherwise available development rights. Due to the zoning lot's unique site conditions, the irregular as-of-right envelope created by the split lot condition on the zoning lot, CSI's pressing need to overcome programmatic difficulties and the regulation of the LPC which has precluded placement of new floor area in the airspace above the Synagogue or anywhere above the height of the adjacent 18 West 70th Street, that residential floor area can only be built in the volume of air space that exists above El. 49.1 and below the roofline of 18 West 70th Street. While the residential portion of the New Building can be developed in compliance with rear yard controls, obviously beginning its first full floorplate at El. 49.1 means that it can only partially comply with the applicable streetwall and building height requirements in the R8B portion of the zoning lot. In addition to these waivers, the LPC imposed the need for a further streetwall waiver in the interests of its aesthetic concerns for the centering of the New Building in relation to the Synagogue.

These factors conspire to prevent CSI from producing residential floor area sufficient to proceed with the development of the New Building. These are demonstrated and recognized hardships which are sufficient to warrant the Board making the requisite "A" Finding.

III. CSI's Programmatic Requirements

The Chair and Commissioner Ottley-Brown requested supplementary information regarding the programmatic hardships associated with operating within the current Synagogue and Community House (See Existing & Proposed Programmatic Diagrams, attached as Exhibit D). Simply put, the hardships can be reduced to CSI having totally outgrown its current facilities and having ignored the consequent growing pains for several decades longer than it should. As stated in the Application, there are hardships

getting into the buildings and once inside there just as severe hardships associated with conducting CSI's religious, pastoral, educational and cultural missions.

CSI is a modern vibrant house of worship for 550 families in a 112-year old building initially designed for 300 families and two early 20th Century townhouses glued together in the 1950's to form a community house. Growth aside, CSI's hardships are also due to the evolution in programming, from a simple house of worship as was the custom in the design of 19th Century sacred sites, to the provider of highly specific spaces and support for dynamic programs - educational, cultural and political - extending far beyond religious study. For half a century CSI made do with a community house which was actually two townhouses given a combined façade and connected at the closest floors. The unsuitability of the current spaces for CSI's existing programs limits both the size of the programs and their quality, either of which are suitable grounds for meeting the findings in ZRCNY 72-21(a). In addition, however, and just as important a hardship, the existing conditions limit the future opportunity to create new religious, pastoral and educational programs consistent with modern religious communities. The following information is provided in response to the Board's interest in both the programs offered and needed to be offered, and their populations.

A. Religious Worship

CSI's Sabbath services on Friday evenings following sunset and Saturday mornings from 8:15 to 11:30AM are observed in the Main Synagogue, as are thirteen additional major holidays. The Main Synagogue is a highly formal 5,050 sf room seating 380 in pews on a main floor and an additional 320 in the balcony. Saturday services attract up to 500 worshippers. While large, its formal fixed seating and the liturgical laws governing its use restrict it to predominantly religious convocations.

Daily morning and evening services also take place 365 days per year in the Small Synagogue, actually the interior of one of its Colonial-era structures which has been re-located to each structure the Congregation has subsequently built. The Small Synagogue is an approximately 746 sf space seating 50, again in pews. It is well-sized for these daily services but again its fixed pews and religious significance limits its general use. Often times, a "talk" is held in conjunction with services and for this function it is too small to allow all those who wish to attend an opportunity to participate.

Handicapped congregants, and those who are ill and/or elderly are either entirely unable to attend these services and related functions, or must be physically carried down stairs from either sanctuary in order to attend religious functions in the cellar-level Levy Auditorium. Testimony at the hearing from both the Rabbi and the Director of Jewish Life stated that the difficulties associated with lack of access to these facilities transcended mere inconvenience for many of the congregants, especially the older ones for whom the activities in the Synagogues and the associated rooms are the staple of their social interaction. To arrive late, or with the stigma of having to be carried between these religious rooms, in many cases serves as an impediment to attendance at all. CSI is dedicated to the continuing participation of its infirm congregants.

