

**COMMUNITY BOARD 7/ MANHATTAN
DECEMBER 2007 RESOLUTIONS**

Land Use Committee

Richard Asche and Page Cowley, Co-Chairpersons

1. Re: 6-10 West 70th Street (Central Park West.)

The Trustees of Congregation Shearith Israel (CSI) have applied for a series of variances, pursuant to Section 72-21 of the Zoning Resolution, with respect to the construction of a proposed community facility/residential building at 6-10 West 70th Street. The proposed building is intended to replace an existing community house, to provide improved circulation for congregants, specifically disabled accessibility, entering and leaving the landmarked synagogue building immediately to the east, and to provide a catering facility capable of serving some 450 guests, space for the synagogue's archives, and five full-floor condominium units.

The proposed structure would not utilize all of the permitted floor area for the site, but would violate other provisions of the zoning resolution: (1) instead of a required setback at a height of 60 feet, the first setback from the street wall would be at 95 feet; (2) the front setbacks would be 12 feet deep rather than a minimum of 15 feet; (3) the rear setback would be 6.67 feet deep instead of a minimum of 10 feet deep; (4) the rear yard would be 20 feet of unbuilt space instead of a minimum of 30 feet; and (5) the height of the building would be 113.7 feet, instead of the 75 feet that is the maximum height under the zoning for most of the proposed building..

The proposed building has received a certificate of appropriateness from the Landmarks Commission, which considered non-zoning, esthetic issues associated with the site's proximity to the landmarked synagogue and its inclusion in the Central Park West Historic District.

Several community based groups, including Landmarks West! and a coalition of residents in nearby buildings have objected to the requested variances on multiple grounds. The Land Use Committee has held a public hearing continued over two sessions.

Section 72-21 requires that a variance application on behalf of a non-profit organization may be granted only upon the making of four findings¹:

1. Required Finding A: That there are unique physical conditions, peculiar to and inherent in the zoning lot; that as a result of such unique physical conditions, practical difficulties or unnecessary hardships arise in complying strictly with the zoning resolution; and that the practical difficulties or hardships are not created by strict application of such provisions in the neighborhood in which the zoning lot is located.

CSI does not claim that the zoning lot is irregular in shape. Rather, the A finding is claimed to be met by a combination of unique circumstances: a) the presence of a landmarked synagogue occupying two-thirds of the zoning lot, the alteration of which would assertedly undermine CSI's religious mission; 2) a development site on the remainder of the zoning lot, on which any proposed structure must be aligned at the streetwall and east elevation with the synagogue building; and 3) dimensions of the zoning lot that preclude development of floor plans for community space required to meet CSI's on-site religious, 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

¹ A fifth finding (Finding B) relates to the ability of the land owner to realize a return on his/her investment, and does not apply to non-profit owners.

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.

Votes:

Lot Coverage:

Land Use Members: 7-0-0-0. Board Members: 2-2-0-0.

Height & Set Back in the Rear Yard R8B Portion:

Land Use Members: 6-1-0-0. Board Members: 1-3-0-0.

Height & Set Back in the Rear Yard R10A Portion:

Land Use Members: 6-1-0-0. Board Members: 1-3-0-0.

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 70th 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 70th 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 70th 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.

Votes:

Changing Depth of the Setback:

Land Use Members: 1-6-0-0. Board Members: 0-4-0-0.

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 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.

Votes:

Height and Street Wall Setback:

Land Use Members: 0-7-0-0. Board Members: 0-4-0-0.

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.

Votes:

Land Use Members: 0-7-0-0. Board Members: 0-4-0-0.

THEREFORE, BE IT RESOLVED THAT Community Board 7/Manhattan **approves** the proposal by Congregation Shearith Israel for variances pertaining to lot coverage and rear-yard setback; and be it further RESOLVED, that Community Board 7/Manhattan **disapproves** the proposed variances with respect to initial setback, building height and setback depth.