



**Statement of the Historic Districts Council
West Park Presbyterian Church Hardship Application
To Landmarks Preservation Commission
June 14, 2022**

HDC opposes this hardship application. While the case law does not envision a reasonable return test applying to charities, even if the test does apply, this owner CAN make a reasonable return on its investment. Other parties will be giving detailed testimony on this point. Our testimony here focuses on the charitable purpose.

We believe that the hardship test the applicant is proposing - to rely on regulatory language only - intentionally ignores extensive case law for nonprofits which amply refute the arguments being proposed by the applicant. We have conferred with legal advisers and believe case law cannot be ignored for this application to be considered by the LPC.

The 1968 case of Sailors' Snug Harbor vs. Platt was the first example of how the Landmarks Law impacted the "charitable purpose" of the applicant. Given the time limit for testimony, I will only address some key points from this case law, and urge the Commissioners to read HDC's full testimony and to examine Society for Ethical Culture vs. Spatt, the Snug Harbor case and St. Bartholomew's Church v. New York.

A significant weakness in the applicant's argument in support of demolition is its refusal to address case law and to instead rely only on the "reasonable return" argument in section 25-309(2). As the law makes clear, and case law further supports, unlike commercial owners, nonprofits do not have the right to the "highest return" or "best use" of their property. The applicant is only applying the statute, and 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.

The second part of our testimony addresses a separate but related part of the application around charitable purpose.

HDC has serious concerns about the applicant's premise that the building cannot serve the current charitable purpose of the congregation. We know that the building is in active use by multiple parties, from the tenant the Center at West Park who use it constantly for cultural use; Lighthouse, a separate congregation from the one that is part of the applicant, and the 12 congregants who are still using the building. If all of these parties are using it and others have expressed interest in using the space and indeed purchasing the building, then how can it not be serving its purpose?

The applicant has not fulfilled its claim that it needs to replace the church immediately to fulfill its charitable mission. While it is clear that this building needs work, the applicant has not demonstrated that analysis of the condition of the building has been fully explored, nor that the entire structure needs to be rehabilitated all at once to become a more useful site.

The costs provided by the applicant are for a complete restoration and rehabilitation of the landmarked structure. We know that this is not necessary for the building to continue to serve its intended purpose. A phased approach would be able to save the structure by providing each of the elements of a restoration plan in a phase over multiple years. All old buildings age and we know that most of them are not fully restored all at one time. This need not be the case here either.

In addition, a sympathetic buyer could be found who would retain the church building and repurpose it for new uses. The information provided by the applicant on past efforts at selling or leasing the building have been vague and contradictory. In their own application materials, the applicant states “West Park has been unable to meet these steep financial challenges and has no other viable opportunity but to sell the building. Given the church’s landmark designation and its condition, it is unclear if West-Park could realize any value from the sale today.”

We know that last part to be untrue and there are groups that have expressed interest in buying, although possibly not for the \$30 million that the developer has promised. As is clear in the Landmarks Law, nonprofits do not have the right to the highest return and best use of their property. So shouldn’t the applicant be required to put the property on the market for a buyer who may make an offer contingent on keeping the building?

Certainly, the applicant has not shown that it used due diligence to sell the building, without demolition as a contingency, in recent years. Whether the new owner is the Center at West Park or not, we urge the congregation and Presbytery to put the church building on the market in a public manner, considering all bids that would preserve the landmark.