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May 1, 2007

Jeff Mulligan  
Executive Director  
NYC Board of Standards and Appeals  
40 Rector Street - 9th Floor  
New York, New York 10006

Re: BSA 74-07-BZ  
Congregation Shearith Israel  
6-10 West 70th Street/99 Central Park West  
Block 1122 Lots 36. 37 - Manhattan

Dear Mr. Mulligan:

On April 23, 2007 I wrote you concerning two deficient aspects of the Congregation Shearith Israel BSA Application relating to the lack of shadow studies and the failure to provide information relating to 18 West 70<sup>th</sup> Street. On April 26, 2007, I wrote to you concerning jurisdictional deficiencies relating to the stale DOB application and other non-compliance with BSA requirements as to variance applications.

I have further reviewed the Application and noted a number of other factual omissions and inaccuracies. The factual misstatements may not on their face be major, but, together with all of the other errors and omissions, still create substantial confusion.

I do not wish to nit-pick the Application, but the Congregation did spend over a year in preparing the BSA application, and so I am not willing to assume that any omission or inaccuracy is not intentional.

So, I am writing to provide further information not contained in my last two letters;

### **DOB Objections:**

First, though, I would like to discuss again the curious fact that the DOB objections were issued prior to three LPC meetings/hearings in this matter.<sup>1</sup>

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<sup>1</sup> On April 26, 2007, in connection with my FOIL requests to DOB, I had conversations with DOB legal staff who assured me that they had absolutely no record of any March, 2007 DOB objection letter.

On August 15, 2005, the Congregation filed a new set of plans with LPC showing a building 124' 5" high:

The October 28, 2005 DOB objections state:

6. PROPOSED MAXIMUM BUILDING HEIGHT IN RBB DOES NOT COMPLY. 113.70' PROVIDED INSTEAD OF 75.00' CONTRARY TO SECTION 23-633.

What is curious is that the DOB objections dated October 28, 2005 refers to a building with maximum building height of 113.70 feet.

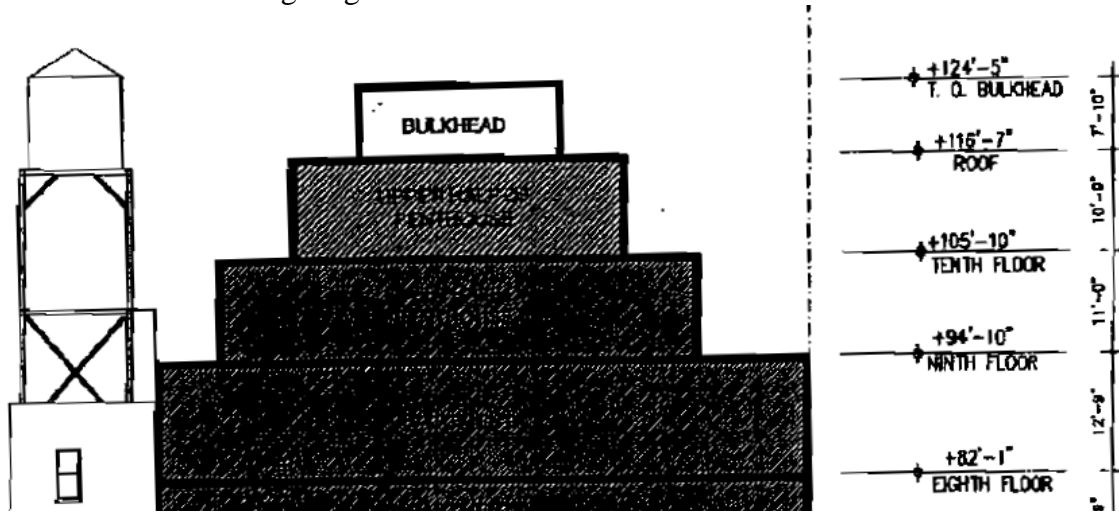


Figure 1 August 15, 2005 Section B 8 stories plus 2 penthouse

Yet, as shown above, the plans provided to LPC and Community Board 7 at that point in time, as shown above, reveal a 124.5 foot building. This is the proposal considered by the Community Board in September and October 2005 and on November 15, 2005 by LPC.

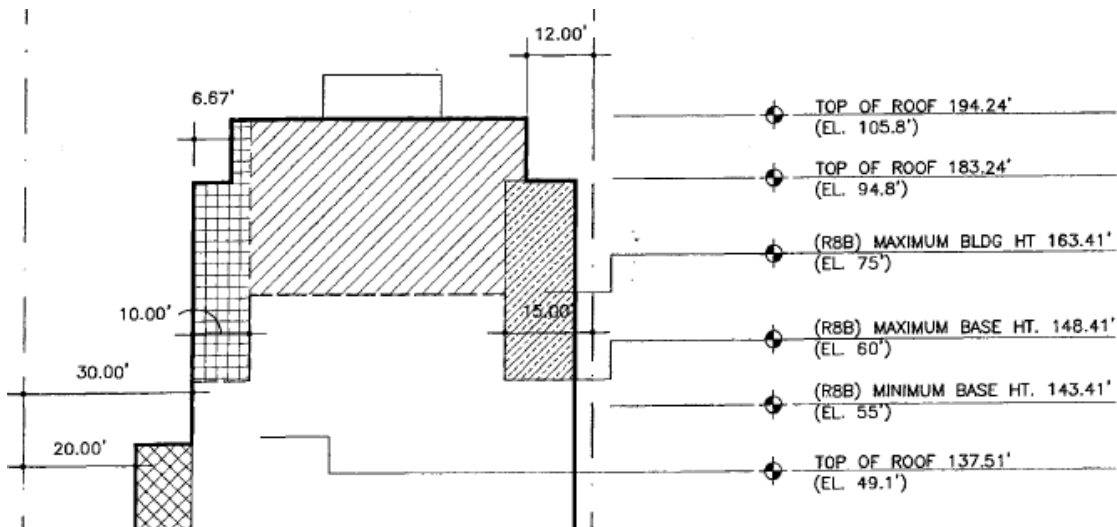


Figure 2 P-4 BSA Application April 2, 2007 8 stories plus 1 penthouse

Above is an excerpt from the street wall section filed with BSA on April 2, 2007. There is a clear discrepancy – was the Congregation filing one set of plans in November 2005 with DOB, but presenting another set of plans later to LPC??

