



MORE TOWER TALK

Congregation Shearith Israel Plan to Build Luxury Condos on Its Landmark Site

~

**June 20, 2007, 7:00 PM: Community Board 7 Land Use Committee Public Meeting
At Congregation Rodolph Sholom, 7 West 83rd Street**

MAIN ISSUES

On the eve of Passover, April 2, 2007, Congregation Shearith Israel (CSI) submitted an application to the NYC Board of Standards and Appeals (BSA) for **8 variances to allow them to construct luxury condominiums** on top of a brand-new community house on the mid-block of West 70th Street, about 100-150 feet west of Central Park West.

The new building, located immediately adjacent to CSI's Classical-style Individual Landmark (the Spanish & Portuguese Synagogue on Central Park West), would be **the tallest mid-block structure ever allowed to be built** since the creation of the contextual zoning district (1984) and Upper West Side/Central Park West Historic District (1990), both intended to protect our neighborhood from out-of-scale development.

CSI seeks the equivalent of "**spot-zoning**" to construct a 105'-tall building, **more than twice as tall as the brownstones that define this and most other mid-blocks** on the Upper West Side – low-rise, human-scale blocks that are specifically called out for protection in both the 1984 Contextual Zoning Report and the 1990 Historic District Report.

Like many low-rise cultural and religious institutions lining Central Park West, CSI has long sought to exploit its real estate through the development of a luxury tower that would compromise the character of this Landmark, the surrounding Historic District and the rules governing sound planning for the Upper West Side. Now CSI argues that, instead of building over the Landmark synagogue, it wants to transfer air rights to **construct a large, mixed-use building right next to the Landmark, on one of the most pristine, brownstone blocks in the Historic District.**

CSI claims that the purpose of the new building is to address "severe circulation limitations," "the physical obsolescence and the ill-configured floorplans" of its current, 1950s community house and synagogue. Yet, CSI's application demonstrates that **it could construct an up-to-date community house to meet its programmatic needs without breaching the zoning laws.** Indeed, CSI solves the claimed issues of "circulation" and "obsolescence" on just part of the first floor of the community house. But, instead of paying for the new facility out of its own pocket, CSI wants to build 4 floors of market-rate condos as a "partial source of funding" that would **essentially shift the cost of new construction to the community.**

CSI must prove to the BSA that it faces a "unique hardship." But, in fact, nothing distinguishes this site from hundreds of other sites in the Historic District. Approval of CSI's application for special exemptions from the laws protecting our neighborhood from overdevelopment **would trigger a "domino effect"** along Central Park West and throughout the city. The New-York Historical Society, 980 Madison Avenue, the Whitney Museum and the General Theological Seminary are just some examples of other nonprofit and for-profit developers who, eager to exploit their own sites, already recognize CSI's proposed building as a **precedent opening the door for future development.**

PRIMARY FACTS

An Important Site, A Dangerous Precedent

CSI is an Individual Landmark, also known as the Spanish & Portuguese Synagogue, designed by architects Brunner & Tryon and built in 1897, one of the first New York City Landmarks to be designated after the creation of the Landmarks Preservation Commission in 1965.

This important site has multiple layers of protection: it is part of the Upper West Side/Central Park West Historic District, designated in 1990, and it is covered by contextual zoning, created in 1984. The Zoning Report states:

The typical midblock building is the 3 to 6-story, 55 to 60 foot high 'brownstone'...The consistency with which these building types north of 68th Street repeat themselves is the key to the strength and clarity of the image of the West Side. Over 85% of the structures in the midblocks conform to the 'midblock' type...There is warranted concern that new development will weaken the quality and 'intactness' of the existing context by introducing buildings that are out-of-place.

The Historic District Designation Report reinforces this characterization:

On most of the side streets of the district, scattered later apartment buildings have interrupted the original rows, but in general the surviving rowhouses present a strong coherency and are a major element in creating a special sense of place particular to this district on Manhattan's Upper West Side.

Seventy-three percent (73%) of the new, 105'-tall building would be located in the R8B zoning district, which caps overall building height at 75' with a streetwall of 60'. In the 1980s, Community Board 7 (CB7) fought for this zoning to protect traditional brownstone mid-blocks and to reduce the depth of the tall-building Central Park West zone (from 150' to 100' – it was ultimately set at 125') so that sites like this one (about 100' to 150' west of the avenue) would remain low-rise.

So, while CSI's site is incredibly important, it is not unique. Approval of these variances would set a far-reaching precedent that would extend throughout this Historic District and beyond. Maps show the number of other low-rise buildings in the Historic District, many of them owned and/or occupied by nonprofits, that could become development sites if variances were granted to CSI. Certainly, CSI's Landmark status must not be interpreted as a basis for "unique hardship" – such a decision would sound the death knell for landmark designation in New York City.

CB7's Parks & Preservation Committee voted overwhelmingly to disapprove an earlier version of this building in October 2005, citing numerous concerns about its design, which remains largely unchanged. The question is, will CB7's Land Use Committee approve precedent-setting variances so that *this* building can be built? The cost of which the community will have to bear (see below)?

