



THE COMMITTEE TO PRESERVE THE UPPER WEST SIDE

**Testimony of LANDMARK WEST!  
Before the Board of Standards and Appeals  
Regarding Congregation Shearith Israel, 6-10 West 70<sup>th</sup> Street  
November 27, 2007**

LANDMARK WEST! works closely with the many neighbors and civic groups who have opposed this application since it was presented to the Landmarks Preservation Commission back in 2002. What some at first attempted to write off as a minor Upper West Side “hot spot” blossomed into an issue of citywide concern. The coalition of New Yorkers who see this application as a stalking horse for piecemeal rewriting of the Zoning Resolution, particularly as it applies to nonprofit institutions, continues to grow.

As Columbia Professor Elliott D. Sclar wrote in a statement in 2003, “The very fact that this project will require that various city agencies grant it a series of ‘waivers,’ ‘variances,’ ‘special permits’ ...should set off alarm bells everywhere in the planning and preservation community.” In 1982, Professor Sclar conducted a seminal study that resulted in the Department of City Planning’s Upper West Side Zoning Study that, in turn, created the basis for New York’s first “contextual” zoning districts to preserve the character of this neighborhood’s high-rise avenues and low-rise, brownstone-scale midblocks. The boundary between the avenue and the side-street zoning was deliberately moved from 200 to just 125 feet from Central Park West, in order to limit tower development to the avenue and prevent it from encroaching on the midblocks. Thanks to the zoning and subsequent historic district designation, the crisp delineation between the Central Park West skyline and rowhouse blocks like West 70<sup>th</sup> Street—a crucial aspect of this neighborhood’s “essential character”—has remained largely intact.

The explicit purpose of this zoning is to protect the public health, safety and welfare. Any transgression of the zoning inherently violates this public trust.

We understand that the purpose of the Board is not to rewrite the zoning, but to consider where exceptions may be merited due to special hardship. Therefore, I will direct my comments specifically to required findings (a) and (c). To reiterate a point made by Chair Srinivasan at yesterday’s review session, the burden is on the applicant to show that such hardship exists. The applicant has failed.

For example, the applicant claims that the “presence of a unique, noncomplying, specialized building of significant cultural and religious importance” creates a unique physical condition. In fact, this is not a unique situation for Central Park West, which is lined with important cultural institutions, including the Society for Ethical Culture, the New-York Historical Society, the First/Second Church of Christ Scientist, just to name a few. Most are low-rise; they do not use all of their developable air rights. Most are also landmarked, either individually or as part of the Upper West Side/Central Park

West Historic District. As the Board's record shows, landmark designation is not an acceptable basis for a hardship finding.

And if the Landmarks Commission had believed this proposed building was *more appropriate* than an as-of-right building, it would have granted the 74-711 application.

The applicant further argues that the presence of the landmark synagogue compels it to develop on a site "whose feasible development is hampered by the presence of a zoning district boundary..." By this, the applicant means the site of the existing community house plus the adjacent vacant lot. However, many other sites up and down Central Park West, must contend with exactly the same issue. Hardly ever does the zoning boundary coincide exactly with lot boundaries. In this case, more than 70% of the proposed New Building site is located squarely in the R8-B zoning district.

The proposed New Building site is perfectly rectangular with no inherent, practical difficulties for development, either as an as-of-right community house or residential building or a modest combination of both. The applicant's drawings show this clearly. In fact, floors 1-4 of the As-Of-Right Scheme (Scheme A) and the Proposed Scheme handle circulation and accessibility in identical fashion.

The "difficulty" arises because the applicant chooses to concentrate all of its program- and profit-driven ambitions onto this one, relatively small piece of its large, combined site. And yet, the applicant has offered no explanation as to why its needs can only be met in this manner. Conspicuously, there is no mention of the Parsonage and its potential for accommodating functions such as offices, archives, classrooms of reasonable size to accommodate the 40-student Hebrew school. The applicant relies on the combined zoning lot to generate a higher FAR, but ignores the possibility of using its real-estate assets over the entire lot more efficiently.

The applicant also ignores the real physical context here. None of the taller buildings cited as justification for the proposed New Building defines the "essential character" of this block. As *New York Times* columnist Christopher Gray wrote, West 70<sup>th</sup> Street is "A Block Full of 19<sup>th</sup>-Century Row Houses." Only three buildings are taller than 6 stories; the vast majority, including both the Synagogue and the Parsonage, are brownstone scale. Yet, the applicant conveniently chooses to adhere to the taller, nonconforming, pre-zoning "context," thus increasing the level of nonconformity on this virtually pristine block, tipping the balance away from the traditional rowhouses that the zoning was intended to protect. When the Catholic High School Association at 22 West 70<sup>th</sup> Street applies to add floors to its brownstone at 22 West 70<sup>th</sup> Street, one can predict which "context" it will invoke.

Congregation Shearith Israel is trying to pass off what it wants for what it needs, at the expense of its neighbors and the zoning that protects this special part of the city. We urge you to deny this application.