

**STATEMENT IN OPPOSITION
TO VARIANCE APPLICATION
OF CONGREGATION SHEARITH ISRAEL**

(June 10, 2008)

Affected Premises:

6-10 West 70th Street

Block 1122, Lots 36 & 37

18 West 70th Street
91 Central Park West
101 Central Park West
Other residents of West 70th Street
&
LANDMARK WEST!

NEW YORK CITY
BOARD OF STANDARDS AND APPEALS

Application: 74-07-BZ

Affected: 6-10 West 70th Street
Premise Block 1122/Lots 36 & 37
Manhattan

STATEMENT IN OPPOSITION

Applicant: Congregation Shearith Israel
6-10 West 70th Street
99-100 Central Park West

This statement in opposition to the variance application filed by Congregation Shearith Israel (“Applicant”) is submitted by a coalition of buildings and residents of West 70th Street, including 18 West 70th Street, 91 Central Park West and 101 Central Park West, the immediately adjacent neighbors, together with LANDMARK WEST!.

This statement, together with the attached Summary of Flaws Preventing Reasoned Analysis of Applicant’s Request for Variances, responds to Applicant’s submission to the Board of Standards and Appeals on May 13, 2008, and summarizes arguments set forward more extensively in previous submissions by Opposition.

Despite repeated failures to make its case for hardship, Applicant continues to seek 7 zoning variances to construct a new, 9-story, 105’-tall building, more than twice as tall as the brownstones that define this and most other mid-blocks on the Upper West Side and in direct contravention of the intent of the 1984 contextual zoning.

For no other reason than the desire to accommodate luxury condominiums and a tenant school, both income-producing uses that bear no relationship to its religious, educational or cultural mission, Applicant seeks to push bulk from the portion of its zoning lot in the R10A zoning district that lines Central Park West to the portion in the R8B district that covers the mid-block of West 70th Street, violating zoning regulations for height, setbacks and lot coverage. The resulting New Building is precisely the type of noncontextual development that the 1984 zoning sought to prevent.

Applicant provides no justification to depart from the existing zoning for this site. None of the 5 findings required under Section 72-21 of the Zoning Resolution of New York City. **All of Applicant’s programmatic needs could be accommodated in an as-of-right building.** Furthermore, **Applicant is clearly able to gain a reasonable return from as-of-right development of the site.** Correctly analyzed, Applicant's AORScheme A (a community house with a 2-floor condominium on top) yields a profit of \$2,285,500 to \$6,465,927 (not the \$11,769,000 loss reported by Applicant). Applicant’s Scheme C

yields a return of \$10,366,500 to \$24,142,154 (not \$2,894,000 as reported by Applicant).¹

As described in the attached Summary of Flaws, materials submitted by Applicant over the past 14 months (Applicant's first formal submission to the Board was made on April 2, 2007) fall far short of establishing the existence of any hardship meriting relief from the zoning code.

It is impossible for the Board to make any of the five findings for variances required under Section 72-21 of the New York City Zoning Resolution. Therefore, the Board should deny this application completely.

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

Applicant repeatedly attempts to establish the unique physical condition in terms of the obsolescence of the existing building occupying its proposed development site, access and circulation difficulties, and lack of space. These conditions are not unique physical conditions as contemplated by the language of 72-21(a).

Indeed, were the Board to find that the strict application of contextual height and setback requirements to Applicant poses a hardship meriting zoning relief, it would open the door to applications from many more Central Park West institutions.²

What Applicant has is a level, rectangular site on a prime midblock just west of Central Park West. Apparently the site's subterranean conditions permit a cellar and subcellar.³

Even if Applicant could establish a unique physical condition, Applicant has demonstrated that all of its programmatic needs, including access and circulation, could be accommodated in an as-of-right building;⁴ thus the strict application of the zoning law does not prevent Applicant from meeting its needs. Indeed, adequate classroom space can be comfortably provided on floors 2 through 4 of an as-of-right building.⁵ Furthermore, educational meeting space is available in ample supply elsewhere on the zoning lot, including 15,569 square feet elsewhere in the as-of-right building (Scheme

¹ Martin B. Levine, MAI, letter dated June 10, 2008, p. 13. Attached.

² See discussion of community-initiated study of Central Park West "soft sites" by Weisz+Yoes in Statement in Opposition dated March 25, 2008, pp. 5-8 (previously submitted).

³ Architect's drawings of both Applicant's Proposed Scheme and Scheme A show a cellar and subcellar.

⁴ See Craig Morrison, AIA, letter dated January 28, 2008 (previously submitted).

⁵ James A. Greer, II, letter dated March 25, 2008, pp. 1 (previously submitted).

A),⁶ not to mention additional available zoning floor area that could be constructed, as of right, elsewhere on the zoning lot.⁷

The Board has made clear its position that residential use created for the purpose of raising capital funds is not, in and of itself, a programmatic need. The sole function of the upper-floor variances is income-producing luxury condominiums unrelated to Applicant's mission. Therefore, Applicant cannot claim that any aspect of the zoning that prevents it from constructing luxury condominiums on top of its new community house poses a practical difficulty or unnecessary hardship.

