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¶11 WHEREAS, additionally, Landmark West! and a group of neighbors represented by counsel testified at hearing and made submissions into the record in opposition to the application (the "Opposition"); the arguments made by the Opposition related to the required findings for a variance, and are addressed below; and

¶12 WHEREAS, the subject zoning lot on which the Synagogue is located consists of Lots 36 and 37 within Block 1122 (the "site"); and

¶13 WHEREAS, the site has a total lot area of 17,286 square feet, with 172 feet of frontage along the south side of West 70<sup>th</sup> Street, and 100.5 feet of frontage on Central Park West; and

¶14 WHEREAS, the portion of the site that extends 125 feet west of Central Park West is located in an R10A zoning district; the remainder of the site is located within an R8B district; and

¶15 WHEREAS, the site is also located within the Upper West Side/ Central Park West Historic District; and

¶16 WHEREAS, Tax Lot 36 is occupied by the Synagogue, with a height of 75'-0", and a connected four-story parsonage house located at 99-100 Central Park West, with a total floor area of 27,760 sq. ft.; and

¶17 WHEREAS, Tax Lot 37 is occupied in part by a four-story Synagogue community house with 11,079 sq. ft. of floor area located at 6-10 West 70<sup>th</sup> Street (comprising approximately 40 percent of the tax lot area); the remainder of Lot 37 is vacant (comprising approximately 60 percent of the tax lot area) (the "Community House"); and

¶18 WHEREAS, the Community House is proposed to be demolished; and

¶19 WHEREAS, the applicant represents that Tax Lot 36 and Tax Lot 37 together constitute a single zoning lot under ZR § 12-10, as they have been in common ownership since 1965 (the "Zoning Lot"); and

¶20 WHEREAS, Tax Lot 37 is divided by a zoning district boundary, pursuant to 1984 zoning map and text amendments to the Zoning Resolution that relocated the former R8/R10 district boundary line to a depth of 47 feet within the lot; and

¶21 WHEREAS, the applicant further represents that the formation of the Zoning Lot predates the relocation of the zoning district boundary, and that development on the site is therefore entitled to utilize the zoning floor area averaging methodology provided for in ZR § 77-211, thereby allowing the zoning floor area to be distributed over the entire Zoning Lot; and

¶22 WHEREAS, the applicant states that as 73 percent of the site is within an R10A zoning district, which permits an FAR of 10.0, and 27 percent of the site is within an R8B zoning district, which permits an FAR of 4.0, the averaging methodology allows for an overall

site FAR of 8.36 and a maximum permitted zoning floor area of 144,511 sq. ft.; and

¶23 WHEREAS, the applicant states that the site is currently built to an FAR of 2.25 and a floor area of 38,838 sq. ft.; and

¶24 WHEREAS, the applicant proposes a nine-story and cellar mixed-use building with community facility (Use Group 3) uses on two cellar levels and the lower four stories, and residential (Use Group 2) uses on five stories including a penthouse (the "proposed building"), which will be built on Tax Lot 37; and

¶25 WHEREAS, the applicant states that the community facility uses include: Synagogue lobby and reception space, a toddler program, adult education and Hebrew school classes, a caretaker's unit, and a Jewish day school; the upper five stories are proposed to be occupied by five market-rate residential condominium units; and

¶26 WHEREAS, the proposed building will have a total floor area of 42,406 sq. ft., comprising 20,054 sq. ft. of community facility floor area and 22,352 sq. ft. of residential floor area; and

¶27 WHEREAS, the proposed building will have a base height along West 70<sup>th</sup> Street of 95'-1" (60 feet is the maximum permitted in an R8B zoning district); with a front setback of 12'-0" (a 15'-0" setback is the minimum required in an R8B zoning district); a total height of 105'-10" (75'-0" is the maximum permitted in an R8B zone), a rear yard of 20'-0" for the second through fourth floors (30'-0" is the minimum required); a rear setback of 6'-8" (10'-0" is required in an R8B zone), and an interior lot coverage of 80 percent (70 percent is the maximum permitted lot coverage); and

¶28 WHEREAS, the Synagogue initially proposed a nine-story building with a total floor area of 42,961 sq. ft., a residential floor area of 22,966 sq. ft., and no court above the fifth floor (the "original proposed building"), and

¶29 WHEREAS, the Synagogue modified the proposal to provide a complying court at the north rear above the fifth floor, thereby reducing the floor plates of the sixth, seventh and eighth floors of the building by approximately 556 sq. ft. and reducing the floor plate of the ninth floor penthouse by approximately 58 sq. ft., for an overall reduction in the variance of the rear yard setback by 25 percent and a reduction in the residential floor area to 22,352 sq. ft.; and

¶30 WHEREAS, the Synagogue is seeking waivers of zoning regulations for lot coverage and rear yard to develop a community facility that can accommodate its religious mission, and is seeking waivers of zoning regulations pertaining to base height, total height, front setback, and rear setback to accommodate a market rate residential development that can generate a reasonable financial return; and

¶31 WHEREAS, as a religious and educational institution, the Synagogue is entitled to significant

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deference under the laws of the State of New York pertaining to proposed changes in zoning and is able to rely upon programmatic needs in support of the subject variance application (see Westchester Reform Temple v. Brown, 22 N.Y.2d 488 (1968)); and

¶32 WHEREAS, under ZR § 72-21(b), a not-for-profit institution is generally exempted from having to establish that the property for which a variance is sought could not otherwise achieve a reasonable financial return; and

¶33 WHEREAS, however, the instant application is for a mixed-use project in which approximately 50 percent of the proposed floor area will be devoted to a revenue-generating residential use which is not connected to the mission and program of the Synagogue; and

¶34 WHEREAS, under New York State law, a not-for-profit organization which seeks land use approvals for a commercial or revenue-generating use is not entitled to the deference that must be accorded to such an organization when it seeks to develop a project that is in furtherance of its mission (see Little Joseph Realty v. Babylon, 41 N.Y.2d 738 (1977); Foster v. Saylor, 85 A.D.2d 876 (4<sup>th</sup> Dep't 1981) and Roman Cath. Dioc. of Rockville Ctr v. Vill. Of Old Westbury, 170 Misc.2d 314 (1996); and

¶35 WHEREAS, consequently, prior Board decisions regarding applications for projects sponsored by not-for-profit religious or educational institutions which have included commercial or revenue-generating uses have included analysis of the hardship, financial return, and minimum variance findings under ZR § 72-21 (see BSA Cal. No. 315-02-BZ, applicant Touro College; BSA Cal. No. 179-03-BZ, applicant Torah Studies, Inc.; BSA Cal. No. 349-05-BZ, Church of the Resurrection; and BSA Cal. No. 194-03-BZ, applicant B'nos Menachem School); and

¶36 WHEREAS, therefore, as discussed in greater detail below, the Board subjected this application to the standard of review required under ZR § 72-21 for the discrete community facility and residential development uses, respectively, and evaluated whether the proposed residential development met all the findings required by ZR § 72-21, notwithstanding its sponsorship by a religious institution; and

ZR § 72-21 (a) – Unique Physical Conditions Finding

¶37 WHEREAS, under § 72-21 (a) of the Zoning Resolution, the Board must find that there are unique physical conditions inherent to the Zoning Lot which create practical difficulties or unnecessary hardship in strictly complying with the zoning requirements (the "(a) finding"); and

Community Facility Use

¶38 WHEREAS, the zoning district regulations limit lot coverage to 80 percent and require a rear yard of 30'-0"; and

¶39 WHEREAS, the proposed building will have the following program: (1) a multi-function room on the sub-cellar level with a capacity of 360 persons for the hosting of life cycle events and weddings and mechanical space; (2) dairy and meat kitchens, babysitting and storage space on the cellar level; (3) a synagogue lobby, rabbi's office and archive space on the first floor; (4) toddler classrooms on the second floor; (5) classrooms for the Synagogue's Hebrew School and Beit Rabban day school on the third floor; and (6) a caretaker's apartment and classrooms for adult education on the fourth floor; and

¶40 WHEREAS, the first floor will have 5,624 sq. ft. of community facility floor area, the second and third floor will each have 4,826.5 sq. ft. of community facility floor area, and the fourth floor will have 4,777 sq. ft. of community facility floor area, for a total of 20,054 sq. ft. of community facility floor area; and

¶41 WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the Synagogue, and by the physical obsolescence and poorly configured floor plates of the existing Community House which constrain circulation and interfere with its religious programming; and

¶42 WHEREAS, the applicant represents that the programmatic needs and mission of the Synagogue include an expansion of its lobby and ancillary space, an expanded toddler program expected to serve approximately 60 children, classroom space for 35 to 50 afternoon and weekend students in the Synagogue's Hebrew school and a projected 40 to 50 students in the Synagogue's adult education program, a residence for an onsite caretaker to ensure that the Synagogue's extensive collection of antiquities is protected against electrical, plumbing or heating malfunctions, and shared classrooms that will also accommodate the Beit Rabban day school; and

¶43 WHEREAS, the applicant states that the proposed building will also permit the growth of new religious, pastoral and educational programs to accommodate a congregation which has grown from 300 families to 550 families; and

¶44 WHEREAS, to accommodate these programmatic needs, the Synagogue is seeking lot coverage and rear yard waivers to provide four floors of community facility use in the proposed building; and

¶45 WHEREAS, the Board acknowledges that the Synagogue, as a religious institution, is entitled to substantial deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application (see Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986)); and

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¶46 WHEREAS, however, in addition to its programmatic needs, the applicant also represents that the following site conditions create an unnecessary hardship in developing the site in compliance with applicable regulations as to lot coverage and yards: if the required 30'-0" rear yard and lot coverage were provided, the floor area of the community facility would be reduced by approximately 1,500 sq. ft.; and

¶47 WHEREAS, the applicant states that the required floor area cannot be accommodated within the as-of-right lot coverage and yard parameters and allow for efficient floor plates that will accommodate the Synagogue's programmatic needs, thus necessitating the requested waivers of these provisions; and

¶48 WHEREAS, the applicant represents that a complying building would necessitate a reduction in the size of three classrooms per floor, affecting nine proposed classrooms which would consequently be too narrow to accommodate the proposed students; the resultant floor plates would be small and inefficient with a significant portion of both space and floor area allocated toward circulation space, egress, and exits; and

¶49 WHEREAS, the applicant further states that the reduction in classroom floor area would consequently reduce the toddler program by approximately 14 children and reduce the size of the Synagogue's Hebrew School, Adult Education program and other programs and activities; and

¶50 WHEREAS, the applicant represents that the requested yard and lot coverage waivers would enable the Synagogue to develop the site with a building with viable floor plates and adequate space for its needs; and

¶51 WHEREAS, the Opposition has argued that the Synagogue cannot satisfy the (a) finding based solely on its programmatic need and must still demonstrate that the site is burdened by a unique physical hardship in order to qualify for a variance; and