Worship in the Jewish faith extends beyond the four walls of the sanctuaries in which services are performed. At CSI, most of these continuing rituals of faith can only occur in the sub-grade Levy Auditorium (2,726 sf), which shares all of the accessibility hardships attributed in the preceding paragraph to the Synagogues. The activities of faith and community include:

1. *Kiddush*: *Kiddush* festivities, which follow each Saturday and holiday service, provide both a social and religious forum for the congregants. Most, but not all, who attend the services attend *Kiddush*, where prayers and blessings are bestowed in accordance with Jewish ritual. The flow of congregants from the sanctuary to the location of the *Kiddush* is as important and custom-driven event as how one leaves a church. Under existing physical conditions, many who would like to attend *Kiddush* are unable to descend the existing stairs that link the two sanctuaries to the Levy Auditorium.
2. Life Cycle Events: Approximately two to three scheduled Bar or Bat Mitzvahs, baby namings and bris (circumcisions) per month are held in the Synagogue's Main Sanctuary. The ritual meal and communal gathering that follows each can only be held in the Levy Auditorium. Many of these events generate attendance in excess of the Levy Auditorium's limit of 150 occupants, causing CSI to turn away many of its own members for moments in life that should be centered on Synagogue life. The New Building's larger multi-function room will permit CSI to accommodate congregants (and potential future members) whose family members and guests exceed 150 persons for a particular life cycle event.
3. Weddings: Approximately eight to ten weddings per year are held in the Main Sanctuary but as many as an additional twelve to fifteen weddings are unable to take place due to CSI's occupancy and facility limitations, and schedule conflicts with the above life cycle events. The New Building's multi-function room will accommodate a modern the modern Orthodox wedding without the celebration party being forced to move offsite as now typically occurs.

Woven through all of these religious events is the traditional Jewish connection with food. The *Kiddush*, weddings and other life cycle events require the availability of working kitchens, in the Orthodox Jewish experience two working kitchens as meat and dairy must be kept separate. The facilities available adjacent to the Levy Auditorium are in such poor condition that approximately 95 percent of weddings and life cycle events are now catered with food brought in for warming rather than cooking because the existing dairy kitchen is only partially functional. The New Building's proposed meat and dairy kitchens will enable both the wedding ceremony and the post-ceremony gathering to be held at CSI.

The Proposed Multi-Function Room will minimally address the interferences with religious observance and custom. It will be located in the sub-cellar of the New Building. It will be easily and fully accessible from the sidewalk on in. Its size (6,432 sf) and new kitchens will enable a greater number of congregants and their families to more fully

partake in the Jewish traditions which are integral to their faith. The multi-function room will be the site of after-service components of Sabbath *Kiddush*, Bar and Bat Mitzvahs, baby namings and other Life Cycle events As indicated in the October 25, 2007 submission to the Board, CSI will not lease the multi-function room to outside catering entities. CSI's bylaws specify that all ceremonies must be conducted under the auspices of CSI's rabbi and with CSI's Sephardic customs, all but assuring the celebrants are CSI congregants.

In addition to the additional religious and life cycle programming the new multi-function room will allow, there are two other communal/family programs which are currently severely compromised by the limitations in the Levy Auditorium (in addition to the accessibility limitations discussed elsewhere):

1. Family Education: The Congregation-wide program currently brings up to 50 children and 100 adults together. Due to the scheduling difficulties associated with the Levy Auditorium, the classes need to be arbitrarily subdivided into Saturday sessions from 12:30 to 2 PM following *Kiddush* and Sunday mornings. The New Building will enable CSI to schedule the entire Family Education Program on Saturday afternoons following services and *Kiddush* in the multi-function room.
2. Music, Film and Lecture Series: Approximately three to eight evening events are scheduled each month in the Levy Auditorium with attendance ranging from relatively few to 200 persons. The New Building will allow for fluidity: smaller events can take place in the adult fourth floor classrooms and larger events can take place in the multi-function room.

B. CSI Hebrew School

CSI's Hebrew School currently serves approximately 35 to 50 students between grades one and ten under significantly substandard learning conditions. Sunday classes are held in the existing Community House from 9:30AM to Noon in four 3rd floor classrooms and a single 4th floor classroom. Weekday classes are held from 3:30 to 6:00PM in these same classrooms.

