

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

Date: December 4, 2007

Committee of Origin: Land Use

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.

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.

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- 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 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.

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.

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.

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.

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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.

THEREFORE, BE IT RESOLVED THAT Community Board 7/Manhattan **disapproves** the proposal by Congregation Shearith Israel for variances, as follows:

Building Height and Base Height: 38 In favor 0 Against 1 Abstention 0 Present
Front Set Back: 37 In favor 1 Against 1 Abstention 0 Present
Rear Set Back: 38 In favor 0 Against 1 Abstention 0 Present
Rear-yard Incursion in R8B and R10A and Lot Coverage:
21 In favor 13 Against 2 Abstentions 0 Present

Date: December 4, 2007

Committee of Origin: Parks & Preservation

Re: 325 West End Avenue (West 76th – 77th Streets.)

Full Board Vote: 16 In favor 14 Against 1 Abstention 2 Present

The following facts and concerns were taken in to account in arriving at our conclusions.

The Parks & Preservation Committee of Community Board 7/Manhattan believes that, in light of the constraints that appear to be beyond the control of the applicant, the proposed terrace installation is reasonably appropriate to the historic character of the building and of the Historic District;

THEREFORE, BE IT RESOLVED THAT Community Board 7/Manhattan **approves** the proposed terrace installation at 325 West End Avenue, but recommends that the applicant use less reflective metal elements than the stainless steel in the proposal.

Committee: 4-2-0-0.

Date: December 4, 2007

Committee of Origin: Parks & Preservation

Re: 101 West 77th Street (Columbus Avenue.)

Full Board Vote: 14 In favor 11 Against 7 Abstentions 0 Present

The following facts and concerns were taken into account in arriving at our conclusions.

The Parks & Preservation Committee of Community Board 7/Manhattan believes that the proposed rooftop addition is reasonably appropriate to the historic character of the building and of the Historic District.

The Committee believes that the restoration of the 8 brick chimneys along the perimeter of the roof at the cornice is a desirable restoration.

The architect for the applicant assured the Committee that the stucco façades of the rooftop addition will be painted in a color matching the brick color of the building's primary facades.

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THEREFORE BE IT RESOLVED THAT Community Board 7/Manhattan **dissapproves** the proposed rooftop addition at 101 West 77th Street. *Committee: 6-0-0-0.*

Date: December 4, 2007

Committee of Origin: Parks & Preservation

Re: 44 West 87th Street (Columbus Avenue – Central Park West.)

Full Board Vote: 28 In favor 0 Against 0 Abstentions 1 Present

The following facts and concerns were taken into account in arriving at our conclusions.

The Parks & Preservation Committee of Community Board 7/Manhattan applauds the applicant for a sensitive restoration of the façade of this building, including the proposed restoration of the slate roof and of the stoop and the installation of new wood windows, and for minimizing the visual impact of the proposed lift.

The Committee believes that the proposed alterations are appropriate to the historic character of the building and of the Historic District.

THEREFORE, BE IT RESOLVED THAT Community Board 7/Manhattan **approves** the application for the installation of windows and a lift at the front of the building at 44 West 87th Street.

Committee: 5-0-0-1.

Date: December 4, 2007

Committee of Origin: Transportation

Re: 207 West 96th Street (Amsterdam Avenue.)

Full Board Vote: 23 In favor 4 Against 1 Abstention 0 Present

BE IN RESOLVED THAT Community Board 7/Manhattan **approves** the request by the Franciscan Friars of Holy Name Church to the Department of Transportation for two “No Parking” spaces in front of their building (the Rectory) to allow easy and timely access to the church’s vehicles for unscheduled ministerial calls.

Committee: 7-1-1-0. Public Members: 2-0-0-0.

Date: December 4, 2007

Committee of Origin: Transportation

Re: 100 West 106th Street (Columbus Avenue.)

Full Board Vote: 26 In favor 0 Against 1 Abstention 0 Present

BE IT RESOLVED THAT Community Board 7/Manhattan **approves** the renewal application #B01397 to NYC Taxi and Limousine Commission by U.C. Columbus Radio Dispatch, Inc. at 100 West 106th St. for a For Hire base station license.

Committee: 6-0-0-0.

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Date: December 4, 2007

Committee of Origin: Transportation

Re: 969 Columbus Avenue (West 108th-107th Street.)

Full Board Vote: 26 In favor 0 Against 1 Abstention 0 Present

BE IT RESOLVED THAT Community Board 7/Manhattan **approves** the renewal application #B02228 to NYC Taxi and Limousine Commission by Special Radio Dispatcher at 969 Columbus Avenue for a for Hire base station license.

Committee: 6-0-0-0.

Date: December 4, 2007

Committee of Origin: Transportation

Re: 2537 Broadway (West 95th Street), Symphony Space.