¶52 WHEREAS, notwithstanding that the applicant has asserted that the site is also burdened with a physical hardship that constrains an as-of-right development, discussed below, the Board notes that the Opposition ignores 50 years of unwavering New York jurisprudence holding that zoning boards must accord religious institutions a presumption of moral, spiritual and educational benefit in evaluations of applications for zoning variances (see e.g.; Diocese of Rochester v. Planning Bd., 1 N.Y.2d 508 (1956) (zoning board cannot wholly deny permit to build church in residential district; because such institutions further the morals and welfare of the community, zoning board must instead seek to accommodate their needs); see also Westchester Ref. Temple v. Brown, 22 N.Y.2d 488 (1968); and Islamic Soc. of Westchester v. Foley, 96 A.D. 2d 536 (2d Dep't 1983)), and therefore need not demonstrate

that the site is also encumbered by a physical hardship; and

¶53 WHEREAS, in support of its proposition that a religious institution must establish a physical hardship, the Opposition cites to decisions in Yeshiva & Mesivta Toras Chaim v. Rose (137 A.D.2d 710 (2d Dep't 1988)) and Bright Horizon House, Inc. v Zng. Bd. of Appeals of Henrietta (121 Misc.2d 703 (Sup. Ct. 1983)); and

¶54 WHEREAS, both decisions uphold the denial of variance applications based on findings that the contested proposals constituted neither religious uses, nor were they ancillary or accessory uses to a religious institution in which the principal use was as a house of worship, and are therefore irrelevant to the instant case; and

¶55 WHEREAS, the Board finds that the proposed Synagogue lobby space, expanded toddler program, Hebrew school and adult education program, caretaker's apartment, and accommodation of Beit Rabban day school constitute religious uses in furtherance of the Synagogue's program and mission; and

¶56 WHEREAS, the Opposition contends that the Synagogue's programmatic needs are too speculative to serve as the basis for an (a) finding; and

¶57 WHEREAS, in response to a request by the Board to document demand for the proposed programmatic floor area, the applicant submitted a detailed analysis of the program needs of the Synagogue on a space-by-space and time-allocated basis which confirms that the daily simultaneous use of the overwhelming majority of the spaces requires the proposed floor area and layout and associated waivers; and

¶58 WHEREAS, the Opposition argues, nonetheless, that the Synagogue's programmatic needs could be accommodated within an as-of-right building, or within existing buildings on the Synagogue's campus and that the proposed variances for the community facility use are unmerited and should consequently be denied; and

¶59 WHEREAS, specifically, the Opposition has contended that the Synagogue's programmatic needs could be accommodated within the existing parsonage house; and

¶60 WHEREAS, the applicant represents that the narrow width of the parsonage house, at approximately 24'-0", would make it subject to the "sliver" limitations of ZR § 23-692 which limit the height of its development and, after deducting for the share of the footprint that would be dedicated to elevator and stairs, would generate little floor area; and

¶61 WHEREAS, the applicant further represents that development of the parsonage house would not address the circulation deficiencies of the synagogue and would block several dozen windows on the north elevation of 91 Central Park West; and

¶62 WHEREAS, the Board notes that where a



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nonprofit organization has established the need to place its program in a particular location, it is not appropriate for a zoning board to second-guess that decision (see Guggenheim Neighbors v. Bd. of Estimate, June 10, 1988, N.Y. Sup. Ct., Index No. 29290/87), see also Jewish Recons. Syn. of No. Shore v. Roslyn Harbor, 38 N.Y.2d 283 (1975)); and

¶63 WHEREAS, furthermore, a zoning board may not wholly reject a request by a religious institution, but must instead seek to accommodate the planned religious use without causing the institution to incur excessive additional costs (see Islamic Soc. of Westchester v. Foley, 96 A.D.2d 536 (2d Dep't 1983); and

¶64 WHEREAS, religious institutions are entitled to locate on their property facilities for other uses that are reasonably associated with their overall purposes and a day care center/preschool has been found to constitute such a use (see Uni. Univ. Church v. Shorten, 63 Misc.2d 978, 982 (Sup. Ct. 1970)); and

¶65 WHEREAS, in submissions to the Board, the Opposition argues that the Beit Rabban school does not constitute a programmatic need entitled to deference as a religious use because it is not operated for or by the Synagogue; and

¶66 WHEREAS, however, it is well-established under New York law that religious use is not limited to houses of worship, but is defined as conduct with a 'religious purpose;' the operation of an educational facility on the property of a religious institution is construed to be a religious activity and a valid extension of the religious institution for zoning purposes, even if the school is operated by a separate corporate entity (see Slevin v. Long Isl. Jew. Med. Ctr., 66 Misc.2d 312, 317 (Sup. Ct. 1971); and

¶67 WHEREAS, the applicant further states that the siting of the Beit Rabban school on the premises helps the Synagogue to attract congregants and thereby enlarge its congregation, which the courts have also found to constitute a religious activity (see Community Synagogue v. Bates, 1 N.Y.2d 445, 448 (1958)), in which the Court of Appeals stated, "[t]o limit a church to being merely a house of prayer and sacrifice would, in a large degree, be depriving the church of the opportunity of enlarging, perpetuating and strengthening itself and the congregation"); and

¶68 WHEREAS, the Board notes that the applicant has provided supportive evidence showing that, even without the Beit Rabban school, the floor area as well as the waivers to lot coverage and rear yard would be necessary to accommodate the Synagogue's programmatic needs; and

¶69 WHEREAS, the applicant represents that the variance request is necessitated not only by its programmatic needs, but also by physical conditions on the subject site – namely – the need to retain and

preserve the existing landmarked Synagogue and by the obsolescence of the existing Community House; and  
¶70 WHEREAS, the applicant states that as-of-right development of the site is constrained by the existence of the landmarked Synagogue building which occupies 63 percent of the Zoning Lot footprint; and

¶71 WHEREAS, the applicant represents that because so much of its property is occupied by a building that cannot be disturbed, a relatively small portion of the site is available for development – largely limited to the westernmost portion of the Zoning Lot; and

¶72 WHEREAS, the applicant further represents that the physical obsolescence and poorly configured floorplates of the existing Community House constrain circulation and interfere with its religious programming and compromise the Synagogue's religious and educational mission, and that these limitations cannot be addressed through interior alterations; and

¶73 WHEREAS, the applicant states that the proposed building will provide new horizontal and vertical circulation systems to provide barrier-free access to its sanctuaries and ancillary facilities; and

¶74 WHEREAS, based upon the above, the Board finds that the aforementioned physical conditions, when considered in conjunction with the programmatic needs of Synagogue, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

¶75 WHEREAS, the Opposition argues that uniqueness is limited to the physical conditions of the Zoning Lot and that the obsolescence of an existing building or other building constraints therefore cannot fulfill the requirements of the (a) finding, while citing no support for such a proposition; and

¶76 WHEREAS, to the contrary, New York courts have found that unique physical conditions under Section 72-21(a) of the Zoning Resolution can refer to buildings as well as land (see Guggenheim Neighbors v. Board of Estimate, June 10, 1988, N.Y. Sup. Ct. Index No. 29290/87; see also, Homes for the Homeless v. BSA, 7/23/2004, N.Y.L.J. citing UOB Realty (USA) Ltd. v. Chin, 291 A.D.2d 248 (1<sup>st</sup> Dep't 2002;); and, further, obsolescence of a building is well-established as a basis for a finding of uniqueness (see Matter of Commco, Inc. v. Amelkin, 109 A.D.2d 794, 796 (2d Dep't 1985), and Polsinello v. Dwyer, 160 A.D. 2d 1056, 1058 (3d Dep't 1990) (condition creating hardship was land improved with a now-obsolete structure)); and

¶77 WHEREAS, in submissions to the Board, the Opposition has also contended that the Synagogue had failed to establish a financial need for the project as a whole; and

¶78 WHEREAS, the Board notes that to be entitled to a variance, a religious or educational institution must establish that existing zoning requirements impair its ability to meet its programmatic needs; neither New

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the landmark Synagogue limits the developable portion of the site to the development site; and

¶113 WHEREAS, as to the limitations on development imposed by the site's location within the R&B contextual zoning district, the applicant represents the district's height limits and setback requirements, and the limitations imposed by ZR § 23-692, result in an inability to use the Synagogue's substantial surplus development rights; and

¶114 WHEREAS, the applicant represents that, as a result of these constraints, the Synagogue would be permitted to use a total of 28,274 sq. ft. for an as-of-right development, although it has approximately 116,752 sq. ft. in developable floor area; and

¶115 WHEREAS, the Synagogue further represents that, after development of the proposed building the Zoning Lot would be built to a floor area of 70,166 sq. ft. and an FAR of 4.36, although development of 144,511 sq. ft. of floor area and an FAR of 8.36 would be permitted as-of-right, and that approximately 74,345 sq. ft. of floor area will remain unused; and

¶116 WHEREAS, the Opposition contends that the inability of the Synagogue to use its development rights is not a hardship under ZR § 72-21 because a religious institution lacks the protected property interest in the monetization of its air rights that a private owner might have, citing Matter of Soc. for Ethical Cult. v. Spatt, 51 N.Y.2d 449 (1980); and

¶117 WHEREAS, the Opposition further contends that the inability of the Synagogue to use its development rights is not a hardship because there is no fixed entitlement to use air rights contrary to the bulk limitations of a zoning district; and

¶118 WHEREAS, the Board notes that Spatt concerns whether the landmark designation of a religious property imposes an unconstitutional taking or an interference with the free exercise of religion, and is inapplicable to a case in which a religious institution merely seeks the same entitlement to develop its property possessed by any other private owner; and

¶119 WHEREAS, furthermore, Spatt does not stand for the proposition that government land use regulation may impose a greater burden on a religious institution than on a private owner; indeed, the court noted that the Ethical Culture Society, like any similarly situated owner, retained the right to generate a reasonable return from its property by the transfer of its excess development rights (see 51 N.Y.2d at 455, FN1); and

¶120 WHEREAS, the Board notes that the Zoning Resolution includes several provisions permitting the utilization or transfer of available development rights from a landmark building within the lot on which it is located or to an adjacent lot, and

¶121 WHEREAS, the Board further notes that while a nonprofit organization is entitled to no special

deference for a development that is unrelated to its mission, it would be improper to impose a heavier burden on its ability to develop its property than would be imposed on a private owner; and

¶122 WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in light of the Synagogue's programmatic needs, create practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; thereby meeting the required finding under ZR § 72-21(a); and ZR § 72-21 (b) – Financial Return Finding