Conflicts with the Hebrew School Program. Due to the age disparity among the children and age-specific learning requirements, classes need to be broken into seven separate learning groups. These groups exceed the number of available classrooms in the existing Community House. Older children cannot share rooms dedicated to younger students because the lower grade rooms have smaller tables and chairs which are unsuitable for the older students. Moving furniture from room to room has been tried but is counter-productive and disruptive to classes in session. Combining grade levels within a classroom or relocating to either existing auditorium has proven detrimental to classroom order and destroys the intimate learning environment every school seeks. These same classrooms are occupied by Beit Rabban most weekdays from approximately 8:00AM to 5PM. It must be noted that while men's' and ladies' bathrooms are located on

the third floor, no facilities are located on the fourth floor and none are appropriate for the younger children.

Future Hebrew School Programming Needs. The New Building will provide appropriately sized and barrier-free classrooms will be dedicated to specific grade levels. The third floor provides individual classrooms for first through third grade children; fourth through fifth grade children; eighth grade children; and ninth through tenth grade children. Two classrooms for sixth through seventh grade children are also provided on this floor. In contrast to the current rationing of too few classrooms, flexible scheduling will permit the Adult Education Program, Hebrew School and private study sessions to co-exist in the three 4th floor classrooms as need arises and as the respective programs expand and grow. Programmatic and accessibility issues that face current and future students are resolved in the New Building: (1) all classrooms are accessible by elevator and/or stairs; (2) seven large, well-ventilated classrooms will allow for more focused learning and social interaction; and (3) bathroom facilities for boys and girls are located on both the third and fourth floor.

Ongoing Supplemental Tutoring for Children. Approximately 20 boys and girls now meet individually with the Cantor for private lessons in preparation for Bar and Bat Mitzvah. These learning sessions take place in the Cantor's study. The students also participate in ongoing supplemental tutoring and voice training, which is available on Sunday mornings, every afternoon and on weekends (daytime or evenings). Due to program deficiencies with respect to the availability of smaller, private study areas, one-on-one tutoring often occurs in shared settings, which compromises learning due to distractions and noise. The New Building's additional classrooms will provide the necessary facilities for one-on-one study.

C. Adult Education

Adult education is a mainstay for any religious community and CSI's inability to provide an adult educational setting for congregants from ages 19 to 90 is an indisputable hardship. In line with CSI's mission, the Adult Education program also includes a social action component, which is dedicated to facilitating outreach and providing assistance to members and non-members alike. Under the umbrella of the Social Action Justice League, various CSI sub-groups pay visits and deliver food to homebound elderly, mourners and new mothers within the community. The social action programs are also hindered by the existing Community House deficiencies, to the detriment of the entire West Side community it serves.

Adult education currently takes place in the Synagogue's first floor Elias Meeting Room (the "Elias Room," approximately 775 sf) and serves as the only social and cultural activity for many of CSI's most senior members. To reach the Elias Room, one must enter the existing Community House, walk up a flight of stairs into the main Synagogue building and pass through the Small Synagogue, which is often also in use at the same time. This pathway is extremely challenging for some and impossible for others (seniors and non-seniors alike), denying participation in the adult education program

entirely due to the physical constraints of entering and passing through the two buildings. Currently, the following adult education classes occur in the Elias Room:

- | | |
|--------------|--|
| 1. Sundays | Courses in Jewish Thought & Law
8:40-9:40AM; 40-50 adults
9:45-11AM; 5-15 adults |
| 2. Monday | Courses in Jewish Law & Lore (Talmud)
7:30-9:00PM; 17 adults (once/month) |
| 3. Wednesday | Poetry Group
3:00-4:00PM; 15-20 adults |
| 4. Thursdays | Meditations
11:00AM-Noon; 10-20 adults |
| 5. Saturdays | Bible Class (following Saturday service)
1.25 hrs; 20-50 adults |

Conflicts with Adult Education Programming. The Elias Room is also the only room available for meetings by CSI's Board of Trustees; CSI's Sisterhood Board of Trustees and other CSI-affiliated organizations. Cumulatively, difficulties arise because the Elias Room is the only appropriately sized and furnished setting for adult group activities other than worship, which results in overbooking and scheduling conflicts. At other times, it is inappropriate for a respective gathering's size (either too many or too few attendees), particularly with respect to the Adult Education Program and Social Action Justice League for which attendance is very high. On high capacity days (*i.e.*, Saturday and Sunday) when services/programs/classes occur simultaneously, shifting activities from the Elias Room to the existing Community House is not a viable option. The second floor classrooms have desks and chairs suitable for Early Childhood/Toddler events rather than adult programs and the Saturday Youth Group (see below) occupies the entire third floor on Saturdays with children divided by age into the four existing classrooms. The proposed New Building will permit relocation of the Adult Education Program to upper level classrooms while making the Elias Room more available for smaller meetings and conferences.

