

Changes made compared to May 13, 2008 Version of Statement

New statements in blue.

**STATEMENT IN SUPPORT  
OF CERTAIN VARIANCES  
FROM THE PROVISIONS OF  
THE NEW YORK CITY ZONING RESOLUTION**

**Affected Premises:**

**CONGREGATION SHEARITH ISRAEL  
6-10 West 70<sup>th</sup> Street/99-100 Central Park West  
Block 1122 Lots 36 & 37  
Manhattan**

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**Friedman & Gotbaum LLP  
568 Broadway, Suite 505  
New York, NY 10012  
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\* See Exhibits A & B clocked in on 5/13/2008

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portion of Lot 37 had previously been occupied by two additional CSI-owned row houses, both of which were demolished in 1950. The remaining portion of Lot 37 was added to CSI's Zoning Lot in 1965. No use or bulk modifications have occurred since 1954. In 2006 the LPC approved the installation of one trailer for educational purposes on the vacant portion of Lot 37.

### **THE NEW BUILDING DEVELOPMENT PROGRAM**

CSI is a modern vibrant house of worship for 550 families in a 112-year old building initially designed for 300 families and two early 20<sup>th</sup> Century townhouses glued together in the 1950's to form a community house. Growth aside, CSI's hardships are also due to the evolution in programming, from a simple house of worship as was the custom in the design of 19<sup>th</sup> Century sacred sites, to the provider of highly specific spaces and support for dynamic programs - educational, cultural and political - extending far beyond religious study. For half a century CSI made do with a community house which was actually two townhouses given a combined façade and connected at the closest floors. The unsuitability of the current spaces for CSI's existing programs limits both the size of the programs and their quality, either of which are suitable grounds for meeting the findings in ZRCNY 72-21(a). In addition, however, and just as important a hardship, the existing conditions limit the future opportunity to create new religious, pastoral and educational programs consistent with modern religious communities (see attached Exhibit A, Proposed Usage Chart: Floors 2-4)<sup>1</sup>. CSI's requirements as a religious institution must be examined in terms of both the programs offered and needed to be offered, and their respective populations. Accordingly, and in response to the Board's request, the key components of CSI's program are set forth as follows:

<sup>1</sup> See also, Programmatic Diagrams/Existing & Proposed, submitted December 28, 2008.  
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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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Finally, the requested residential use is as-of-right throughout the Zoning Lot and more than enough zoning floor area is available as a matter of right. The proposed residential floor area uses only 16 percent of the Zoning Lot's available zoning floor area, and represents 53.3 percent of proposed New Building zoning floor area, 40.7 percent of the New Building's gross floor area and 32.4 percent of the proposed zoning floor area (based on the entire Zoning Lot). When completed with the New Building, more than fifty-one percent of the development rights on the Zoning Lot (74,345.41 zsf) will remain unused. The development rights used for the New Building have been native to the Zoning Lot for almost three-quarters of a century and have not been acquired from an adjacent lot for development purposes.

Groups and individuals opposing this Application have inaccurately and misleadingly mischaracterized the concept of "monetization," as undue profit-taking when it is nothing of the kind. The term "monetization" refers only to a process of conversion of an economic asset from one form to another, much in the way the fields of chemistry convert solids to liquids or physics converts energy to matter. On a factual level, it is entirely possible to monetize an asset at a significant loss. As applied to the principles in this Application, monetization refers exclusively to the conversion of unused developed rights inherent to the Zoning Lot created by the adoption of the Zoning Resolution in 1961 to built floor area on the same Zoning Lot, and implies neither gain nor loss. The Financial Analysis prepared by Freeman/Frazier & Associates demonstrates that the conversion of 23,000 sf of unused development rights already owned by CSI on the Zoning Lot into 23,000 sf of built residential floor area is an economic wash, occurring without generation of either profit or loss to CSI. The utilization of such unused floor area by a community facility for residential purposes is not uncommon, with several precedents in

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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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Frazier Associates (“Freeman Frazier”) to provide a Feasibility Study analyzing potential mixed use development on Lot 37. Freeman Frazier’s May 13, 2008 submission examines the proposed New Building with eight-stories (plus penthouse) and complying rear courtyard at floors six through eight. This analysis compared the rate of return that could be expected from the New Building containing 15,243 sf of residential sellable floor area with two hypothetical as-of-right mixed-use building scenarios: (1) the New Building with only seven stories, a complying rear courtyard, and with penthouse removed (“AOR #1”); and (2) the New Building with only seven storeys plus penthouse, and a complying courtyard (“AOR #2”). Freeman Frazier concluded that due to existing physical conditions on the Zoning Lot, including the need to address the Synagogue’s circulation problems and the need to replace and enlarge the functions in the Community House, there is no reasonable possibility that a financially feasible mixed-use building could be developed in strict conformity with the Zoning Resolution. The 21,798 sf building describe as AOR #1 yields 13,454 sf of residential sellable area. The total investment for such a project would be \$25,728,000 on a net project value of \$28,576,000, producing a capital annualized loss to a developer of \$983,000. The 18,006 sf building describe as AOR #2 yields 11,835 sf of residential sellable area. The total investment for this project would be \$25,084,000 on a net project value of \$26,098,000, producing a annualized return of 0.93 percent.

In comparison, the New Building as proposed herein with 15,243 sf of residential sellable area requires an investment of \$26,731,000 on a net project value of \$34,039,000. This is a 10.66 percent rate of return, which Freeman Frazier posits to be minimally sufficient consideration as an investment opportunity. Pursuant to the Board’s request following the June

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24, 2008 public hearing, two additional development schemes were analyzed, neither of which are financially feasible. First, Freeman Frazier analysis confirmed that when rear terraces are included at the fifth floor above the community facility space and at a small portion of the sixth floor, the additional value resulting from 695 sf of open space amounts to an annualized return on investment from 10.66% to 10.93%, a less than 0.3% increase. Second, a revised as-of-right development scheme, which includes an open terrace at the fifth floor only, yields an annualized capital loss of \$4,569,000 (See Freeman Frazier letter dated July 8, 2008).

**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. ZRCNY Sec. 72-21 9 (c)**

The Variance, if granted, not alter the essential character of the neighborhood or the historic district; nor will it either substantially impair the appropriate uses or development of the adjacent properties or be detrimental to the public welfare. It is indisputable that a diversity of uses has been what has distinguished New York City neighborhoods and the Upper West Side is no exception. Approval of this Application will add 8,957.14 sf of Use Group 4 Use to CSI's current total of 38,838.10 sf, or an approximately 23 percent increase. It will add 22,352.31 sf of Use Group 2 residential use to a block developed with hundreds of thousands of feet of residential use. There will be no significant environmental consequences attributable to adding this minimal amount of square footage to the existing condition, which already includes the Synagogue, Parsonage and Community House. Moreover, at eight stories and one penthouse, the New Building will be a minor addition to the streetscape. It is dwarfed by the 13-storey 91 CPW to its south and the 15-storey 101 CPW to its north (both developed in excess of FAR 13) and has been limited by the LPC to the same height as 18 West 70<sup>th</sup> to its west. Viewed from the east  
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