¶123 WHEREAS, under ZR § 72-21 (b), the Board must establish that the physical conditions of the site preclude any reasonable possibility that its development in strict conformity with the zoning requirements will yield a reasonable return, and that the grant of a variance is therefore necessary to realize a reasonable return (the "(b) finding"), unless the applicant is a nonprofit organization, in which case the (b) finding is not required for the granting of a variance; and

Community Facility Use

¶124 WHEREAS, the applicant represents that it need not address the (b) finding since it is a not-for-profit religious institution and the community facility use will be in furtherance of its not-for-profit mission; and

Residential Development

¶125 WHEREAS, under New York State law, a not-for-profit organization which seeks land use approvals for a commercial or revenue-generating use is not entitled to the deference that must be accorded to such an organization when it seeks to develop a project that is in furtherance of its mission (see Little Joseph Realty v. Babylon, 41 N.Y.2d 738 (1977); (municipal agency was required to make the variance findings because proposed use would be operated solely by and for the benefit of a private entrepreneur); Foster v. Saylor, 85 A.D.2d 876 (4<sup>th</sup> Dep't 1981) (variance upheld permitting office and limited industrial use of former school building after district established inability to develop for a conforming use or otherwise realize a financial return on the property as zoned); and Roman Cath. Dioc. of Rockville Ctr v. Vill. Of Old Westbury, 170 Misc.2d 314 (1996) (cemetery to be operated by church was found to constitute a commercial use)); and

¶126 WHEREAS, the residential development was not proposed to meet its programmatic needs, the Board therefore directed the applicant to perform a financial feasibility study evaluating the ability of the Synagogue to realize a reasonable financial return from as-of-right residential development of the site, despite the fact that it is a not-for-profit religious institution; and

¶127 WHEREAS, the applicant initially submitted a feasibility study that analyzed: (1) an as-of-right community facility/residential building within an R&B envelope (the "as-of-right building"); (2) an as-of-right

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on profits is typically used on an unleveraged basis for condominium or home sale analyses and would therefore be more appropriate for a residential project, such as that proposed by the subject application; and

¶144 WHEREAS, the Board notes that a return on profit model which evaluates profit or loss on an unleveraged basis is the customary model used to evaluate the feasibility of market-rate residential condominium developments; and

¶145 WHEREAS, the Opposition also raised concerns as to the omission of the income from the Beit Rabban school from the feasibility study; and

¶146 WHEREAS, in response to concerns raised by the Opposition as to why the feasibility study omitted the income from the Beit Rabban school, a submission by the applicant states that the projected market rent for community facility use was provided to the Board in an earlier submission and that the cost of development far exceeded the potential rental income from the community facility portion of the development; and

¶147 WHEREAS, further, the Board notes that it requested that costs, value and revenue attributable to the community facility be eliminated from the financial feasibility analysis to allow a clearer depiction of the feasibility of the proposed residential development and of lesser variance and as-of-right alternatives; and

¶148 WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements would provide a reasonable return; and

ZR § 72-21 (c) – Neighborhood Character Finding

¶149 WHEREAS, as pertains to the (c) finding under ZR § 72-21, the Board is required to find that the grant of the variance will not alter the essential neighborhood character, impair the use or development of adjacent property, or be detrimental to the public welfare; and

¶150 WHEREAS, because the variances sought to permit the community facility use differ from the variances sought to permit the proposed residential use, the potential affects on neighborhood character of each respective set of proposed variances are discussed separately below; and

Community Facility Use

¶151 WHEREAS, the applicant represents that the proposed rear yard and lot coverage variances permitting the community facility use will not negatively affect the character of the neighborhood, nor affect adjacent uses; and

¶152 WHEREAS, the applicant states that the proposed waivers would allow the community facility to encroach into the rear yard by ten feet, to a height of approximately 49 feet; and

¶153 WHEREAS, the applicant states that, as a community facility, the Synagogue would be permitted to build to the rear lot line up to a height of 23 feet; and

¶154 WHEREAS, the applicant represents that the affect of the encroachment into the rear yard is partly offset by the depths of the yards of the adjacent buildings to its rear; and

¶155 WHEREAS, the Board conducted an environmental review of the proposed action and found that it would not have significant adverse impacts on the surrounding neighborhood; and

¶156 WHEREAS, the Opposition disputes the findings of the Environmental Assessment Statement ("EAS") and contends that the expanded toddler program, and the life cycle events and weddings held in the multi-purpose room of the lower cellar level of the proposed community facility would produce significant adverse traffic, solid waste, and noise impacts; and

¶157 WHEREAS, the Board notes that the additional traffic and noise created by the expanded toddler program – which is projected to grow from 20 children to 60 children daily – falls below the CEQR threshold for potential environmental impacts; and

¶158 WHEREAS, the Board further notes that the waivers of lot coverage and rear yard requirements are requested to meet the Synagogue's need for additional classroom space and that the sub-cellar multi-purpose room represents an as-of-right use; and

¶159 WHEREAS, the applicant states that the proposed multi-function room would result in an estimated 22 to 30 life cycle events and weddings over and above those currently held; and

¶160 WHEREAS, with respect to traffic, the applicant states that life cycle events would generate no additional traffic impacts because they are held on the Sabbath and, as Congregation Shearith Israel is an Orthodox synagogue, members and guests would not drive or ride to these events in motor vehicles; and

¶161 WHEREAS, the applicant further states that significant traffic impacts are not expected from the increased number of weddings, because they are generally held on weekends during off-peak periods when traffic is typically lighter, or from the expanded toddler program, which is not expected to result in a substantial number of new vehicle trips during the peak hours; and

¶162 WHEREAS, with respect to solid waste, the EAS estimated the solid waste attributable to the entirety of the proposed building, including the occupants of the residential portion and the students in the school, and conservatively assumed full occupancy of the multi-function room (at 360 persons); and

¶163 WHEREAS, the estimates of solid waste generation found that the amount of projected additional waste represented a small amount, relative to the amount of solid waste collected weekly on a given route by the Department of Sanitation, and would not



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sixth through eighth floors of the building, thereby retaining access to light and air of three additional lot line windows; and

¶209 WHEREAS, the applicant modified the proposal to provide a complying court at the north rear above the fifth floor, thereby reducing the floor plates of the sixth, seventh and eighth floors of the building by approximately 556 sq. ft. and reducing the floor plate of the ninth floor penthouse by approximately 58 sq. ft., for an overall reduction in the variance of the rear yard setback of 25 percent; and

¶210 WHEREAS, during the hearing process, the Board also directed the applicant to assess the feasibility of several lesser variance scenarios; and

¶211 WHEREAS, financial analyses submitted by the applicant established that none of these alternatives yielded a reasonable financial return; and

¶212 WHEREAS, however, the Opposition argues that the minimum variance finding is no variance because the building could be developed as a smaller as-of-right mixed-use community facility/ residential building that achieved its programmatic mission, improved the circulation of its worship space and produced some residential units; and

¶213 WHEREAS, the Synagogue has fully established its programmatic need for the proposed building and the nexus of the proposed uses with its religious mission; and

¶214 WHEREAS, the Board notes again that a zoning board must accommodate a proposal by a religious or educational institution for a project in furtherance of its mission, unless the proposed project is shown to have significant and measurable detrimental impacts on surrounding residents (See Westchester Ref. Temple v. Brown, 22 N.Y.2d 488 (1968); Islamic Soc. of Westchester v. Foley, 96 A.D. 2d 536 (2d Dep't 1983); and Jewish Recons. Synagogue of No. Shore v. Roslyn Harbor, 38 N.Y.2d 283 (1975)); and

¶215 WHEREAS, the Opposition has not established such impacts; and

¶216 WHEREAS, the Opposition may have raised other issues that are not specifically addressed herein, the Board has determined that all cognizable issues with respect to the required variance findings or CEQR review are addressed by the record; and

¶217 WHEREAS, the Board finds that the requested lot coverage and rear yard waivers are the minimum necessary to allow the applicant to fulfill its programmatic needs and that the front setback, rear setback, base height and building height waivers are the minimum necessary to allow it to achieve a reasonable financial return; and

¶218 WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

¶219 WHEREAS, the project is classified as a Type 1 action pursuant to 6NYCRR, Part 617; and

¶220 WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA071M dated May 13, 2008; and

¶221 WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

¶222 WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

¶223 *Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under ZR § 72-21, to permit, on a site partially within an R8B district and partially within an R10A district within the Upper West Side/ Central Park West Historic District, the proposed construction of a nine-story and cellar mixed-use community facility/ residential building that does not comply with zoning parameters for lot coverage, rear yard, base height, building height, front setback and rear setback contrary to ZR §§ 24-11, 77-24, 24-36, 23-66, and 23-633; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 13, 2008"—nineteen (19) sheets and "Received July 8, 2008"—one (1) sheet; and *on further condition*:

¶224 THAT the parameters of the proposed building shall be as follows: a total floor area of 42,406 sq. ft.; a community facility floor area of 20,054 sq. ft.; a residential floor area of 22,352 sq. ft.; a base height of 95'-1"; with a front setback of 12'-0"; a total height of 105'-10"; a rear yard of 20'-0"; a rear setback of 6'-8"; and an interior lot coverage of 0.80; and

¶225 THAT the applicant shall obtain an updated Certificate of Appropriateness from the Landmarks Preservation Commission prior to any building permit being issued by the Department of Buildings;

¶226 THAT refuse generated by the Synagogue shall be stored in a refrigerated vault within the building, as shown on the BSA-approved plans;

A-1980  
(A-1872 to A-2023)

Manhattan Community Board 7 Land Use Committee Meeting Transcript, dated  
October 17, 2007 (submitted with LW January 29, 2008 letter) (109 of 152)

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109

1 community. Hebrew school tends to be  
2 after school and have weekend function,  
3 and that is the primary purpose of the  
4 space in the community house.

5 And it's the primary purpose  
6 of the expanded space with the new  
7 classrooms we'll be seeking. Those  
8 classrooms lie dormant during the  
9 regular school day when children are in  
10 other schools in their regular  
11 education.

12 The synagogue has arranged a  
13 relationship with a day, scheduled day  
14 school to use those spaces that are  
15 already there. So it's not so the  
16 priority there and the zone of the space  
17 is not as a rental facility, and oh, by  
18 the way, this is not as a Hebrew school,  
19 the synagogue has the Hebrew school and  
20 have been recently able to find a tenant  
21 to be able to use all that space during  
22 the daytime.

002935



**A-1981**  
**(A-1872 to A-2023)**

Manhattan Community Board 7 Land Use Committee Meeting Transcript, dated  
October 17, 2007 (submitted with LW January 29, 2008 letter) (110 of 152)

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110

1                   Both institutions are  
2           responsible for the present situation  
3           which is significant overcrowding, as  
4           you know the Landmarks Commission gave  
5           approval to put two temporary trailers  
6           in the vacant lot because the school  
7           conditions are as run down as they are  
8           and underserved.