Future Adult Education Programming Needs. New and expanded adult programs are necessary, all of which project increased member participation based on the current size and demographics of the CSI congregation and community. CSI's Rabbi has indicated that he would like to offer concurrent adult education classes (*e.g.*, Beginners' Judaism, Hebrew Learning and Prayer, Jewish Law and Philosophy, Talmud and Bible). Current attendance, for example, has amounted to as many as 50 students participating in Jewish Thought and Law classes. Past reliance on the Elias Room as the focal point for adult education has basically allowed one class at a time to be scheduled there. Neither the Levy Auditorium nor the existing Community House Auditorium are appropriate spaces for smaller classes. With increased adult classroom availability and scheduling

flexibility, more adults will be able to participate, for example, in an expanded Jewish Thought and Law program, as well as avail themselves of private study sessions. While it is difficult to estimate the projected increase in member participation, the Rabbi has further indicated that the members will be polled to see which additional nights are preferable for specific study programs and classes will be scheduled accordingly in appropriately sized rooms within the New Building. The Social Action Justice League (and its sub-groups) will be able to schedule regular meetings in the New Building rather than gathering in private homes as is now required.

D. The Toddler Program

CSI's toddler program takes place in the existing Community House lower level auditorium, an open space serviced by stairs down from the door. The stairs are extremely difficult to negotiate for toddlers, most of whom have to be carried up and down by caregivers with other children in tow, limiting drop-off and pick-up to a narrow mezzanine-like foyer packed with strollers at the top of the stairs. There is no natural light or air in this sub-grade space. Storage space for the program is wherever there is unused space in the Synagogue's lobby. There are no adjacent bathrooms. The children must utilize an adult bathroom at the Synagogue's cellar level.

CSI's Toddler Program is open to all in the community and enjoys a diverse and multicultural membership. It currently operates three mornings each week (Monday, Wednesday and Saturday from 9:00AM to Noon) with 20 children, ages 2-4, in attendance. The program is over-subscribed.

Conflicts with the Toddler Program. The entranceway used for the Toddler Program is the main entrance used by all building visitors. Because it is crammed with baby strollers and at designated times those dropping off and picking up children, there is a considerable conflict in the immediate egress and entrance. There is also an inherent security conflict as the attention of staff and caregivers on the children negotiating the stairs means less attention is being given to other children in strollers immediately inside or outside the doors. All schools and daycare programs must provide a safe environment for entering and leaving their buildings, and at the moment the situation for the Toddlers is far from ideal. Finally, the Toddlers must use the Synagogue's lavatories, which bring them into contact with other visitors and users of the facilities.

Future Toddler Programming Needs. The proposed New Building's design would enable CSI to offer daycare to a greater number of families within the surrounding community, for more hours per day and more days per week. Approximately 60 toddlers (a 66% increase) would be able to attend on Mondays through Thursdays from 8AM to 6PM and on Fridays from 8AM to 4PM. Both the programmatic and accessibility issues that now face these very young children are resolved in the New Building: (1) the second floor toddler classes would be accessible by elevator (or stairs) with stroller storage located at designated storage area; 2) six large individual classrooms would allow the children to be grouped for age-appropriate play and more focused learning; (3) the smaller groupings would allow for a more conducive rest/nap period associated with full

or half day programs essential for small children; and (4) bathroom facilities for boys and girls would be located in the classrooms.

IV. Neighborhood Impacts

A. Traffic

Although the proposed plans would theoretically allow for larger events in the New Building multi-function room (up to a maximum occupancy of 360), attendance numbers will not create an adverse situation. CSI's Application makes it clear that it considers its inability to serve as the site for its Congregant's (and no others') significant ceremonies and events a hardship in fulfilling its mission as a house of worship. However, neither the events it hosts nor the addition of the five residential units comprise circumstances requiring mitigation as neither generates impacts under the CEQR methodology.

