

# Landmarks Cases: A Decisive Verdict

## Panel's Rejection of 2 Towers Says 'No' to a Growing Trend

By PAUL GOLDBERGER

When the city's Landmarks Preservation Commission voted Tuesday to reject plans for towers at St. Bartholomew's Episcopal Church and the New-York Historical Society, it was issuing a decisive verdict against the growing trend toward turning landmark buildings into profit-making real estate.

Under its new chairman, Gene A. Norman, the commission stopped short of saying landmarks were sacrosanct, but it made clear that adding skyscrapers on top of or beside them was not the kind of alteration it wanted to see.

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Still, for all the certainty with which the commission turned down the two projects, the two proposed buildings are not the same, and neither is the way in which the commission dealt with them.

The proposed St. Bartholomew's tower, an addition by the firm of Edward Durell Stone Associates to one of the city's most prominent landmarks on as conspicuous and valuable a piece of property as there is in midtown, would juxtapose a sleek and modern 59-story glass tower and an unusually sumptuous Byzantine church by Bertram Goodhue. Replacing the community house of the church on Park Avenue between 50th and 51st Streets, the tower would be a startling clash between old and new, and almost every civic group concerned with architecture and planning spoke up against the project.

### A Unanimous Decision

The commission's decision to deny the church permission to proceed was unanimous.

The historical society's plan was a different matter altogether. The society's building, a staid classical box by York & Sawyer and Walker & Gillette on Central Park West between 76th and 77th Streets, is hardly as beloved a landmark as St. Bartholomew's, and the proposed 23-story apartment tower, by Hugh Hardy of Hardy Holzman Pfeiffer Associates, was considerably more sensitive to the older architecture than was the St. Bartholomew's tower.

Two of the eight commissioners were so swayed by the quality of the Hardy firm's design that they voted in favor of it, and others, though they cast their votes against it, spoke respectfully of the project.

This could mean that the commission is looking eagerly for chances to show its willingness to approve new projects and is reluctant to be perceived as being against all new development.

One decision that would seem to underscore this is the commission's recent approval of a design that would replace an old brownstone on East 64th Street with a new limestone-fronted town house by the architects Agrest & Gandolsonas.

Some East Side residents protested against this design with the argument that the old brownstone should not have been changed at all. But the commis-

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# Landmarks Verdict

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sion decisively rejected the argument that East 64th Street, which is within the Upper East Side Historic District, should be immune to change.

There is little comparison, however, between a town-house facade and a 23-story tower addition, and this is the issue. The commission's majority still did vote against the historical society project, despite the positive feelings regarding the architecture, and this was seen by most observers as a statement that no tower, no matter how sensitively designed, could avoid changing the appearance of a landmark drastically.

The commission's role here is a delicate one. Its legal mandate is to protect the city's store of landmark buildings and to allow only those changes it deems appropriate and reasonable, and it was saying that even the Hardy design failed to meet these criteria.

However, the commission is not legally empowered to act as a planning or zoning board and make decisions regarding the appropriateness of density or more high-rise building in the city. In its decision, it took pains to point out that its rejection was based on the belief that putting a high-rise building on the roof violated the architectural integrity of the landmark, and not that it objected to adding more high-rise buildings to either neighborhood.

## Continuing the Fight

Neither the St. Bartholomew's project, which has been discussed and debated for some years, nor the historical society project, which was first proposed last year, is likely to be abandoned. Spokesmen for the church have said repeatedly that they intend to continue the fight to build their building, and there are several options open to them.

The church and the developer with whom it is working, Howard Ronson, could revise the design and make a new submission to the landmarks panel, which would require an entire new round of public hearings. They could also ask the commission to reconsider its rejection of their proposal on the ground that maintaining the landmark church in its present condition constitutes a financial hardship.

The commission is legally obligated to consider such a request from any nonprofit owner of a landmark structure, although to render a final judgment, it would have the right to evaluate the financial condition of the church, something that officials of the Episcopal Diocese of New York have been reluctant to permit.

St. Bartholomew's might also decide to ask the courts to overturn the Landmarks Commission's decision. If it decides to sue, it can do so either in state court, where it would be expected to argue that the decision represents an improper or arbitrary exercise of gov-

ernmental power, or in Federal court, where it would argue the case on constitutional grounds.

Supporters of the church's position have argued that designating churches as landmarks violates the constitutionally guaranteed separation of church and state, and such a case would be likely to take this view as its starting point.

## Supreme Court Ruling

In any event, the Landmarks Commission's right to designate and give legal protection to the city's notable works of architecture is not expected to be in jeopardy. That right was upheld by the United States Supreme Court in 1978, when it ruled that the city had acted legally by designating Grand Central Terminal as a landmark and, as a consequence of that decision, prevented the Penn Central Railroad, Grand Central's owner, from erecting a skyscraper atop the terminal.

But the record of legal decisions involving the commission's designations of religious properties and other nonprofit institutions that are landmarks is less clear.

The New York Court of Appeals, the state's highest tribunal, ruled against the commission when the Lutheran Church sued to have the landmark designation removed from the J. P. Morgan mansion on Madison Avenue, which it owns. On the other hand, the commission won a court case against the Ethical Culture Society on Central Park West, which also wanted to be free of landmark status.

A court case is less likely with the historical society project, in part because the society, unlike St. Bartholomew's, is not in a position to argue a Federal case on constitutional grounds.

The rejection of the society project came as somewhat more of a surprise; the opposition of some commissioners was not known until the vote, and some observers had expected the project to be approved. It is thus possible that the historical society and its real-estate developer, Robert Quinlan, may decide to take advantage of the commission's sympathy for Hugh Hardy's work and resubmit a more modest, scaled-down design.