Board of Standards and Appeals v. Landmarks Preservation Commission

CSI's application requests 8 separate zoning variances from the BSA. The BSA is an adjudicatory body that considers whether to grant special permission for development that, due to some kind of "unique hardship," does not comply with zoning.

The BSA adheres to an entirely different set of standards than the Landmarks Preservation Commission (LPC). The current application contains much new information that has never before

Contact LANDMARK WEST! 212-496-8110, landmarkwest@landmarkwest.org

been presented to CB7 or the public at large. CB7's Land Use Committee must apply the BSA standards, which pertain to "unique hardship," not the LPC standards, which pertain to "appropriateness." It should be noted that, while the LPC approved design of the new building (although not "unanimously" as CSI claims – Landmarks Commissioner Roberta Brandes Gratz voted against the application at the LPC's March 14, 2006, public meeting), it had previously denied CSI's application for a "74-711" special permit, which is only granted if the applicant can prove that the project would serve a legitimate "preservation purpose."

Because the proposed new building violates the zoning resolution and failed to gain LPC approval for special permits under "74-711", CSI is appealing to BSA for variances. The BSA standards relate to 5 specific findings, each of which must be made for each variance. The chart below explains the findings and the community's response to each:

The Five Findings (<u>all 5 must be met for each variance</u>)	Community Response
1. There are unique physical conditions peculiar to the zoning lot and, because of them, practical difficulties or unnecessary hardship arise in complying strictly to the zoning.	This mid-block site, a level rectangle 60 x 104 feet with no irregularities, resembles countless others spread throughout the Upper West Side and other neighborhoods. Neither does the fact that the site is located in a historic district and adjacent to an individual landmark make it in any way special. If this site is deemed "unique," it will spell the end of mid-block zoning and landmark protection.
2. Because of such physical conditions, there is no reasonable possibility that the development of the zoning lot in strict conformity with the zoning will bring a reasonable return.	<p>This finding usually does not apply to nonprofits, but since CSI wants variances to build luxury condos, not to meet any programmatic need, it must show that the project produces a reasonable return on investment.</p> <p>To reach its conclusion that an as-of-right building will result in a negative return on investment if the two top floors are developed as condominiums, the Congregation assigned all of the \$18.9 million land "costs" to the condominiums, and, as well ignored rental income to be expected from the school facilities and banquet hall.</p> <p>But, even more importantly, the decision of the Congregation to reserve the first five floor equivalents of the building for the community house is a choice of the Congregation, and has nothing to do with any physical condition described for Finding 1. Indeed, because there are NO unique physical conditions, then this provision is not applicable at all.</p>
3. The variance, if granted, will not alter the essential character of the neighborhood or impair the appropriate use or development of adjacent property and will not be a detriment to the public welfare.	The 1984 Contextual Zoning Report states: "The typical midblock building is the 3- to 6-story, 55 to 60 foot high 'brownstone'...Over 85% of the structures in the midblocks conform to the 'midblock' type." CSI's plan would insert a 105'-tall tower into the midblock of

	<p>West 70th Street, a street defined by its brownstones. The new building would plunge buildings on the north side of the street into shadow. If approved, this building would trigger a domino effect that would impact every block on the Upper West Side and beyond.</p> <p>The lot-line streetwall of the proposed building is out of character with the rest of this and other brownstone blocks in the historic district, where buildings traditionally have a setback of several feet.</p> <p>CSI has not produced shadow studies analyzing the impact of shadows cast by the new building on the north side of West 70th Street, or sight lines analyzing the visibility of the new building from the street or Central Park.</p> <p>The extra floors requested by CSI would block off windows in 18 West 70th Street and otherwise impact light and air to residents of adjacent properties.</p>
<p>The practical difficulties or unnecessary hardship claimed as a ground for a variance have not been created by the owner or by a predecessor in title.</p>	<p>There is no practical difficulty or unnecessary hardship inherent in this site. If any hardship exists, it is the result of CSI's aspirations to turn their community house site into income-producing real estate.</p>
<p>The variance, if granted, is the minimum variance necessary to afford relief, and the Board may permit a lesser variance than that applied for.</p>	<p>As demonstrated by its own application, CSI could successfully meet its programmatic needs through an as-of-right building, without any variance at all.</p>

Procedural Problems

The City's Charter states that applicants must present to community boards within 60 days of filing with BSA. CSI has far exceeded this limit, deliberately pushing public meetings on this matter into the summer and the July 4th national holiday. (This has been a chronic pattern with CSI – public hearings at the LPC were scheduled on such deadly dates as July 3 and November 25, two days before Thanksgiving.) Public notice of the June 20, 2007, presentation of this application before CB7's Land Use Committee was provided (via a revision to the committee's agenda posted on the CB7 website) less than two weeks prior to the meeting.