Adverse conditions are further unlikely to occur because as the Board notes few houses of worship are so well suited to be accessed by mass transit. There are numerous subway and bus lines within CSI's vicinity. The entrance to the Subway Station serving the B and C trains is located adjacent to the Synagogue at the corner of Central Park West and West 70th Street and mere yards from its entrance. The Nos. 1, 2 and 3 trains stop at Broadway and West 72nd Street. Bus service on Central Park West, West 72nd Street, Amsterdam and Columbus Avenues, and Broadway provide additional access to mass transit. The occasional horse and buggy is also available in this unique transit cornucopia. Car and/or taxi drop-offs occur both along Central Park West in front of the Synagogue and along West 70th Street in front of the existing Community House. The Orthodox proscription against driving to worship on Sabbath and the significant holidays assures traffic congestion will be all but non-existent for the most consistently high-volume days.

B. Trash Removal

CSI is sensitive to concerns raised regarding trash removal following the larger weddings and life cycle events at the Synagogue. Two alternatives for trash removal are being considered by CSI: (1) garbage bags will be "cold-stored" in the New Building's enlarged cellar level trash room; and/or (2) CSI will contract with a private carter for morning removal of garbage following each event. These alternatives will enable CSI to manage the post-function environment in a manner that provides the least disruption, physically and visually, along the West 70th Street block front.

C. Precedents – The Other Alleged Development Sites

The Chair requested that we research the prevalence of other sites owned by nonprofits as sites for similar expansions and, if located, distinguish those sites from the Application. We have identified those sites relevant to the Chair's request to be those fronting on Central Park West that are within or partially within the R10A district

established in 1984 running 125 ft west of Central Park West (See color-coded map, attached as Exhibit E.). All of the properties fall within the boundaries of the Central Park West Historic District.

First Church of Christ Scientist (CPW at West 68th Street) The First Church of Christ Scientist is an individually designated New York City Landmark. However, unlike CSI it falls entirely within the R10A district and thus not pertinent to the midblock zoning issues giving rise to many of the CSI objections. The four-story, 27-unit residential building to its west, not controlled by a Church entity, is on the zoning lot with the split R10A/R8B condition, and thus transfers of unused development rights in either direction would require a new zoning lot merger which would not be eligible for the averaging methodology found in ZRCNY Article 77 permitting transfers of zoning floor area across district boundaries. Thus the Church has no as-of-right development footprint. Accordingly, the Church's land use profile has nothing in common with CSI.

Universalist Church of New York (CPW at West 76th Street). The Universalist Church is not an individually designated landmark. The building is mainly used as a catering and banquet hall for social functions, business parties, fashion shows and commercial promotional events. There is an agreement in place with surrounding buildings that it will not utilize or sell its development rights in exchange for monetary support for building upkeep. It is unclear what if any church-related programming is conducted on this site. The building occupies the entire zoning lot, of which 75 percent of the footprint is located in the R10A district and 25 percent located in the R8B district, thus permitting banquet and catering operations to exist both in the R10A and the R8B midblock. There is no development footprint on this zoning lot. The adjacent 16-unit, five-story residential brownstone along its western lot line is owned by an unrelated entity and thus transfers of unused development rights in either direction would require a new zoning lot merger which would not be eligible for the averaging methodology that permits transfers of zoning floor area across district boundaries. The lack of on-site development opportunity, the special restriction freezing development in exchange for financial support from its neighbors, the extensive on-site catering business and apparent lack of programmatic hardship (other than as a catering venue) distinguish this from CSI's programmatic hardships.

New-York Historical Society (CPW at West 77th Street). The N-YHS site is, for the purposes of this discussion, a highly idiosyncratic site. Its zoning lot consists of 150 ft frontage along West 77th, a wide street, 204 ft full blockfront frontage along CPW and a 275 ft frontage along West 76th Street, a narrow street. The zoning lot is improved with the original N-YHS structure, a designated landmark, which occupies the rectangle formed by the West 77th Street and CPW frontage, with a minor irregularity owing to the N-YHS loading bay on West 76th. The remainder of the zoning lot is an adjacent vacant 10,000 sf lot facing West 76th Street. The R10A/R8B zoning district boundary runs through the N-YHS building parallel to CPW for only the southern-most 75 ft, as it then turns west such that most of the building with West 77th Street frontage falls within the R10A district. As a result, the vacant lot is not hampered with a split lot condition. All of

the vacant lot, and only a small percentage of the N-YHS building, falls within the R8B portion of the zoning lot.

