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January 9, 2007

Via Fax 212-925-5199

Shelly S. Friedman
Lori G. Cuisinier
Friedman & Gotbaum, LLP
568 Broadway
Suite 505
New York, New York 10012

Re: Shearith Israel Project at 8-12 West 70th Street, New York, New York

Dear Mr. Friedman and Ms. Cuisinier:

I received Ms. Cuisinier's letter of January 4, 2007, on behalf of your client, Congregation Shearith Israel, relating to the condominium tower-community facility which the Congregation wishes to construct. The Landmarks Preservation Commission (LPC), at an improper non-noticed hearing of March 14, 2006, purportedly approved the project, but has yet to issue a Certificate of Appropriateness. The design approved by the LPC was not approved by the local Community Board and was inspired, not by the historic district and adjoining buildings, but by the economic desires of the Congregation to construct condominiums to provide cash income to the Congregation. The Congregation's desire for these condominiums yielded a building that requires one or more zoning variances.

The proposed project violates zoning restrictions and the Congregation has stated that it will require variances from the Board of Standards and Appeals (BSA), which would authorize the Department of Buildings (DOB) to issue permits notwithstanding the zoning requirements.

Certain members of the public have filed Freedom of Information Law (FOIL) requests to the DOB (as well as the BSA) seeking access to relevant documents.

In response to the FOIL requests, the DOB has refused to provide access to documents which would ordinarily be made available to the public, because of concerns of security, claiming that the project was sensitive.

The DOB's position, as I explained in my letters to you, is:

Due to the 9/11 tragedy, the records for the block and lot or address listed in [the] request are considered "sensitive". In order to obtain agency clearance to release these records, please forward a letter from the owner / managing agent (on record) authorizing you to have access.

On December 19, 2006 I wrote you to ask for “a letter from the owner / managing agent (on record) authorizing ,,, access.” I then wrote you again on January 2, 2007, asking for a response. I then telephoned you the next day and spoke to Ms. Cuisinier.

Finally, in a letter of January 4, 2007, copied to the President of the Congregation, you stated:

This letter is written in response to your correspondences dated December 19, 2006 and January 2, 2007, which included, in part, a request that CSI execute a waiver of objection to “those seeking review of Department of Building documents relating to CSI’s proposed project at [8-12 West 70th Street.] We are unaware of any request by the Department of Buildings (“DOB”) seeking CSI’s waiver of objection with respect to public access of DOB submissions on this matter. If such request is received from the DOB, CSI will consider it at that time. We intend to file a variance application with the Board of Standards & Appeals in the near future and, as you are aware, all formally submitted documents and plans will then be available for public review.

I find your response that you are “unaware of any request” by DOB to be disingenuous, to say the least; your response deliberately ignores what DOB has required. It is self-evident that DOB has required the FOIL requester to obtain the letter from the building owner. Now, almost jokingly, you want me to go back and ask DOB to write you a letter asking for clearance, when DOB has already placed the burden on those filing the FOIL request.

The action of the Congregation, in collaboration with the DOB, to conceal information is, in my view, just one more example of how the Congregation and city agencies and officials have operated in a non-transparent mode so as to conceal and delay the provision of information to the public relating to this project.

In fact, in my conversation with Ms. Cuisinier on Tuesday, she confirmed that DOB has already reviewed the Congregation’s application and that the Congregation had in fact received an “objection letter” from the DOB. As I understand the process, a DOB “objection letter” in this situation would be a denial by the DOB of a building permit based upon, for example, non-compliance with zoning requirements. In the Congregation’s situation, this would include proposing a building that exceeds the zoning height restriction. An “objection letter” further details the DOB’s objections and analysis. This is exactly the type of document covered by the FOIL requests and exactly the type of document that should have been provided to the FOIL requesters weeks ago. Of course, the Congregation’s BSA application will no doubt include the “objection letter” – so, clearly, there are no security issues as to that document.

In any event, as much as I try, it is hard for me to conceive of any reason relating to security which would justify either DOB or your client withholding the DOB objections to the project, as just one example. I note that Mr. Neustadter stated at the hearings before the Community Board and I believe before the LPC hearing that the Congregation had no security issues as to this building. Now, when it is convenient to conceal information, the security card is played.

Nor is this process made more transparent by the fact that on November 8, 2006, your client and its experts held an ex parte meeting with two Commissioners of the BSA to discuss, apparently, how to present the application so as to gain the BSA’s waiver of zoning requirements. The BSA rules provide only for pre-application staff meetings with prospective applicants – an ex parte meeting with BSA Commissioners just prior to an application for a variance is as objectionable as an ex parte meeting after formal filing of the application. Further, in response to a proper FOIL

request, the BSA will not release notes of this meeting to the public on the bizarre grounds that they are protected by the attorney-client privileged.

The Congregation brought a financial advisor to this meeting: why? The most obvious explanation is that it wished to pitch its so-called "special financial needs" to the BSA in a secret session to avoid exposing them to public examination, since, unquestionably, under accepted zoning law, the desire to earn income does not justify a zoning variance. Please explain why the financial expert for the Congregation was at that meeting and why CSI and the BSA are trying so hard to conceal what went on at that meeting.

A recent New York Time column by Tom Wolfe's described the non-transparent way in which the City and favored developers work together to the detriment of the public. This has been followed by a number of letters to the editor, valiantly attempting to defend the City. But, this present situation shows that the thrust of Mr. Wolfe's column was correct.

Sincerely,



Alan D. Sugarman

www.protectwest70.org

Attachments: Relevant Documents may be found at
<http://www.protectwest70.org/topic-pages/BSA-DOB-FOIL.html>

cc: Office of the Mayor of the City of New York
Betsty Gotbaum, Public Advocate of the City of New York
Gail Brewer, New York City Council Member
Hon. Scott Stringer Manhattan Borough President
Hon. Richard Gottfried State Assembly Member
Commissioner Patricia J. Lancaster, Department of Buildings
Commissioner Meenakshi Srinivasan, BSA
Robert B. Tierney, Landmarks Preservation Commission
Hon. Sheldon J. Fine, Chair Manhattan Community Board 7
Kate Wood, Executive Director, Landmarks West
Tom Wolfe