



THE ADVOCATE FOR NEW YORK CITY'S HISTORIC NEIGHBORHOODS

**Historic Districts Council
Testimony October 31, 2023**

LPC-22-09135 165-167

**West 86th Street, aka 541 Amsterdam Avenue - West Park Presbyterian Church - Individual
Landmark**

HDC remains adamantly opposed to this application. The recent independent reports and response from the applicants only strengthen our conclusion that this application does not meet the requirements for hardship.

HDC is glad that the LPC engaged an independent engineer to assess this project, and we agree with Donald Friedman of Old Structures in his finding that the cost estimates based on the document package provided by Kramer Levin in April of this year are “grossly inflated” and “excessive.” This aligns with other reports that have also been commissioned including one by WJE.

Friedman’s assertion that the total cost of envelope and roof work needed at West Park would be less than a third of what has been presented to this Commission, helps underline the dubious nature of the applicant’s claim of financial hardship, by claiming how much support would be needed to bring the building up to code. In this case, a full restoration is not warranted or even necessary. HDC agrees with many of our preservation colleagues that an incremental approach to preservation and restoration is often the best course of action.

We question why Weitzman Real Estate Consultants, which was to provide an independently commissioned opinion, contracted an additional engineering firm. The Old Structures report was completed in August 2023, and the Weitzman report was not finished until October, yet the Weitzman report only intermittently makes use of the Old Structures report numbers, using them in some parts of the report, but not throughout the report as a whole. Because of the cherrypicking and its inconsistent numbers, we cannot be certain of the accuracy of the Weitzman report.

Finally, we return to the applicant’s previous testimony on this application, and their responses to Commissioners’ questions regarding that testimony. We remain unconvinced that the applicant—represented by the same attorney and using the same experts as developer Alchemy—is allowed to claim hardship based on its stated inability to make a reasonable return.

Even if the Church could claim hardship on those grounds, the church plainly does not meet all four subcriteria for charitable entities seeking hardship laid out in Section 25-309 of the administrative code: Subcriteria C.

states that the applicant must show that “Such improvement has ceased to be adequate, suitable or appropriate for use for carrying out both (1) the purposes of such owner to which it is devoted and (2) those purposes to which it had been devoted when acquired unless such owner is no longer engaged in pursuing such purposes;”

Given that the congregation clearly still exists here and is engaged in such purposes, as well as planning to continue these purposes in a space within the proposed new development, the Church fails to meet Subcriteria C.

Even assuming that the applicant is found by the commissioners to meet the standard for reasonable return and the building could not yield such a return, HDC continues to maintain that the “reasonable return” test does not apply in this case, because charitable entities cannot claim “best use” of their property. They are only entitled to apply the “charitable purpose test,” which assesses whether the building is suitable for carrying out charitable purposes. The applicant is not applying what they call the “judicial” test. Time after time, courts, including the state’s highest court, the New York State Court of Appeals, have opined that a request to demolish a landmark will be denied when the applicant is trying to claim “best use” of its property, and the applicant does not, instead, meet the “charitable purpose” test. This is settled law in the State of New York. Citing the decision in *Sailors’ Snug Harbor versus Platt*, the court in the *Society for Ethical Culture* case stated, “A comparable test for a charity would be where maintenance of the landmark either physically or financially prevents or seriously interferes with carrying out the charitable purpose.” As a charitable organization, the Society could not benefit from the financial hardship sections of the Administrative Code. The charitable purpose test instead applied.

The Appellate Division reasoned:

“The designation does not deprive the Society of the present use of the Meeting House, but instead would prevent it from altering or, more specifically demolishing the building, without prior commission approval, to exploit the full economic potential of the Central Park West site. The only hardship upon the Society is speculative upon a prospective use of the property, i.e., large scale development and the revenues to accrue therefrom.”

The Appellate Division further explained:

“The Society does not seek simply to replace a religious facility with a new, larger facility. Instead, using the need to replace as justification, it seeks the unbridled right to develop its property as it sees fit. This is impermissible, and the restriction here involved cannot be deemed an abridgement of any First Amendment freedom, particularly when the contemplated use, or a large part of it, is wholly unrelated to the exercise of religion, except for the tangential benefit of raising revenue through development.”

Today’s applicant has not met this legal standard. It has chosen to bypass this applicable legal standard, and this should raise concerns for the LPC. Why didn’t the applicant seek to meet the “charitable purpose” test? Because demolition of a non-profit-owned landmark to build luxury condos does not meet that test.

In her letter to LPC dated September 5, 2023, Valerie Campbell of Kramer Levin claims that “financial considerations – both operating costs and the costs of renovation and the resources of the building owner – are

central to the determination of ‘suitability.’” She further maintains that “the Building is no longer suitable for the Church’s purposes because...tremendous restoration costs make it infeasible for the Church to continue occupying the Building.”

However, in his assessment of possible restoration scenarios, Don Friendman maintains that the church’s cost estimates for the restoration include “unneeded work” and “excessive intervention,” which inappropriately contribute to an exaggerated cost. Regardless of the total cost of restoration, it is not necessary for all of the repairs to be made at once, and thereby not necessary for the church to have complete funds available at this time. HDC recommends a phased approach to the restoration.

As to whether the church is able to carry out its charitable purpose: We note that the building is in active use by both Lighthouse, which is a religious congregation, and the Center at West Park, which is a cultural arts organization. Indeed, the Center for West Park has offered to buy the building and maintain it. The applicant, however, is seeking to sell the building to a developer who will demolish it in order to build luxury condos. That is not a charitable mission.

As HDC has stated in our previous testimony, If a hardship is granted, the precedent here could be truly destructive regarding religious institutions across the city, some of whom would use this precedent to seek a reasonable return for their landmarked properties and demolish irreplaceable buildings for highest and best use. HDC strongly supports the need for more incentives and technical assistance for congregations as some of them continue to dwindle in size and resources. Some possibilities include increasing the receiving area for air rights for religious sites and incentives to help adaptively reuse these spaces. But that is not the issue before us today. The only issue is if the applicant has met the charitable purpose hardship provision and the answer remains no.