This vacant lot, actually once part of a row of townhouses when purchased and given to the N-YHS, has never been used or built upon for any programmatic purpose, *i.e.*, it is a property separate from the N-YHS building held for investment purposes or, should the need arise, a potential expansion site. Standing on its own, the vacant lot is an appropriately sized development parcel of standard width and depth that could easily accommodate an FAR 4 multiple dwelling of 40,000 sf. The N-YHS has recently successfully prosecuted an application through LPC which, *inter alia*, corrected its own accessibility issues for visitors to the building without recourse to the footprint of the vacant lot.

American Museum of Natural History (CPW at West 77-81st Streets). AMNH is an obvious *sui generis* situation with no relevance to the CSI zoning lot. Located on four City blocks of land and multiple buildings owned by the City and leased to the AMNH Trustees, it has no development potential unless initiated by the City. Moreover, its property includes public park land which cannot be developed.

In relation to these institutions, CSI's zoning lot is unique and distinct for the following reasons: (1) CSI's zoning lot is the only zoning lot to include on it an existing obsolete, inefficient structure which must be replaced to overcome significant programmatic difficulties, (2) the CSI zoning lot is the only zoning lot with a development footprint that at the same time is the as-of-right recipient of considerable zoning floor area from the R10A portion of the lot but is also bifurcated by a zoning district boundary which splits the already small footprint into narrow strips, (2) the CSI zoning lot is the only zoning lot in which the LPC has approved a plan for approving internal circulation of a sacred site through features which can only be provided in an adjacent new building, (3) the CSI zoning lot is the only zoning lot which has a development footprint with an as-of-right envelope that is wholly impractical and financially infeasible to develop, and (4) the CSI zoning lot is the only zoning lot in which correction of the programmatic difficulties associated with a working house of worship and the replacement of a dysfunctional community house deprives the site the opportunity to include residential uses anywhere on the zoning lot below El. 49.1 ft.

We were also asked to research surrounding building heights to determine the precedential value, if any, of the Board's approval of the height and setback objections on the future development along the R10A/R8B district boundary along Central Park West. We examined building heights for the nearly one-mile of CPW between West 66th and West 86th Streets. Within this area, approximately twenty buildings, ranging from nine to thirty stories, are located directly east of, west of, or divided by the R10A/R8B district boundary. Of these twenty buildings, six rise to between eighteen and thirty stories, seven rise to fifteen stories, four rise to twelve stories and the remaining three rise between nine and twelve stories. In addition, of these twenty high rise buildings, thirteen are located on zoning lots with footprints divided by the R10A/R8B boundary line; five are located on zoning lots with footprints adjacent to and east of the R10A/R8B boundary line; and

two are located on zoning lots with footprints entirely west of this boundary line. None of the zoning lots examined share CSI's singular and unique condition, which is to be divided by the R10A/R8B district boundary and improved with an existing obsolete, underperforming structure located directly on the district boundary. And finally, each of these twenty buildings (plus the four community facility buildings) contains more zoning floor area than the proposed New Building and existing Synagogue combined. Accordingly, approval of this Application will not serve as precedent for taller buildings, for bigger buildings or for special treatment of buildings located directly on zoning district boundaries unless those zoning lots are also improved with dysfunctional buildings which must either be altered or replaced. This is indeed a small window of opportunity in which precedent can hold sway.

The role for "precedent" before the BSA. In the final analysis, the Applicant has been asked to distinguish away these other nonprofit sites and buildings out of concern for the dangers of "precedent." Precedent is indeed an important factor in any quasi-judicial determination, but not because, as opponents raised at the hearing, precedent opens the barn door to an untold flood of new requests. Precedent is a qualitative rather than quantitative inquiry. The Applicant puts its faith in the Board's longstanding commitment to exercise its considerable qualitative discretion with fairness and common sense. If this Application is approved, any subsequent nonprofit applicant who feels it can make an equally compelling case should be entitled to submit its application for the Board's consideration. If ten other applicants succeed, in the Board's view, in making such a compelling case, then ten applications should be approved. If only three of those ten succeed in convincing the Board of their merits, then only three applications will be approved. The deciding factor will be the Board's deliberative process, and not a scorecard.