9                   The both communities,  
10          primarily the Hebrew school community at  
11          the synagogue, so in conclusion that is  
12          based synagogue space provided for the  
13          Hebrew school, needs to be expanded.  
14          The tenant will be accommodated to the  
15          extent it can be accommodated and to the  
16          extent that space is already there.

17                   With regard to the second  
18          question about the height setback  
19          requirements, we will -- we have to  
20          maintain and will continue to maintain  
21          provisions of residential housing.

22                   The residential space is a

002936

**A-1989**  
**(A-1872 to A-2023)**

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October 17, 2007 (submitted with LW January 29, 2008 letter) (118 of 152)

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118

1           that you can make as to why you did not  
2           engage the parsonage as part of the  
3           study at large.

4                       MR. FRIEDMAN: Well, if that's  
5           not in the form of a question, let's put  
6           a future date and we'll respond.

7                       MS. COWLEY: Unless you can  
8           tell us why you didn't engage the  
9           parsonage in any of the design studies.

10                      MR. FRIEDMAN: There are two  
11           and I think the architect is better to  
12           answer it, but the parsonage has several  
13           problems as potential facility space  
14           dealing with its construction, with per  
15           se its ability to provide egress  
16           necessary for community facility uses.

17                      There are serious code  
18           requirements regarding the elevator and  
19           while it's the elevator can serve  
20           residential purposes it cannot serve  
21           community facility purposes and,  
22           therefore, would have to be most likely

**002944**

**A-1990**  
**(A-1872 to A-2023)**

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1           in place.

2                     It was poor overall for

3           accepting any of programmatic uses the

4           synagogue required. That's why in days

5           of old, as many of you know, it was used

6           as a homeless shelter. That was its

7           only potential use to the synagogue

8           then, and nothing really changed since.

9                     It did renovate it, it did

10          imply landmarks for facade work and the

11          like, and has again rented it out and,

12          at market rate to a tenant who has a

13          family there and can use the building in

14          which it was built for the purposes it

15          was built as a residential unit. How

16          that might have been different

17          architecturally beyond that tied into

18          the new construction, I'll ask my

19          colleague.

20                     MR. DOVELL: There is one part

21          of that which you should be aware of

22          there is an historical skylight in the

002945

**A-2021**  
**(A-1872 to A-2023)**

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150

1 Rabban, is a tenant and pays rent to  
2 utilize the space for a day school.

3 MR. VITULLO-MARTIN: If the  
4 school ceases to be a renter, then the  
5 synagogue has a lot more space for its  
6 programs. I mean, what is the  
7 consequence of that?

8 MR. FRIEDMAN: If the tenant  
9 left the site, then the synagogue would  
10 have a lot of empty classrooms it uses  
11 in the late afternoons, evenings and  
12 weekends and most other churches and  
13 synagogues that provide after school  
14 programs, that space will be not  
15 utilized. Empty.

16 MR. VITULLO-MARTIN: Okay.  
17 Thank you.

18 MR. FINE: Use space on  
19 weekends, at other times as it is,  
20 that's what I remember from two years  
21 ago.

22 THE CHAIRPERSON: In other

**002976**



A-2264  
(A-2255 to A-2435)

Manhattan Community Board 7 Land Use Committee Transcript, November 19,  
2007 (submitted with Landmark West January 29, 2008 letter) (10 of 181)

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10

1 for are two basic categories. One is  
2 lot coverage in rear yard, which are  
3 related. The second is height and set  
4 back, which also are related. We'll  
5 talk about the first group. Go ahead.

6 Lot coverage and rear yard.

7 This diagram shows the  
8 synagogue in this location, the proposed  
9 addition here. This line here is the  
10 demising line between the two districts,  
11 both of which, within the interior  
12 portion require a 70 percent maximum lot  
13 coverage. What we're asking for here is  
14 to increase that to 80. Go ahead.

15 That in the -- the next is the  
16 rear yard in the R8B portion, which is,  
17 in fact, related to that. The rear yard  
18 required in the R8B is 30 feet. We ask  
19 it be reduced to 20 for programmatic  
20 reasons primarily, so we can get the  
21 classroom space we need at the base of  
22 the building.

002988

A-2265  
(A-2255 to A-2435)

Manhattan Community Board 7 Land Use Committee Transcript, November 19,  
2007 (submitted with Landmark West January 29, 2008 letter) (11 of 181)

**CB7 Land Use Hearing November 19, 2007 Page 11 of 181**

11

1                   So if you can see this is the  
2                   portion, it's ten feet in this  
3                   direction, times the width of the  
4                   district in that direction. And this is  
5                   what it represents in section.

6                   Okay. This is the same issue.  
7                   It's the rear yard in the R10A. It is  
8                   the same ten-foot requirement we're  
9                   seeking just through the balance of the  
10                  width of the site. This is the R10A  
11                  portion of this relief that we're asking  
12                  for and here it is in section. Next.

13                   The lot coverage and the  
14                   reduced rear yard address programmatic  
15                   needs. Without it, we have requirements  
16                   in the building for stairs, of course,  
17                   and bathrooms. Without this, we get a  
18                   substandard and very small classroom  
19                   floors toward the south.

20                   This is what the desired  
21                   solution is that we're asking for.  
22                   Next.

**A-2413**  
**(A-2255 to A-2435)**

Manhattan Community Board 7 Land Use Committee Transcript, November 19,  
2007 (submitted with Landmark West January 29, 2008 letter) (159 of 181)

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159

1           to juggle all the literature that we've  
2           read. This plan is your optimum plan  
3           for the classrooms, for the synagogue,  
4           so it does not reflect any specific age  
5           requirement or new design that might be  
6           required if a different population were  
7           to go there.

8                               **MR. FRIEDMAN:** If that  
9           different population was related to the  
10          synagogue's programming, possibly, but  
11          these spaces and I don't mean to  
12          trivialize the matter, but we would be  
13          comfortable having your measure taken as  
14          if the tenant didn't exist at all.

15                              We believe that the  
16          programmatic needs of the synagogue  
17          account for everything that's being  
18          requested here.

19                             **MS. COWLEY:** Then the  
20          question, a second comment that I have  
21          to my colleagues here, there's no  
22          requirement then to meet a certain

**003137**

A-2414  
(A-2255 to A-2435)

Manhattan Community Board 7 Land Use Committee Transcript, November 19,  
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160

1 classroom size except for the amount of  
2 square footage per person that you're  
3 going to fit in the room, right?

4 So that in the event those  
5 waivers didn't exist, I wouldn't have a  
6 hard time saying that programmatic  
7 agreement wouldn't be met, because you  
8 would be able to meet it in other ways.  
9 Yes --

10 MR. FRIEDMAN: I don't  
11 understand the question.

12 MS. COWLEY: It's a design  
13 issue, but this I address to Ray, a  
14 little bit because I'm trying to help my  
15 colleagues understand nuances.

16 MR. DOVELL: There are 12  
17 classrooms shown. They all have a place  
18 in the synagogue's programming for the  
19 synagogue's use. There are 12 programs  
20 in floors two through four.

21 All of those classrooms have a  
22 specific use for the synagogue, whether

003138



A-2415  
(A-2255 to A-2435)

Manhattan Community Board 7 Land Use Committee Transcript, November 19,  
2007 (submitted with Landmark West January 29, 2008 letter) (161 of 181)

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161

1           it's a Hebrew school, toddler classes  
2           and adult seminar rooms and youth room.  
3           The supplemental offices also have a  
4           particular place there's one office  
5           which would be dedicated to the tenant  
6           school, but that's all.

7                           MS. COWLEY: Again, if the  
8           variances were not given to use ten feet  
9           of that rear yard, it is conceivable  
10          that you would be able to accommodate  
11          that by summary organization of the  
12          space planning that you've got on these  
13          particulars, on the second, third and  
14          fourth floors.

15                       MR. DOVELL: All of those  
16          classroom floors are in the area where  
17          we're pushing out into the back. That  
18          area is all needed for classrooms.

19                       MS. ROSENTHAL: I think what  
20          Page is asking is, so pull it back ten  
21          feet and what happens?

22                       MR. DOVELL: The classrooms

003139

**A-2416  
(A-2255 to A-2435)**

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2007 (submitted with Landmark West January 29, 2008 letter) (162 of 181)

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1           **becomes substandard in width, they're**  
2           **marginal on the front of the building**  
3           **now.**

4                   **MS. COWLEY: That's what I**  
5           **don't understand. You've given more**  
6           **space in the rear for office space,**  
7           **sacrificing classrooms.**

8                   **MR. DOVELL: Look at the floor**  
9           **above.**

10                   **MS. COWLEY: I'm looking at**  
11           **the second floor now and the third**  
12           **floor.**

13                   **MS. ROSENTHAL: On the third**  
14           **floor, it makes sense. How about on the**  
15           **second floor then?**

16                   **MR. DOVELL: On the second**  
17           **floor, there is a requirement for fairly**  
18           **substantial office spaces in connection**  
19           **with those spaces.**

20                   **MS. ROSENTHAL: Requirement to**  
21           **whom?**

22                   **MR. DOVELL: For the synagogue**

**003140**

A-2417  
(A-2255 to A-2435)

Manhattan Community Board 7 Land Use Committee Transcript, November 19,  
2007 (submitted with Landmark West January 29, 2008 letter) (163 of 181)

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163

1 to support their educational mission.

2 MS. ROSENTHAL: Square footage  
3 requirement.

4 MR. DOVELL: They would like  
5 the larger rooms on the second floor.

6 MS. ROSENTHAL: What's the  
7 requirement for the classrooms?

8 MR. FRIEDMAN: Programmatic  
9 requirement.

10 MS. COWLEY: You're dealing,  
11 with all due respect here, trying to fit  
12 a gallon in a pint and what we're trying  
13 to do is find the actual base where  
14 you're required to make that  
15 programmatic, that program fit what  
16 we're trying to wrestle with is what is  
17 the minimum variance you need to get you  
18 there.

19 MR. FRIEDMAN: The minimum  
20 variance can be, can become a sliding  
21 scale as soon as you just tell the  
22 synagogue, start figuring out how to do

003141

A-2425  
(A-2255 to A-2435)

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2007 (submitted with Landmark West January 29, 2008 letter) (171 of 181)

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171

1 let's pick another argument for the sake  
2 of this discussion, and maybe we can  
3 make it work another way, this is the  
4 proposal, we have before you and the  
5 floor you're asking about is currently  
6 committed to, for residential use."

7 Now, if I had to argue in  
8 theory about the community facilities,  
9 we could argue here all night about a  
10 genesis and things about additional  
11 costs of needlessly having to increase  
12 height, many schools will come forward  
13 and say without any of these issues, we  
14 prefer, as Hope said, we prefer the  
15 wider floor plate, because it helps us  
16 in both our programmatic needs in terms  
17 of teaching with adjacencies and  
18 avoiding dead space, and it's more  
19 expensive to build up than build down.