Full Board Vote: 26 In favor 0 Against 1 Abstention 0 Present

BE IT RESOLVED THAT Community Board 7/Manhattan **approves** the request of Symphony Space to the Department of Transportation for two "No Parking" spaces on the south side of West 95th St, immediately west of Broadway.

Committee: 6-0-1-0.

Date: December 4, 2007

Committee of Origin: Transportation

Re: 2418 Broadway (West 89th Street.)

Full Board Vote: 16 In favor 4 Against 3 Abstentions 2 Present

BE IT RESOLVED THAT Community Board 7/Manhattan **disapproves** the petition to Modify Consent DCA# 1172236 to the Department of Consumer Affairs by Three Friends, LLC., d/b/a Georgia's Bake Shop, for a two-year consent to operate an unenclosed sidewalk café with 11 tables and 26 seats, an expansion of the existing 5 tables and 14 seats.

Committee: 5-3-1-0. Public Members: 0-2-0-0.

Date: December 4, 2007

Committee of Origin: Transportation

Re: 427 Amsterdam Avenue (West 80th-81st Street)

Full Board Vote: 23 In favor 1 Against 1 Abstention 1 Present

BE IT RESOLVED THAT Community Board 7/Manhattan **approves** new application DCA# 1265442 to the Department of Consumer Affairs by J of K Corp., d/b/a Momoya Restaurant, for a two-year consent to operate an unenclosed sidewalk café with 9 tables and 17 seats.

Committee: 8-1-0-0. Public Member: 0-0-1-0.

Date: December 4, 2007

Committee of Origin: Transportation

Re: 949 Columbus Avenue (West 106th-107th Streets.)

Full Board Vote: 23 In favor 1 Against 1 Abstention 1 Present

BE IT RESOLVED THAT Community Board 7/Manhattan **approves** new application DCA# 1268384 to the Department of Consumer Affairs by 949 Columbus Avenue Corp., d/b/a Voza, for a two-year consent to operate an unenclosed sidewalk café with 4 tables and 8 seats.

Committee: 8-0-1-0. Public Member: 0-0-1-0.

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Date: December 4, 2007

Committee of Origin: Transportation

Re: 1900 Broadway (West 63rd Street.)

Full Board Vote: 23 In favor 1 Against 1 Abstention 1 Present

BE IT RESOLVED THAT Community Board 7/Manhattan **approves** renewal application DCA# 0895613 to the Department of Consumer Affairs by Coastal at Lincoln, Inc., d/b/a Josephina, for a two-year consent to operate an unenclosed sidewalk café with 17 tables and 35 seats.

Committee: 7-0-0-0.

Date: December 4, 2007

Committee of Origin: Transportation

Re: 1900 Broadway (West 63rd Street.)

Full Board Vote: 23 In favor 1 Against 1 Abstention 1 Present

BE IT RESOLVED THAT Community Board 7/Manhattan **approves** renewal application DCA# 1134053 to the Department of Consumer Affairs by Sushi A Go-Go, Inc., d/b/a Sushi A Go-Go Restaurant, for a two-year consent to operate an unenclosed sidewalk café with 6 tables and 24 seats.

Committee: 7-0-0-0.

Date: December 4, 2007

Committee of Origin: Transportation

Re: 1018 Amsterdam Avenue (West 64th-65th Streets.)

Full Board Vote: 23 In favor 1 Against 1 Abstention 1 Present

BE IT RESOLVED THAT Community Board 7/Manhattan **approves** renewal application DCA# 1133929 to the Department of Consumer Affairs by Skipwell Corp., d/b/a Bistro Ten Eighteen, for a two-year consent to operate an unenclosed sidewalk café with 12 tables and 26 seats.

Committee: 7-0-0-0.

Date: December 4, 2007

Committee of Origin: Transportation

Re: 302 Columbus Avenue (West 74th Street.)

Full Board Vote: 23 In favor 1 Against 1 Abstention 1 Present

BE IT RESOLVED THAT Community Board 7/Manhattan **approves** renewal application DCA# 1184619 to the Department of Consumer Affairs by 302 Columbus Avenue Inc., d/b/a Lenny's, for a two-year consent to operate an unenclosed sidewalk café with 10 tables and 20 seats.

Committee: 8-0-0-0.

Date: December 4, 2007

Committee of Origin: Transportation

Re: 513 Columbus Avenue (West 85th Street.)

Full Board Vote: 23 In favor 1 Against 1 Abstention 1 Present

BE IT RESOLVED THAT Community Board 7/Manhattan **approves** renewal application DCA# 1167803 to the Department of Consumer Affairs by RLS Inc. of NY, d/b/a Señor Swanky's, for a two-year consent to operate an unenclosed sidewalk café with 28 tables and 57 seats.

Committee: 6-3-0-0.

Date: December 4, 2007

Committee of Origin: Transportation

Re: 2724 Broadway (West 104th Street.)