A case in point is the hyperbole regarding this Application's potential for precedent-setting consequences for an expansion of "the Catholic High School Association Building" at 22 West 70th Street, (Block 1122 Lot 44) a few doors down from CSI. It has been said, with unqualified alarm and anxiety, that approval of this Application will lead to an effort to expand that building. However, "The Building" in question is a 19 ft wide 6,200 sf four-story townhouse, wholly in the R8B, built to an FAR of 3.28 out of a permissible FAR 4. There are no available development rights from adjacent structures, and in fact within two tax lots on either side of the building are massively overbuilt apartment buildings, a clear hinderance to transport of development rights. Its immediate neighbors are all townhouses and its rear yard contributes to the "donut" of open space, which is wholly missing in this case. In fact its DOB classification is as a "walk-up apartment building" so this is not even a potential expansion of a community facility use. There is simply no aspect of CSI's application which if approved would be pertinent to an expansion of the "Catholic High School Association Building" except apparently the undue and misplaced concern that one BSA approval makes it easier for any other BSA approval, a position the Applicant finds absurd.

V. BSA Case Studies

The Board requested that we research its records for the disposition of similar applications, *i.e.*, applications of nonprofits requesting waivers for both a community facility development component and a residential development component. While our research will continue in preparation for the next hearing, we have found two pertinent applications which we believe requested similar relief based on similar or analogous hardships.

349-05-BZ

Premises Affected: 325 East 101st Street, Block 1673 Lot 13, Manhattan

The application was brought on behalf of the Church of the Resurrection which sought to demolish a two-story community facility building and replace it with an eight-story mixed use building consisting of community facility uses on the first two floors and 35 units of market rate housing on floors three through eight. As with this Application, the community facility portion of the proposal required rear yard and lot coverage waivers. Unlike this Application, the residential portion of the proposal required significant waivers of lot coverage and a 40 percent increase in the amount of zoning floor area over that permitted in an R7A district.

As to the “A” Finding, the application was predicated on subsurface conditions that increased construction costs. The Board took cognizance of the fact that a cellar could not be feasibly provided in its usual location and granted the floor area variance so that the same floor could be built above grade. Waivers exclusively related to the residential portion of the application and unrelated to the programmatic difficulties of the Church were provided. This is not dissimilar to the Application. As a result of overcoming CSI’s programmatic difficulties with the Synagogue and Community House, the residential uses in this proposal cannot be built in their usual location, thus requiring additional waivers that are not associated with the community facility programmatic hardships.

All of the requisite findings were reached, including a 40 percent increase in allowable floor area, notwithstanding that the amount of residential floor area provided was over three times the amount of the community facility space requested. In making its finding regarding essential community character, the Board’s Resolution dated July 11, 2006 stated:

“WHEREAS, the applicant represents that the proposed project is considerable smaller in scale than adjacent developments, with the subject block dominated by an 11-story apartment complex; and,

WHEREAS, additionally, other buildings on the block are in excess of the ten stories and more than 200 units each; and,

WHEREAS the applicant submitted photographs and a 400-ft radius diagram to support these assertion; and,

WHEREAS, the Board also observes that while the proposal requests additional FAR, the bulk is accommodated within the R7A contextual envelope which minimizes any potential visual impact; and,

WHEREAS, based on the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair use or development of adjacent properties, nor will it be detrimental to the public welfare; and, . . .”

The first three recitals are equally true in this Application, substituting the analysis of building heights submitted with this material for the photographs referenced above. As to the fourth recital, the negative visual impacts of the as-of-right bulk permitted on this zoning lot are clearly as self-evident as the financial infeasibility of its development. Additional comfort regarding the visual impacts of the New Building is provided by the LPC’s Certificate of Appropriateness and the record of its vote, which lauds the harmonies the New Building achieves with both the designated landmark and the historic district.