20 We can have this discussion,  
21 if it was from a scratch discussion. We  
22 have what we have here because these

003149



A-2486  
(A-2477 to A-2564)

Transcript of First BSA Public Hearing held on November 27, 2007 (10 of 88)

181           So, what is lacking here, our classroom sizes are small. They're not enough of  
182           them. They're eight. We need twelve; that combined with the physical constraints of the  
183           existing building.

184                           CHAIR SRINIVASAN: Can you just clarify. You said  
185           you need eight to twelve. Is that based on the tenant's school or is that based on Shearith  
186           Israel's own program?

187                           MR. DOVELL: We are going - - there are eight  
188           classrooms existing. The proposed shows twelve classrooms.

189                           CHAIR SRINIVASAN: I understand that but - - Mr.  
190           Friedman can you answer that question?

191                           MR. FRIEDMAN: I will address that. The school, the  
192           Hebrew School of the synagogue has existed for a very long time.

193                           Recently, it has taken on a tenant, the Bakerbaun (Phonetic) School that uses the  
194           classrooms during the typical school day; Hebrew School - - most religious schools are  
195           afternoons and weekends. That space lays fallow and the synagogue has signed a lease  
196           with Bakerbaun (Phonetic) to use its facilities.

197                           The application is based on the synagogue's needs and synagogue's needs solely.

198                           Ray referred to them as classrooms and they certainly are but on top of that,

199                           they're also adult education rooms. They are conference rooms. They are rooms for

200                           volunteers to do typical social services.

201                           They go well beyond simply the classrooms.

202                           When one deals with the classrooms, one cannot simply provide a generic room

203                           because all age groups from pre-school on up utilize these classrooms so some of these

**A-2490**  
**(A-2477 to A-2564)**

Transcript of First BSA Public Hearing held on November 27, 2007 (14 of 88)

271 RABBI ANGEL: I'm not going to be able to stay for the  
272 entire proceeding so if there are any particular questions you need, I'll be happy to  
273 answer them now.

274 CHAIR SRINIVASAN: Are there any questions for the  
275 Rabbi? All right. Thank you.

276 RABBI ANGEL: Thank you very much.

277 MS. KAY: Hello. Hi. I'm Lynne Kay. I'm the Director  
278 of Jewish Life and Learning at the synagogue. That's the post that has educational and  
279 pastoral responsibilities. I serve just under Rabbi Angel.

280 I also am not able to stay to the end of the proceedings. I have to teach, so when I  
281 finish speaking, if you'd like to ask me any questions, I'd be happy to answer them.

282 We need new classrooms to answer both existing educational needs that are just  
283 not done as well as they should be and also to accommodate expanded adult and youth  
284 programming that we're looking to build.

285 Our Hebrew School has nine teachers and myself. We meet Thursday afternoons  
286 and Sunday mornings.

287 On Sundays - - and, in general, we don't have enough classrooms to  
288 accommodate the school on one floor together. Two classes actually meet in one  
289 classroom with a divider in between them and two others are on another floor and there's  
290 another tutoring, a remedial program that happens in the other part of the building which  
291 is detrimental to that students' smooth transition into the mainstream class which, you  
292 must do every week, and a sense of belonging to the larger school as a whole.

A-2491  
(A-2477 to A-2564)

Transcript of First BSA Public Hearing held on November 27, 2007 (15 of 88)

293           It's very valuable to have classes near each other so there's a sense of camaraderie  
294           within the school and a sense of shared purpose and a chance for the younger students to  
295           learn from the older ones and for the older students to be role models to the younger  
296           children.

297           We're also trying to expand the ages served in our Hebrew School. We're  
298           looking to build a pre-k, a four to five year old group, and that would also need a space  
299           for that.

300           Currently, there's the children who study for a bar or bat mitzvah ceremonies,  
301           which are twelve and thirteen years old, study in a three hundred person auditorium,  
302           which is not conducive to their focus because it doesn't provide a bright, intimate space  
303           for directed study and this happens both on weekdays and on Sundays.

304           We need rooms for different purposes. An early childhood room is not good for  
305           an adolescent class. They'll feel patronized, not to mention the tiny furniture and the  
306           bathrooms are not appropriate.

307           Adult education needs its own venues where books and resources and an AV  
308           setup is there.

309           Currently, we do not have enough rooms for adult education programs, which we  
310           will continue to add to it.

311           We just added a new class this fall.

312           Classes can only meet in a room that we call the Elias room. It's sort of like a  
313           board room and that's frequently taken by board meetings and sisterhood meetings and so  
314           on.

A-2494  
(A-2477 to A-2564)

Transcript of First BSA Public Hearing held on November 27, 2007 (18 of 88)

359 MR. FRIEDMAN: Well, fine, but so that we can be  
360 responsive, I'm assuming, again, that this would be limited to the synagogue's use and  
361 not including the tenant.

362 If you believe the tenant serves any useful purpose, I'll be happy to add those  
363 numbers as well.

364 CHAIR SRINIVASAN: All right.

365 MR. FRIEDMAN: But, we're predicating this application  
366 on the synagogue's use.

367 CHAIR SRINIVASAN: Right. And, I think that's what  
368 may have been confusing in the papers, because you do talk about the tenant's school and  
369 it's one thing you can have the tenant's school and then you would have to explain to us  
370 what the program need is for that but if, in fact, this volume of community facility space  
371 is fundamentally needed for Shearith Israel Congregation, then I think we need to see an  
372 explanation of that.

373 MR. FRIEDMAN: Fine.

374 CHAIR SRINIVASAN: So, then, the tenant's school issue  
375 can just actually be a separate - - it may not really be a part of the equation anymore  
376 unless it's about the usage of space.

377 MR. FRIEDMAN: We don't consider it part of the  
378 equation but if the Board wants us to, I guess that's my question, we'd be happy to do it.

379 CHAIR SRINIVASAN: But, I think it relates partially to  
380 whether you can have simultaneous use and, in fact, when the day school is functioning,  
381 does it take away from the congregation in using the spaces for its own needs?

**A-2635**  
**(A-2634 to A-2639)**

Community Board December 4, 4007 Resolution Opposing Variances (attached to  
CB7 Rosenthal letter of December 6, 2007) (2 of 6)

*December 4, 2007 Full Board Resolution*  
*Committee of Origin: Land Use*  
*Re: 6-10 West 70<sup>th</sup> Street (Central Park West.)*

educational and cultural programmatic needs. CSI also points out that the lot is split between two zoning designations (R10-A and R8-B) in such a way as to make full use of the as-of-right allotted FAR impracticable. CSI's rationale impacts each required variance differently:

- a. Lot coverage and rear yard setbacks: The landmarked synagogue building, which is part of the zoning lot is fully programmed, and not available for classroom and additional office use, nor can it be modified to allow for adequate handicap access and egress. The basement of that building, now used for banquets, is inadequate to the needs of the synagogue; zoning restrictions with respect to lot coverage and the rear yard requirements applicable to the portion of the lot zoned R8B limit the size of the floor plate that could be built on the site without a variance. The synagogue has represented that this limitation makes it impossible to construct adequately-sized and efficient classroom and office space, particularly on the southern portion of the site, and makes it difficult to construct adequate internal circulation in the lower portion of the building. The lot coverage and rear yard zoning restrictions therefore create practical difficulties for CSI in pursuing its programmatic goal.
- b. Height and setbacks: Height and setback variances are not necessary to permit CSI to meet its programmatic goal. While such variances would be necessary to allow CSI to achieve its allowable FAR for the entire zoning lot, this fact alone does not justify a finding of uniqueness of practical difficulties. It is not at all unusual for bulk and other restrictions to prevent full utilization of FAR.

2. Required Finding C: That the variance, if granted, will not alter the essential character of the neighborhood or district in which the zoning lot is located; will not substantially impair the appropriate uses or development of adjacent property; and will not be detrimental to the public welfare.

The proposed building would contain less than half of the permitted FAR for the entire lot. To its east is the synagogue. To its west is an apartment building 95 feet in height. That building was constructed as permitted under previous regulations. The R8-B zoning of the western portion of this site would permit the construction of a building 75 feet in height as of right.

Concerning the "lot coverage" portions of the requested variances, Community Board 7 does not believe that the reduction of the rear yard or rear setbacks or the increase in permitted lot coverage will seriously impact neighboring buildings or alter the character of the neighborhood.

Concerning the requested height and setback variances, the proposed variances would allow a building of 105 feet on the site, with non-conforming setbacks. The scope of the waiver of height and setback restrictions sought by CSI for the R8-B portion of the lot would have a negative visual impact on West 70<sup>th</sup> Street between Columbus Avenue and Central Park West. Such a building is out of character with the mid-block zoning of the historic brownstone block, would overwhelm nearby residences, and would alter the essential character of the neighborhood.

Most importantly, the proposed height and setback variances will substantially impair the use of a portion of the adjacent property. These variances, if granted, would allow a building to abut 18 West 70<sup>th</sup> Street in such a way as to block entirely seven lot line windows in that building. Moreover, the increase in building height from a permitted 75 feet to 105 feet will exacerbate the reduction in light and air enjoyed by residents whose windows face a courtyard on the east side of West 70<sup>th</sup> Street. Community Board 7 believes that it would be an abuse of the variance process to permit one landowner to exceed zoning restrictions at the expense of its neighbors. The blockage of lot line windows and, to a somewhat lesser extent, the reduction of light and air in the courtyard do not constitute mere inconveniences, but, in a very real sense, a taking of property in a way which the zoning resolution was designed to prevent.

3. Required Finding D: That the hardship has not been created by the applicant or its predecessor.

We have heard no persuasive argument that this finding has not been met. With the benefit of hindsight, CSI might have made more appropriate use of the Central Park West townhouse

**A-2636**  
**(A-2634 to A-2639)**

Community Board December 4, 4007 Resolution Opposing Variances (attached to  
CB7 Rosenthal letter of December 6, 2007) (3 of 6)

*December 4, 2007 Full Board Resolution*  
*Committee of Origin: Land Use*  
*Re: 6-10 West 70<sup>th</sup> Street (Central Park West.)*

building to the immediate south of the synagogue, but we do not believe that the failure to have done so constitutes a self-created hardship. Nor are we persuaded that CSI's programmatic needs could have been adequately addressed in any other way than as proposed.

4. Required Finding E: That the variance requested is the minimum variance necessary to afford relief.

The applicant contends that the relief requested is the minimum needed to meet its programmatic requirements. As noted above, this position appears reasonable with respect to lot coverage and rear-yard variances, but makes little sense with respect to height and setback variances. All of CSI's programmatic needs are proposed to be met on the lower four floors of the building, well within the permitted height and below the first required setback.