Full Board Vote: 23 In favor 1 Against 1 Abstention 1 Present

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BE IT RESOLVED THAT Community Board 7/Manhattan **approves** renewal application DCA# 1132659 to the Department of Consumer Affairs by Hot Bread of 104th Street Inc., d/b/a Hot & Crusty, for a two-year consent to operate an unenclosed sidewalk café with 12 tables and 30 seats. *Committee: 6-1-0-0.*

Date: December 4, 2007

Committee of Origin: Transportation

Re: 333 West 86th Street, the Atria (West End Avenue-Riverside Drive.)

Full Board Vote: 14 In favor 2 Against 0 Abstentions 0 Present

The following facts and concerns were taken into consideration in arriving at our conclusion:

The originally installed special parking zone for the Atria was not installed as intended by the original approval of this board, and more specifically;

The installed length of 46 feet is considerably longer in length than the 30 feet that was needed or that CB7 intended;

The 24-hour regulation posted was also not what was needed or what CB7 intended;

THEREFORE, BE IT RESOLVED THAT Community Board 7/Manhattan **approves** and asks for an immediate change of the previously installed special zone for the Atria to “No Standing Except Pickups and Dropoffs 7 A.M. - 7 P.M., 7 Days a Week” and that the zone be reduced to 30 feet in length.

Committee: 8-1-0-0 Public: 1-1-0-0

Date: December 4, 2007

Committee of Origin: Business & Consumer Issues

Re: 768 Amsterdam Avenue (West 97th Street.)

Full Board Vote: 14 In favor 0 Against 0 Abstention 1 Present

BE IT RESOLVED THAT Community Board 7/Manhattan **disapproves** the application to the State Liquor Authority by 768 Amsterdam Avenue, d/b/a La Rural Bistro, unless the following stipulation is added to their method of operation in their SLA application: That they will close their windows and doors by 11:00 pm, and an effort will be made to keep the sidewalk clear of smokers and noise. There is also no objection to the applicant extending the hours of operation to 11:30 pm weekdays and 12 midnight on weekends.

Committee: 5-0-0-0. Public Member: 1-0-0-0.

Date: December 4, 2007

Committee of Origin: Business & Consumer Issues

Re: 903 Columbus Avenue (West 104th Street.) Columbus Valley Restaurant Corp.

Full Board Vote: 14 In favor 0 Against 0 Abstention 1 Present

The applicant did not attend the meeting;

THEREFORE, BE IT RESOLVED THAT Community Board 7/Manhattan **disapproves** the application to the State Liquor Authority by Columbus Valley Restaurant Corp.

Committee: 5-0-0-0. Public Member: 1-0-0-0.

Date: December 4, 2007

Committee of Origin: Business & Consumer Issues

Re: 982-984 Amsterdam Avenue (108th – 109th Streets.) Amsterdam Avenue Restaurant, LLC.

Full Board Vote: 14 In favor 0 Against 0 Abstention 1 Present

BE IT RESOLVED THAT Community Board 7/Manhattan **disapproves** the application to the State Liquor Authority by 982-984/988 Amsterdam Avenue, Amsterdam Avenue Restaurant, LLC, dba Village Pour House, unless the following stipulation is added to their method of operation, in their SLA application, that they will close their windows and doors by 11:00pm, and an effort will be made to keep the sidewalk clear of smokers and noise. Soundproofing would be installed and the owner would verify the effectiveness by visiting tenants at 200 West 109th Street

- The neon light sign will not reflect into apartments and the area would be well lit.

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- There will be full-time licensed security staffs from 5:00pm to 2:00am on weekdays and 4:00am on weekends. The security staffs would also ensure no drug trafficking activities both within or front of the premises. Joseph Abbruzzese, Head of Security, will provide his cell phone number in case of any concern the community has with the establishment.
- Security cameras are provided both within and in front of the establishment.
- Retractable awning will be installed in the entire distance of the frontage of the establishment to reduce the lighting, noise and cigarettes smoke.
- Backdoor would always remain closed except for deliveries.
- Applicant's attorney has appeared at a November 13, 2007 "500 Foot Hearing" of the NYS Liquor Authority and informed the BCI Chair that there was no objection to the applicant.
- Recognizing the long history of drug trafficking, noise and resident complaints to owners operating at the location, this applicant agrees to be an active member of a Community Advisory Council (CAC) spanning 96th-110th Streets. Peter Arndtsen, Executive Director of the Columbus/Amsterdam Business Improvement District (BID), has volunteered to chair the council. The CAC members would include the applicant, a CB7/BCI member (Rosa Gonzalez), residents, owners of businesses, and community leaders. A monthly meeting would be held to discuss the quality of life issues resulting from restaurant/bar operations in the community.

Committee: 6-0-0-0. Public Member: 1-0-0-0.