73-03-BZ

Premises Affected: 400 Lenox Avenue, Block 1727 Lot 1, Manhattan

The application was brought on behalf of a profit-motivated applicant that sought to develop a 12-story mixed use building consisting of commercial and residential uses. The proposed zoning lot included a church building designated a NYC Landmark. As with this Application, once again lot coverage waivers were sought. Unlike this Application, the lot coverage waivers were associated with the residential portion of the proposal and a significant increase in the amount of zoning floor area over that permitted in an R7-2 was requested.

As to the “A” Finding, the application was predicated on subsurface conditions and the difficulties associated with maintaining the functionality of the landmarked church structure. The Board took specific cognizance that the zoning lot’s unique physical conditions included “proximity to a designated landmark” and found, “the Board has determined that because of the subject lot’s unique physical conditions, there is not reasonable possibility that development in strict compliance with the zoning will provide a reasonable return.” This is not dissimilar to the Application. The envelope of the designated landmark on the CSI zoning lot cannot and should not be altered to correct the existing serious accessibility issues. Programmatic relief can be achieved only through dedicating the entire first floor of the New Building to a new egress system and accessory space for the designated landmark. Overcoming that unique conditions causes further programmatic hardships in the construction of the replacement Community House that require zoning relief, and that condition, in conjunction with a narrow development site and a zoning district boundary that divides it into two narrow slivers with different

zoning requirements, renders use of otherwise as of right residential floor impossible without further zoning relief.

VI. Lot Line Windows

Pursuant to the Board's request, we have confirmed that the adjacent building at 18 West 70th currently has 10 windows on its lot line and that approval of this application will result in covering 7 of those windows. It has not been possible to ascertain from either DOB files or external examination which if any of these lot line windows provide the only light and air to their units. In order to conclusively make that determination, the Applicant would need to inspect each affected unit with the consent and cooperation of the affected Unit Owner. We have recently been informed that even the as of right bulk configuration could result in the filling in of some of these lot line windows, presumably because the Building Code requires the removal of lot line windows in certain circumstances based solely on their linear proximity to adjacent new construction as opposed to physical blockage. We hope to have this interpretative issue resolved by our hearing in February.

VII. Society for Ethical Culture v. Spatt (51 N.Y.2D 449 (1980))

References to this case are wholly misguided and perplexing, since the case raises no zoning issues or challenges to the Board's administrative authorities. This was a case, as even its title indicates, against the LPC challenging its right to propose the Society's site for designation as a NYC landmark. The Society claimed that to designate its site amounted to a taking without just compensation, in violation of the Fifth Amendment of the U.S. Constitution. It argued that the designation, with its attendant restrictions on the use of its property, was a confiscation without due compensation and an interference with the free exercise of the Society's religious purpose. Both the Court of Appeals and the Appellate Division rejected the Society's claim and upheld the LPC designation.

This Application raises no such constitutional challenge. Inasmuch as the Applicant has long submitted willingly to LPC jurisdiction, and in fact affirmatively filed an application for a Certificate of Appropriateness that was unanimously approved by the LPC, we are, in a word, baffled by its relevance to this case.

RESPONSE TO OPPONENT'S COMMENT RE THE CSI PARSONAGE

CSI's four-story Parsonage fronting Central Park West connects to the Synagogue at the ground floor level only and is fully incorporated into the first floor plan of the Synagogue. Above the first floor, the Parsonage is a residential building entirely unusable for redaptive community facility use due to the narrow width of its upper floors. The 2,477 sf first floor is fully built; the second and third floors have floorplates approximately 50% smaller (1,150 sf) than the first; and the fourth floor occupies only 559 sf.

Some opponents have urged that the Parsonage be adapted for classroom use. Clearly the space requirements, accessibility and egress requirements (a full new elevator

and elevator bulkhead and a new separate stair would be required) would require substantial expansion of the Parsonage's envelope. In all likelihood, LPC would limit all such necessary expansion to the rear portion of the building. This would place the locus of almost all the construction activity and new bulk and mechanicals adjacent to 91 Central Park West and would most likely require the loss of lot line windows on that building. In addition, this proposal would produce considerably redundant construction and operation costs, as the program space would be spread across two buildings, with two cores for elevators and egress and two mechanical systems instead of one.

CONCLUSION

Thank you for your attention in this matter. Please contact me should you have any questions or require further information.

Very truly yours,


Shelly S. Friedman