CSI contends that the sale of five residential stories above the community facility space is necessary in order to finance construction of the space it will occupy. We are aware of BSA decisions rejecting use variances where the applicant's rationale is the need to finance its non-profit activities. CSI claims that these decisions do not apply to variances other than use variances, but we perceive no reasoned distinction.

CSI has chosen to support its economic argument by a series of calculations typically made in connection with the B finding (inability to make a reasonable rate of return), which have no applicability to non-profit organizations. These calculations are claimed to demonstrate that a hypothetical developer of an as-of-right project could not make a reasonable (6%) return. This conclusion holds, if at all, only if one assumes that the applicant is entitled to a reasonable return on the hypothetical value of its land (here claimed to be worth \$17+ million).

Disregarding the value of the land, which CSI already owns, by its own calculations, CSI could raise enough money to construct its community facility by building fewer residential units than it proposes. Thus, even if it were appropriate to finance the community facility space by the construction of residential units, this could be accomplished with a mixed use building far smaller than the proposed building. CSI's desire to maximize the value of its real estate is an insufficient basis on which to grant a variance, however apt this analysis is for Finding B.

Moreover, in reviewing the economic projections provided by CSI, we note that there is no provision for prospective income from the use of two subgrade floors intended to house, among other things, an all purpose room capable of accommodating 450 people and full kitchen facilities. It is inconceivable that such a facility on the upper west side of Manhattan has zero economic value.

**THEREFORE, BE IT RESOLVED THAT Community Board 7/Manhattan disapproves the proposal by Congregation Shearith Israel for variances, as follows:**

<b>Building Height and Base Height:</b>	<b>38 In favor 0 Against 1 Abstention 0 Present</b>
<b>Front Set Back:</b>	<b>37 In favor 1 Against 1 Abstention 0 Present</b>
<b>Rear Set Back:</b>	<b>38 In favor 0 Against 1 Abstention 0 Present</b>
<b>Rear-yard Incursion in R8B and R10A and Lot Coverage:</b>	<b>21 In favor 13 Against 2 Abstentions 0 Present</b>

**Community Board 7/ Manhattan**

**001889**

A-2718  
(A-2640 to A-2743)

Manhattan Community Board 7 Meeting Transcript, dated December 4, 2007  
(submitted with LW January 29, 2008 letter) (79 of 104)

www.protectwest70.org

79

1                   As to the rear yard and lot  
2                   coverage, we did not feel that that  
3                   seriously impinged on the nature and  
4                   character of the block or on the public  
5                   welfare.

6                   David?

7                   MR. HARRIS: I thought the  
8                   applicant asked if the initial ten feet  
9                   was used to the classroom. I wasn't  
10                  clear on the issue I heard classrooms  
11                  and other uses.

12                  MR. FRIEDMAN: We were asked  
13                  of the BSA whether this had anything,  
14                  whether the application was predicated  
15                  on the tenant school and we stated in  
16                  front of the BSA as we stated in front  
17                  of this committee, it does not.

18                  The offices that are, the rooms  
19                  that are there for a synagogue as  
20                  opposed to a school can be multi  
21                  purpose.

22                  They are not simply classrooms.

003238



A-2719  
(A-2640 to A-2743)

Manhattan Community Board 7 Meeting Transcript, dated December 4, 2007  
(submitted with LW January 29, 2008 letter) (80 of 104)

www.protectwest70.org

80

1           Some of them are classrooms, they will  
2           be used for adult education. They will  
3           be used for social action group  
4           meetings. There are other purposes, so  
5           they're not in the context of the  
6           synagogue.

7                     They're not simply classrooms and  
8           they're not there to address any tenants  
9           needs. They are there to provide the  
10          minimum configuration of space that the  
11          synagogue needs to conduct its programs  
12          to have its rabbinical offices to have  
13          its pastoral offices to have its  
14          archive, et cetera, et cetera, et  
15          cetera.

16                    MR. C. SIMON: I want to make  
17          a couple points. One is on this whole  
18          as of right question, I think it needs  
19          to be crystal clear and I too have been  
20          at the various public meetings that have  
21          been held on this topic a substantial as  
22          of right building can be built.

003239

**A-2814  
(A-2811 to A-2830)**

Letter from Friedman and Gotbaum (on behalf of Applicant) to BSA Chair  
Meenakshi Srinivasan, dated December 28, 2007 (4 of 20)

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 R8B<sup>2</sup>) 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**

2

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)

**A-2815**  
**(A-2811 to A-2830)**

Letter from Friedman and Gotbaum (on behalf of Applicant) to BSA Chair  
Meenakshi Srinivasan, dated December 28, 2007 (5 of 20)

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.

**A-2816**  
**(A-2811 to A-2830)**

Letter from Friedman and Gotbaum (on behalf of Applicant) to BSA Chair  
Meenakshi Srinivasan, dated December 28, 2007 (6 of 20)

**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 70<sup>th</sup>. 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 70<sup>th</sup> 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 70<sup>th</sup> 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

**A-2819**  
**(A-2811 to A-2830)**

Letter from Friedman and Gotbaum (on behalf of Applicant) to BSA Chair  
Meenakshi Srinivasan, dated December 28, 2007 (9 of 20)

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 3<sup>rd</sup> floor classrooms and a single 4<sup>th</sup> 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



**A-2820**  
**(A-2811 to A-2830)**

Letter from Friedman and Gotbaum (on behalf of Applicant) to BSA Chair  
Meenakshi Srinivasan, dated December 28, 2007 (10 of 20)

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 4<sup>th</sup> 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

**A-2822**  
**(A-2811 to A-2830)**

Letter from Friedman and Gotbaum (on behalf of Applicant) to BSA Chair  
Meenakshi Srinivasan, dated December 28, 2007 (12 of 20)

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



**A-2829**  
**(A-2811 to A-2830)**

Letter from Friedman and Gotbaum (on behalf of Applicant) to BSA Chair  
Meenakshi Srinivasan, dated December 28, 2007 (19 of 20)

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 70<sup>th</sup> 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

**A-2830**  
**(A-2811 to A-2830)**

Letter from Friedman and Gotbaum (on behalf of Applicant) to BSA Chair  
Meenakshi Srinivasan, dated December 28, 2007 (20 of 20)

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

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**A-3328**  
**(A-3324 to A-3329)**

Letter from Shelley S. Friedman (on behalf of Applicant) to BSA, dated March 11, 2008, responding to comments and transmitting documents (5 of 6)

- **Second Floor Toddlers' Program:** The 494 sf/thirty-five percent reduction in the three southerly classrooms will decrease the number of toddlers that the program will be able to accommodate by approximately fourteen children.
- **Third Floor Classrooms:** The 494 sf/thirty-five percent reduction in the three southerly classrooms negatively impact CSI's Hebrew School, Youth Group and Youth Tutoring Program. The grade 6-7 and grade 4-5 classrooms will each be reduced by thirty-four percent of their respective square footage; and the grade 1-3 classroom will be reduced by thirty-eight percent of its square footage.
- **Fourth Floor Classrooms:** The fourth floor provides only three classrooms in total, thus the 494 sf reduction represents a thirty-five percent loss of its total classroom square footage, which negatively impacts CSI's Adult Education Program and Youth Group and Youth Tutoring Program. The two westerly adult education classrooms will both be reduced by thirty-four percent of their respective square footage and the grade 9-10 classroom will be reduced by thirty-eight percent of its square footage.

CSI has worked carefully with its project architects to develop the proposed building in a manner that meets its programmatic requirements, which include serving existing members and the institution itself as CSI's natural life-cycle evolves with respect to the prospective new members, while at the same time minimally impacting the adjacent buildings. This can only be achieved with approval of the 20' rear yard waiver which will permit CSI's program to flourish as described in the Application submissions and during presentations to the Board.

**C. Impact on Adjacent Building's Lot Line Windows With Proposed Upper Level Court Alternative**

The revised Plans submitted with this letter provide, as directed by the Board, a fully compliant outer court affecting floors 6-8 which will retain the operability of three more lot line widows on the east lot line wall of 18 West 70th than the building as originally proposed. In addition to benefiting those lot line windows, this modification has the following consequential effects:

1. It reduces the sixth, seventh and eighth floor floorplans by 165.37 sf each and the ninth floor floorplan by 58.07 sf.
2. It reduces the net sellable floor area in the proposed building by 556.2 sf, with a consequent reduction in sales proceeds but without any material savings in construction costs, thereby reducing the rate of return.
3. It reduces the extent of the required rear wall setback variance in the R8B portion of the site by twenty-five percent as now less bulk will be located within the noncompliant zone.

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**(A-4024 to A-4027)**

Letter from Shelly S. Friedman (on behalf of Applicant) to BSA Chair  
Meenakshi Srinivasan, dated June 17, 2008, in response to comments (2 of 4)

were somehow providing depositions in a proceeding of their own making, the opponents have ultimately added nothing to the discourse.

All of the required findings in ZRCNY Sec. 72-21 have been met. Further comments on the "A" and "B" Findings are as follows.

**Finding "A"**

The Statement adequately explains the unique physical conditions peculiar to the Zoning Lot and the practical difficulties that arise due to them. The Zoning Lot possesses 144,510.96 sf of developable floor area but the position of an individually designated landmark over two-thirds of the Zoning Lot limits development on the Zoning Lot to two small parcels. One parcel, facing Central Park West has a width of 24.4 ft and a depth of 108 ft. It is improved with what was once a 4-storey single family building and is now known as the Parsonage. While this site is capable of significant theoretical development as a matter of right (it is zoned R10A, its streetwall may rise to 125 ft and its building height to 210 ft, subject to the "sliver" limitations in ZRCNY Sec 23-692 that would limit the height of an enlargement or new development to the height of the streetwall at 91 Central Park West), its narrow footprint, after deduction for elevators and stairs, would be useless for residential or community facility uses. In addition, such development would necessitate the blocking of several dozen windows on the north elevation of 91 CPW. Moreover, development of the Parsonage parcel would do nothing to remedy the significant egress and circulation deficiencies in the landmarked Synagogue, a remediation that is at the heart of this Application.

The only other development parcel on the Zoning Lot, the parcel proposed in this Application, which is also theoretically eligible to use as a matter of right a significant amount of zoning floor area, is also small and has become burdened with the relocation of a zoning district boundary that post-dates the establishment of the Zoning Lot and subdivides the parcel into a minor portion of R10A and a major portion of R8B, with resulting disparate height and setback requirements and a "sliver law" condition that preclude as-of-right development. Moreover, in order to remedy the circulation difficulties in the Synagogue, the footprint of the proposed development on its split-lot footprint must be held captive to the necessary physical alignments with the Synagogue. In addition, the dimensions of the parcel and the Applicant's programmatic needs require that the layout of educational and religious uses at floors 2 through four extend 10 ft into the required rear yard. The resulting configuration of the proposed new residential floor area on the narrow development parcel further requires that such residential uses not begin until elevation 49'1", and end at elevation 75 ft in an R8B district, which will not allow the residential use as proposed.