Applicant has failed to meet finding (a).

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

Martin B. Levine, MAI, a New York State Licensed commercial real estate appraiser and Chairman of Metropolitan Valuation Services, Inc., has again identified numerous fatal flaws in the Freeman/Frazier feasibility study, as revised and included in Applicant's May 13, 2008, submission, underscoring that its conclusions cannot be relied upon as a basis for granting variances.

Levine demonstrates that both of Applicant's as-of-right Schemes A and C are economically feasible and would provide a reasonable return.⁸

In addition, Applicant has repeatedly failed to analyze the economic potential of the site in accordance with the Board's rules for preparing financial feasibility statements.⁹ Correct analysis reinforces the fact that Applicant could develop the site to both meet its programmatic goals and yield a reasonable return, without variances.

Applicant has failed to meet finding (b).

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

⁶ *Ibid*, p. 7. See also Craig Morrison, AIA, letter dated March 24, 2008, and Opp. Ex. GG (both previously submitted).

⁷ Opp. Ex. GG (previously submitted).

⁸ Levine, Table 1 and Table 2, pp. 11-12.

⁹ Levine, pp. 3-7. See also James E. Mulford letter dated June 9, 2008. Attached.

As described in previous submissions by Opposition, the Proposed New Building would undermine the essential character of the surrounding neighborhood and amount to an unconstitutional “transfer of wealth” from adjacent properties to Applicant’s property.

The most egregious impacts on community character and adjacent properties result solely from Applicant’s desire to construct luxury condominiums on top of a new community house. The waiving of height and setback regulations would cause 7 lot-line windows at 18 West 70th Street to be bricked over.¹⁰ An as-of-right building would impact no windows.

Applicant’s recent proposal to include a rear courtyard does little to mitigate the impact on these windows or the infringement on affected owners’ use of their properties. Indeed, Applicant’s attempt to diminish the impact on the adjacent building is acknowledgement of the harm that would be done.

Applicant’s revised Environmental Assessment Statement continues to downplay the effect that a new, 9-story, 105’-tall building will have on the light, air and overall physical character of West 70th Street. Applicant has finally produced a study of shadows on West 70th Street, but it is inconsistent with photographs previously filed with the BSA.

The proposed building would begin to tip the balance between the low-rise, 4- and 5-story brownstones that define the midblock and the few, taller anomalies that predate the existing contextual zoning.

Applicant has failed to meet finding (c).

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

Opposition has shown in previous submissions that Applicant has failed to meet finding (d). Applicant creates its own “hardship” by its desire to construct new religious and educational facilities along with five floors of for-profit luxury condominiums, and thereby finance the creation of space for its religious mission.

It is not the Board’s role to ensure Applicant’s ability to pay for a new community house, but rather to assess whether or not zoning impedes the useful development of this site. The site can be developed in a variety of ways that comply with zoning and would produce tangible benefits to Applicant. The fact that Applicant chose not to pursue any of these options is illegitimate grounds for a hardship finding.

¹⁰ The diagram included in Applicant’s May 13, 2008, submission showing lot-line windows at 18 West 70th Street errs by not identifying any of the affected windows.

No new materials have been submitted by Applicant to cure the deficiencies of its previous submissions. Therefore, Applicant has still failed to meet finding (d).

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

Accessibility, Circulation and Program Usage

Opposition’s previous submissions have demonstrated that Applicant’s asserted accessibility and circulation issues could be resolved by simply modifying or replacing the elevator in the existing building.¹¹ Both the as-of-right Scheme A and the proposed new building handle accessibility and circulation issues in exactly the same way.¹² A very small portion of the proposed building is required and programmed to meet circulations and accessibility needs.¹³

All of Applicant’s needs can be met without any of the requested variances and indeed within the first four floors of an as-of-right building.¹⁴ Furthermore, there is ample space in the entire zoning lot to accommodate Applicant’s programmatic needs without zoning variances.¹⁵

Throughout this proceeding, Applicant has made vague and increasingly confusing and conflicting statements about its programmatic needs. In sum, Applicant has not made a convincing case explaining why its proposed building is the minimum variance needed to afford relief, or indeed why any relief is necessary since an as-of-right building could accommodate Applicant’s programmatic needs, with room to spare.

Moreover, Applicant is capable of constructing a mixed-use building (community house with a 2-floor condominium on top, such as shown in Scheme A) or an all-residential building (Scheme C) at a reasonable return.

Applicant has not shown as required by finding (e) that it needs any variances to obtain relief from the zoning code.

Conclusion

For all of the foregoing reasons, all of Applicant’s requests for variances from the zoning code should be denied.

¹¹ Craig Morrison, AIA, report dated February 12, 2008 (previously submitted).

¹² *Ibid.*

¹³ Craig Morrison, AIA, letter dated March 24, 2008, Point 7 and Opp. Ex. GG (previously submitted).

¹⁴ *Ibid.*, Point 1 and Opp. Ex. GG.

¹⁵ *Ibid.*, Points 1-5 and Opp. Ex. GG.