CSI filed its application with BSA on the eve of Passover, April 2, 2007, *over one year* after receiving approval from the LPC on March 14, 2006. Meanwhile, CSI's attorneys and consultants met privately with BSA commissioners and staff, a clear violation of prohibitions against ex parte meetings in quasi-judicial proceedings such as those pertaining to zoning variances. Like any judge engaged in "ex parte" communications with parties in a lawsuit, the BSA commissioners who participated in meetings with the applicant should recuse themselves.

The community has been stymied in efforts to gain access to public documents pertaining to CSI's application. In April 2007, LANDMARK WEST! (LW!) filed a lawsuit against the Department of Buildings (DOB) for failure to comply with the Freedom of Information Law (FOIL). Since November 2006, DOB has denied access to CSI files, citing the "FOIL Refusal Rule," which was apparently adopted (illegally) after September 11, 2001, to limit public access to DOB files related to certain properties labeled as "sensitive" without the written consent of the property owner.

CSI's April 2, 2007, submission to BSA included an Objections Sheet from DOB that was issued on October 28, 2005, and stamped "Denied" by DOB on March 27, 2007. But, the October 2005 DOB Objection Sheet was for a materially different building than the one submitted to BSA in April 2007 (a 113.7'-tall building versus a 105.8'-tall building, with different setbacks). The October 2005 Objection Sheet is far older the 30-day limit prescribed by BSA.

In addition, the April 2 application is substantially incomplete. CSI fails provide drawings accurately showing the impact of all variances, a rationale showing how the 5 conditions are met for each of the eight variances, sight lines showing the impact on the surrounding area, the impact on the windows in the east façade of 18 West 70th Street, shadow studies showing impacts on West 70th Street, cross-sectional drawings of the building, and providing specifications the drawings as to the location of alleged hardships.

No Evidence of "Unique Hardship"

In recent cases, BSA has held nonprofit religious institutions to a high standard for demonstrating a "unique hardship." For example, in a May 2006 decision, BSA explained its rationale for not allowing Congregation Somiou, a small synagogue in Brooklyn, to build a 5-story synagogue and yeshiva with 8 "Use Group 2" (standard residential) apartments:

...the Board expressed concern about this proposal, noting that there was no justification for waivers such as FAR and street wall height that arose solely because the application included market rate UG 2 residences... (72-05-BZ)

CSI, one of the largest and wealthiest congregations in the city, is seeking BSA approval for similar variances to those denied to a much smaller, less resourceful congregation in Brooklyn that also sought to build apartments to subsidize its mission.

In another recent case concerning a Brooklyn religious girls school, Bnos Menachem, the BSA determined that a proposed catering facility "did not have a sufficient nexus to the religious nature of the school" and required the school to submit a feasibility study showing that a conforming residential use would not yield a reasonable return due to the site's unique physical condition—i.e., the school was treated as a for-profit applicant, therefore not exempt from Finding 2.

CSI has also submitted a feasibility study, at BSA's request, a signal that BSA questions the "nexus" between CSI's requested variances and its religious mission and indeed considers CSI's proposed new building a commercial project. Failing the "nexus" test, CSI seeks to pass the "reasonable return" test. Its feasibility study argues that CSI's proposed scheme—an 8-story-plus-penthouse building including a new community house and 5 apartments—would generate a \$6 million net profit, whereas an as-of-right scheme—a 6-story building including a new community house and two apartments—would cost CSI approximately \$8.6 million. In essence, CSI is asking the community to assume the burden of a harmful, precedent-setting, noncompliant, luxury condo development so that CSI will not have to pay for a new community house.

CSI is not a matter of programmatic need, but rather economic greed. And, as the Brooklyn cases suggest, approval of CSI's application could have far-reaching impacts in the boroughs beyond Manhattan. If BSA approves variances to allow one of the wealthiest institutions in the city to go into the development business, why should such variances be denied to small, struggling institutions in other parts of the city?

Flaws in CSI's Feasibility Study

CSI's feasibility study is fundamentally flawed in at least two key aspects:

- CSI's analysis attributes the full land value to the condos, even though only a fraction of the whole project is condos, predetermining a negative return on investment. Adjusting the land value to the correct percentage would considerably reduce the "net loss"—i.e., the cost—of building a brand-new, as-of-right community house.
- The study does not account for rental income from the tenant school, a basement space clearly intended for use as a banquet facility, or the parsonage. These revenue sources would significantly even out the profit margin for an as-of-right community house.

Conclusion

A fair reading of the application of CSI, a nonprofit, religious institution in excellent financial standing, makes it clear that CSI can construct an as-of-right building, at little or no cost to itself, that will meet its programmatic needs and allow it to carry out its charitable, religious mission without doing long-term damage to the neighborhood and the planning process. CSI should **NOT** be granted a series of harmful, precedent-setting variances to build a mixed-use, luxury condo building for the sole purpose of turning a profit.

This document was created with Win2PDF available at <http://www.daneprairie.com>.
The unregistered version of Win2PDF is for evaluation or non-commercial use only.