Adding to the unique restrictions on this site, the Landmarks Preservation Commission has issued, unanimously, a Certificate of Appropriateness for the proposal contained in the Application. Accordingly, the only reasonable way to proceed with development is to build within the envelope and in accordance with the detailed design drawings that the Commission has approved. This is not the case of an applicant coming to the Board to allege that the existence of the Zoning Lot within a historic district or adjacent to a designated landmark constitutes a recognizable hardship. This Applicant worked with the Commission for several

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**(A-4024 to A-4027)**

Letter from Shelly S. Friedman (on behalf of Applicant) to BSA Chair  
Meenakshi Srinivasan, dated June 17, 2008, in response to comments (3 of 4)

years in gaining approval of a Certificate of Appropriateness that limits the development envelope to the building before the Board. Its request for Landmarks cooperation on a ZRCNY Sec. 74-711 special permit was denied, thus properly bringing this Application to the Board for relief.

The Board has asked for and received an unprecedented amount of material on the educational and religious uses which must be included in the new development. It has heard the religious and educational leaders of the Synagogue attest to the need and the configuration of the new community facility space requested in the Application. It has received material in several formats regarding the utilization of this space, down to each hour of each day, which is a degree of submission beyond the experience of practitioners who routinely have represented or currently represent hospitals and schools before the Board. It has asked for and received detailed information on a tenant school notwithstanding that the Applicant has stated on numerous occasions without condition or qualification that the tenant's programmatic needs bear no relationship to this Application. It has heard testimony from the Synagogue's Rabbi and its chief educator that were there no tenant the religious and educational needs of the Synagogue would still require that it apply for the classroom space requested in this Application.

The Board has requested and received detailed information, both graphically and in site-specific narrative, traveling up and down the length of Central Park West to demonstrate conclusively that there are no other sites that can reasonably be considered development sites that share the specific and unique properties of this Zoning Lot.

The Applicant hopes that the Board can return to the basic elements of this Application, shorn of all the digressions and canards associated with non-existent catering halls, profit-motivated schemes and conspiratorial tenants to the basic elements of the submission, which are in accord with the Board's past practices and its present approach to considering the "A" Finding in applications based on educational and religious purposes, including those applications that propose mixed-uses on their Zoning Lot.

**Finding "B"**

ZRCNY Sec. 72-21 states in part: "this finding shall not be required for the granting of a variance to a nonprofit organization . . . ."

Notwithstanding the clear language of the Zoning Resolution, the Board has requested and received substantial financial information, near or at a level of specificity that it would require from a profit-motivated applicant. We have been pleased to comply with the Board's interests, but not to the extent of waiving our right to observe with all due respect that consideration of a B Finding in this case, or any semblance of consideration of reasonable return in determining the outcome of this Application, especially given the educational and religious purposes of the Applicant, would exceed the Board's authority. We understand that the Board believes it can legitimately delve into an analysis of reasonable return in this Application because of the mixed-use nature of the Application, and we done our utmost to cooperate with the Board's interests. We further appreciate that it has done so in four cases which it has subsequently approved. However, we understand that the Board believes there is a distinction

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**(A-4166 to A-4221)**

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**THE APPLICATION**

This statement is filed in support of the Application by Friedman & Gotbaum LLP on behalf of the Trustees of Congregation Shearith Israel ("CSI") pursuant to Section 72-21 of the Zoning Resolution of the City of New York (the "Zoning Resolution" or "ZRCNY") for a variance in connection with the construction of a new community facility/residential building at 6-10 West 70<sup>th</sup> Street (the "New Building") **The New Building will be located on a longstanding single Zoning Lot consisting of CSI's house of worship, also known as the "Spanish and Portuguese Synagogue in the City of New York," located on the southwest corner of Central Park West and West 70<sup>th</sup> Street (the "Synagogue"),** a connected parsonage with the address 99 Central Park West (the "Parsonage"), a connected 4-storey community house converted from two townhouses in 1954 (the "Existing Community House"), which is a support building in deteriorating condition connected to the Synagogue, and vacant land. The Synagogue and Parsonage together form Tax Lot 36 on Block 1122. The Existing Community House and land vacant since 1950, which will serve as the footprint for the New Building, comprise Tax Lot 37 on Block 1122. **Together Tax Lots 36 and 37 constitute the Zoning Lot (the "Zoning Lot") which is the subject of this Application.** These two tax lots, in common ownership by CSI since the enactment of an "applicable amendment" to the Zoning Resolution in 1984, constitute a single Zoning Lot as the term is defined in ZRCNY Sec. 12-10.

The Zoning Lot is bisected by a zoning district boundary which results in its eastern 72.7 percent being zoned R10A and its western 27.3 percent being zoned R8B. Because the Zoning Lot predates the adoption of this zoning district boundary in 1984, it is entitled as a matter of right to utilize the zoning floor area averaging methodology provided in ZRCNY Sec. 77-22.

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and R8B base and building height exceedances per ZRCNY Sec. 633; and (5) R8B rear setback exceedance per ZRCNY Sec. 663.

The proposed uses across the Zoning Lot can be summarized as follows. **The two cellar levels** and first four floors of the New Building will hold community facility (Use Group 3) uses associated with the Synagogue's mission (multifunction room, meat and dairy kitchens, babysitting room, expanded small synagogue, foyer servicing the main sanctuary, rabbinical and administrative offices, exhibition and archival space, educational rooms for use by its Hebrew School and a caretaker's apartment. **Additionally, when the Synagogue is not using portions of the classroom space, they will be used by a Jewish day school** that has leased space in the Existing Community House since 1994. The upper four stories, plus a 2,815.92 zsf penthouse, will be Use Group 2 residential space.

The charitable purpose of the New Building is to address several infringements on the mission of CSI as a house of worship, center of Jewish education and culture and provider of community programming open to the public. The Synagogue has severe circulation limitations which interfere with its religious programming. These limitations cannot be addressed through interior alterations. In addition, the physical obsolescence and the ill-configured floorplans of the Existing Community House compromise CSI's religious, educational and cultural missions. Combined, the configuration of the structures on the Zoning Lot make it impossible to utilize in a feasible manner the zoning floor area inherent in the Zoning Lot in order to address any of these programmatic difficulties. **As further described throughout the Application, the New Building addresses the programmatic difficulties by providing: (1) new horizontal and vertical circulation systems for the Synagogue to eliminate systemic shortfalls in its construction and**

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design that limit barrier-free access to its sanctuaries and ancillary facilities and that cannot practically be addressed through physical exterior alterations and/or enlargements to the Synagogue itself, (2) a new "Community House" within the two cellars and the first four floors of the New Building providing offices and specialized rooms supporting religious, educational and cultural uses that are essential to CSI's mission but either cannot be accommodated within or beneath the Synagogue or can no longer be accommodated in the physically obsolescent and deteriorating Existing Community House; and (3) residential use on floors 5 – 8 (plus penthouse) to be developed as a partial source of funding to remedy the programmatic religious, educational and cultural shortfalls on the other portions of the Zoning Lot.

The New Building cannot be constructed in a manner consistent with the Zoning Resolution with regard to its yards, streetwall, lot coverage and height and setback that will overcome the current religious, educational and cultural programmatic difficulties. These zoning issues are described at length below. The need for the waivers requested in this Application stem from (1) the lack of any feasible options to modify the existing structures consistent with the Zoning Resolution that will address these severe programmatic difficulties; (2) the Synagogue's substantial existing zoning noncompliances, (3) the otherwise as-of-right residential floors cannot begin until the fifth floor and in the R8B portion of the Zoning Lot can only rise 11 ft before hitting the 60 ft maximum streetwall height, and (4) the parallel jurisdiction of the Landmarks Preservation Commission, which has approved unanimously both the massing and the design of the New Building, and by so doing has expressed views substantially similar to CSI regarding the need to protect the architectural heritage of the landmarked Synagogue. While the landmark status of the Synagogue clearly presents hurdles in addressing the programmatic

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volunteers from within the Existing Community House.

In addition, the Community House in the New Building needs to provide space for CSI's own Hebrew School of approximately 40 students. These facilities are shared with its tenant day-school, Beit Rabbin, which enrolls 125 children between the ages of five and seventeen in full time attendance. Beit Rabbin is a licensed private school that has been a tenant since 1994. Beit Rabbin is unaffiliated with CSI other than as its tenant and membership in CSI is not a prerequisite for admissions. The relationship between the two organizations was borne of the fact that like all other ancillary religious schools, CSI's classrooms are vacant during the hours of the regular school day. An important factor of Beit Rabbin's tenancy is that it shares CSI's missions and goals and thus was chosen as a suitable candidate to utilize CSI's classrooms and sanctuary for its program. While income is generated which supports CSI's own mission, Beit Rabbin has become a welcomed feeder for Synagogue growth and the adjacency to the Synagogue has been an important attribute to the educational and cultural teaching within the tenant school. While the focus of this Application for expanding its space is on its own pastoral and educational programming, Beit Rabbin's own growth is a validation of the need for additional space for educational religious purposes. Recently the Landmarks Preservation Commission approved the addition of a temporary trailer in the vacant portion of Lot 37 to permit these educators to alleviate the severe overcrowding in the Existing Community House.

Through the facilities housed in the Existing Community House, CSI offers a wide range of youth activities such as monthly Shabbat dinners, "toddler Shabbat" and informal Saturday religious classes. During holidays, the students participate in traditional holiday community service programs which include delivery of food packages throughout the City. For adult

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of the Zoning Lot:

- (1) ZRCNY Sec. 24-11/77-24: permitted lot coverage is exceeded.

Within the R8B portion of the Zoning Lot, the New Building is underbuilt based on the permitted FAR 8.36, but its massing cannot be provided in an as-of-right manner due to the unique role it must play in addressing the Synagogue's deficiencies as well in providing the types of spaces required for CSI to maintain its religious, educational and cultural activities. The

following exceedances are created in the R8B portion of the Zoning Lot:

- (1) ZRCNY Sec. 24-11/77-24: permitted lot coverage is exceeded,
- (2) ZRCNY Sec. 23-633: permitted base height, setback and building height requirements are exceeded, and
- (3) ZRCNY Sec. 23-663: required rear setback is not provided.

Finally, in order to provide for the appropriate connections between the Synagogue and the New Building and in order to provide suitable floorplans and adjacencies for the portion of the New Building to be used by CSI for Community House purposes (floors 1 – 4), the first floor will fully cover the lot and floors 2– 4 will set back 20 ft from the rear property line. Such coverage is permitted for the first floor but the other three floors fail to provide the required 30 ft rear yard in either the R10A portion or the R8B portion of the Zoning Lot as set forth in ZRCNY Sec. 24-36.

**FIFTY YEAR SITE HISTORY**

The Synagogue was built in on Lot 36 in 1896-97. The Parsonage was built on Lot 36 in 1897. The Existing Community House was created in 1954 through the combination of two turn of the century row houses on what is now a portion of Lot 37. The Community House and Synagogue have come to share the same property address: 8 West 70<sup>th</sup> Street. The now vacant

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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

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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 3<sup>rd</sup> floor classrooms and a single 4<sup>th</sup> 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

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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 4<sup>th</sup> 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-

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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. Caretaker's Apartment**

When the Community House was originally built in 1954, a caretaker's apartment was included as an accessory use to the community facility and is noted as such on the building's Certificate of Occupancy. Due to the CSI's heirloom status and the numerous priceless religious artifacts and relics contained within the Synagogue, it is critical to CSI's program that the caretaker must continue to live on-premises to ensure that the electrical, plumbing and heating systems remain in good working order, and that any potential emergency can trigger an immediate response. CSI is protected with fire, flood, carbon monoxide and carbon dioxide detectors as well as a closed circuit television system, all of which are monitored by the caretaker both in his apartment and at the lobby's security desk. CTV cameras surround CSI's exterior and also monitor its historic exhibits within the Synagogue.

In addition, the caretaker must continue to serve as superintendant/guardian of CSI's educational institution, which also requires ongoing monitoring of its antiquated mechanical,

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electrical, plumbing and heating and fire protection systems. The caretaker's concurrent responsibilities for oversight of both CSI's religious and educational facilities require that he reside within the New Building. The development plans' project feasibility further requires that the caretaker apartment be located at the fourth floor level rather than on a higher residential floor which carry a premium due to their oblique Central Park views. Currently, the caretaker oversees a staff of one fulltime security guard and three full-time maintenance workers.

**E. 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

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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.

Without the New Building requested in this Application, CSI's existing programmatic deficiencies as described above will remain unattended and continue to get worse. The continuation of these deficiencies through CSI's inability to construct the New Building would seriously undermine the religious, educational and cultural mission of CSI. Only through the

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contrary to Section 23-633.

6. Proposed maximum building height in R8B does not comply. 113.70' provided instead of 75.00' contrary to Section 23-633.

7. Proposed rear setback in an R8B does not comply. 6.67' provided instead of 10.00' contrary to Section 23-663.

**ZRCNY Sec. 72-21 REQUIRED FINDINGS**

**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 [zoning] resolution; and that the alleged practical difficulties or unnecessary hardships 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. ZRCNY Sec. 72-21(a)**

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 along East 70<sup>th</sup> Street 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.** These physical and regulatory constraints are unique to this Zoning Lot. The strict application of the ZRCNY provisions raised as objections to the approval of the New Building will preclude CSI from developing the New Building or any substantially similar building and as such represents a practical difficulty in developing any feasible as-of-right New Building. Such strict compliance with the ZRCNY would therefore  
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without averaging. While the Zoning Resolution permits the averaging methodology, thereby permitting as a matter of right the development of floor area over twice the permitted FAR 4, it does not provide in this case a similar mechanism for providing relief from the R8B height and setback, streetwall and rear yard provisions correlating to the FAR 4 massing established for R8B Quality Housing developments. This alone creates practical difficulties in this case; as it is essential that the New Building's massing accommodate its role in providing circulation space for the Synagogue and appropriately sized floorplates for the Community House, which cannot be achieved within the R8B Quality Housing provisions regulating lot coverage, yards and height and setback.

**Lot Coverage in R10A and R8B.** (Objection 1) ZRCNY Sec. 24-11 imposes a maximum lot coverage of 70 percent for interior lots, or portions of Zoning Lots that are interior lots. There is no similar requirement for corner lots within 100 ft of a corner. The CSI Zoning Lot is partially a corner lot, which portion is entirely zoned R10A and fully covered by the Synagogue and Parsonage, and partially an interior lot. The maximum permitted lot coverage is exceeded in the remaining R10A portion located beyond 100 ft from the avenue. Within the R8B portion of the Zoning Lot, the New Building covers 79.8 percent of the lot measured from above its groundfloor, below which is exempt from the calculation. The New Building requires a lot coverage waiver (216 zsf in the R10A and 477 zsf in the R8B, which adds approximately 640 zsf to the footprints of those three floors<sup>2</sup>) and rear yard waiver (see below) to remedy the improvement of the circulation space within the Synagogue and the replacement of the dysfunctional Community House with a new Community

<sup>2</sup>

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)

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House space in the New Building, which supports rather than conflicts with CSI's programmatic functions and mission objectives.

The lot coverage waiver, in tandem with provision of the 20 ft rear yard, is required to meet CSI's educational purposes, specifically the Toddler Program, the Hebrew School and the Adult Education Program. The floorplate configuration 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.

Without a waiver permitting lot coverage in excess of 70 percent, the New Building cannot provide the floorplans that can address the existing programmatic difficulties in either the

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**Synagogue or the new Community House.**

**Rear Yard in R10A and R8B.** (Objections 2 & 3) ZRCNY Sec. 24-36 requires a rear yard of not less than 30 ft for interior lots or portions of Zoning Lots which are interior lots in R8B and R10A districts. ZRCNY Sec. 24-33 permits community facilities to build within a required rear yard to an elevation of 23 ft or one storey above grade, whichever height is lower. The New Building does not provide a 30 ft rear yard for its first four floors, those floors constituting the community facility portion of the building to be occupied by the Community House. The first floor is fully built to the rear property line as permitted. Floors 2-4 provide only a 20 ft rear yard because those floors must align properly with the Synagogue and must provide the appropriately sized offices and classrooms. The Application is limited to requesting a waiver from the rear yard requirement for floors 2 through 4 only. Above those floors, the remaining residential floors of the New Building provide a fully compliant rear yard.

With respect to CSI's program and classrooms, the project architects determined that provision of a 30' rear yard (rather than the currently requested 20' rear yard) would result in a loss of approximately 494 zsf per floor (640 gsf), or 1,482 zsf overall on floors two, three and four, which represents a twenty-five percentage loss in total classroom square footage. In practical terms, the 15 classrooms and necessary ancillary space required to meet CSI's programmatic needs and mission objectives can not be then be accommodated within a bulk envelope (*i.e.*, the allowable footprint above the first floor) which is 64 ft wide by 70.5 ft deep, minus approximately 100 zsf from each floor "taken" by the Synagogue for its elevator shaft on each floor. 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

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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.

Specifically, the critical square footage loss in absence of a rear yard waiver affects three classrooms on each floor and seriously compromises CSI's program in the following manner:

- **Second Floor Toddlers' Program:** The 494 sf/thirty-five percent reduction in the three southerly classrooms will decrease the number of toddlers that the program will be able to accommodate by approximately fourteen children.
- **Third Floor Classrooms:** The 494 sf/thirty-five percent reduction in the three southerly classrooms negatively impact CSI's Hebrew School, Youth Group and Youth Tutoring Program. The grade 6-7 and grade 4-5 classrooms will each be reduced by thirty-four percent of their respective square footage; and the grade 1-3 classroom will be reduced by thirty-eight percent of its square footage.
- **Fourth Floor Classrooms:** The fourth floor provides only three classrooms in total, thus the 494 sf reduction represents a thirty-five percent loss of its total classroom square footage, which negatively impacts CSI's Adult Education Program and Youth Group and Youth Tutoring Program. The two westerly adult education classrooms will both be reduced by thirty-four percent of their

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respective square footage and the grade 9-10 classroom will be reduced by thirty-eight percent of its square footage.

CSI has worked carefully with its project architects to develop the proposed building in a manner that meets its programmatic requirements, which include serving existing members and the institution itself as CSI's natural life-cycle evolves with respect to the prospective new members, while at the same time minimally impacting the adjacent buildings. This can only be achieved with approval of the 20' rear yard waiver which will permit CSI's program to flourish as described in the Application submissions and during presentations to the Board.

Height and Setbacks in R8B only. (Objections 4, 5 & 6) ZRCNY Sec. 23-633 governs height and setback requirements requires for buildings in contextual zoning districts such as R10A and R8B. The regulations establish a base height, require a setback above the base height and establish building height. The portion of the New Building within the R10A is fully compliant. In an R8B district, the permitted base height can range between 55 and 60 ft above curb, at which point the front elevation must set back 15 ft. The overall building height cannot exceed 75 ft. The New Building has a base height of 94.8 ft, a setback of 12 ft and a building height of 105.8 ft. The unique aspects of the Zoning Lot, including the footprint of the Synagogue, the presence of the zoning district boundary in the only portion of the Zoning Lot capable of development, combined with the interests of the LPC in providing a front elevation harmonious—with both the designated landmark and the historic district --render it impossible to provide any useful development in accordance with the applicable provisions of ZRCNY Sec. 23-633.

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A-4420  
(A-4407 to A-4421)

Applicant Closing Statement in Response to Opposition of Certain Variances,  
dated August 12, 2008 (submitted with August 12 letter) (14 of 15)

(e) Finding: As described in the plans and the Statement of Findings filed with the application, and in the testimony placed in the record, the Applicant has made every effort to design a new Community House that overcomes the dysfunctional aspects of the current Community House and reasonably addresses the programmatic deficiencies in the existing building. The lack of accessibility to the various rooms of worship has been addressed without intervening in the historic building. The administrative rooms for the Synagogue are simple, functional and in no way excessive. The creation of archival space that will eliminate the need for off-site storage and permit the museum-quality contents of its archives to be integrated into both the religious life of the Congregation and the educational life of its students is an essential component of this Application. The educational rooms are spartan and utilitarian in both number and design. Shearith Israel could not provide solutions to these programmatic deficiencies in any "lesser" manner than presented in the Application. Its ability to achieve these solutions is constrained by the idiosyncratic nature of its site and by the approvals of the Landmarks Preservation Commission which would not approve a building of any greater scale or height.

The residential component of the Application, an integral component of its ability to overcome its programmatic deficiencies, while not necessarily economically feasible (see FFA Report dated December 21, 2007 and subsequent responses to opposition comments), could be built as-of-right were it not for the limitations placed on the siting of the Community House to provide necessary adjacencies with the Synagogue and the minimal properly-configured religious and educational spaces to overcome the current programmatic deficiencies. All of the requested height and setback waivers owe their origins to the need to overcome the programmatic deficiencies within the volume of lower portions of the building currently designed for religious and educational uses. Because of the difficulties presented by the existing building, the zoning district boundary and the constrictions of the buildable site on this Zoning Lot, there is no other place for the residential component but in the remaining air space above the proposed community house and below the height restriction imposed by the Landmarks Preservation Commission. The extensive financial information requested by the Board

August 12, 2008