Moreover, the DOB objections number 3 and 7 are not consistent with either set of drawings.

4. PROPOSED INITIAL SETBACK IN R8B DOES NOT COMPLY. 12.00' PROVIDED INSTEAD OF 15.00' CONTRARY TO SECTION 23-633.

7. PROPOSED REAR SETBACK IN R8B DOES NOT COMPLY. 6.67' PROVIDED INSTEAD OF 10.00' CONTRARY TO SECTION 23-663.

Quite clearly, the rear setback shown from floor 5-7 is not 6.67 feet, but is no setback at all (because the Congregation failed to provide required cross-sections with the floor heights, it is not simple to determine the floor.) The same discrepancy exists as to the initial setback – there is no initial setback until 94.8 feet. These are significant discrepancies, one that should have been noticed by the Congregation when discussing its proposal with DOB.

## ***INACCURACIES AND OMISSIONS***

In addition, I would like to point out some other factual errors or omissions in the Congregation's Application, not mentioned in my prior two letters:

### **1. Date of Acquisition of 12 West 70<sup>th</sup> Street.**

The Congregation states in its Statement in Support of Certain Variances (Statement) at p 14 states that "Tax Lots 36 and 37 have been in common fee ownership since 1949." This is not true: the Congregation acquired 12 West 70<sup>th</sup> Street in 1965 and demolished the brownstone in 1970.<sup>2</sup>

A similar incorrect statement appears at 26.

### **2, Misstatement as to two rowhouses once on vacant lot**

On page 17, the Statement claims as follows;

"The vacant portion of Lot 37 was created when two of the four rowhouses

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<sup>2</sup> Title acquired under deed dated 52865 in Liber 5327 cp 339.

owned by CSI, presumably numbered Nos. 16 and 14 West 70th Street, were demolished in 1950” is totally inaccurate, and serves to perpetuate the mistaken claim that the Congregation owned 12 West prior to 1949.<sup>3</sup>

Of course, there was on building on this site; it was acquired in 1965 and demolished in 1970.



## **2. Prior Ownership of 8 West 70<sup>th</sup> Street**

Relevant to the issue of self-imposed hardship, the Statement does not disclose that when the Synagogue was constructed in 1896-7, the Synagogue owned the property located at 8 West 70<sup>th</sup> Street and then conveyed the property to another party - showing that the Trustee owned the land in 1896, which would have allowed a lobby building to be constructed then.

## **3. Covenants Limiting Height of Buildings next to Synagogue.**

The Statement does not disclose that when the Trustees conveyed 8 West in 1897 to a third party, the 1897 Trustees imposed restrictive covenants upon 8 West 70<sup>th</sup> Street

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<sup>3</sup> These facts are described in an Agreement with the Congregation filed at L-4112, cp 178, dated March 22, 1921 and documents cited therein.

limiting the height of any building on 8 West 70<sup>th</sup> Street to not be taller than the Synagogue building, so as to avoid a violation of Jewish Law.

#### **4. Confusing East and West:**

At page 7 of the Statement the Congregation states:

It is perhaps the most glaring design flaw of the Synagogue. Because according to Jewish Law a synagogue must be designed so worshippers face west when praying toward the altar, the altar is located along the western wall of the Synagogue.

Not only is this an exaggeration, and as can be shown self-imposed, but the writer of the Statement incorrectly describes Jewish Law. Jewish Law provides that when praying facing the Ark, the worshiper must face East (in the Americas) toward Jerusalem. And, indeed, the Ark in the Congregation's Synagogue is in fact on the Eastern wall.

<http://en.wikipedia.org/wiki/Synagogue>.

We will not at this point discuss the convoluted over- the-top self-serving rhetoric associated with this error, but, this error alone establishes the factual disconnects in the Statement's rhetoric.

Nor does the Congregation, in discussing Jewish Law, mention the prohibition of constructing a building taller than a Synagogue, next to a synagogue. This prohibition was well understood by the Trustees of the Congregation when the Synagogue was constructed in 1896-7, imposing a restrictive covenant on 8 West and constructing the low Parsonage to the South on Central Park West.

#### **5. Absence of Factual Predicate for Rhetoric**

The Statement is permeated with repetitive conclusory narratives, replete with 72-21 code words, but absent specific factual predicates. For, example, there are multiple references to elevators resolving accessibility issues, but not even one indication on any of the drawings as to where this elevator (or is there only one) is located and how replacement or creation of a new elevator required construction of the proposed building or relates to the requested variances.

It is requested respectfully that the Applicant prepare a drawing which illustrates the location of the rhetorical exercises in the present and proposed buildings. Conclusory representations by an applicant are not a sufficient basis for findings by the BSA - findings must be supported by facts, and not merely self-serving representations of an applicant. Furthermore, there must be a factual predicate for each of the eight variances.

## 6. Uses of the Parsonage

The Congregation has included the Parsonage as being within the Synagogue site, but, strangely, is silent as to the use of the Parsonage space. It is not clear why certain of the essential programmatic needs of the Synagogue are not being accommodated in this building, such as offices and archives. At the present, or in the recent past, some state that the upper floors have been rented to a third party. DOB records show that in 2003, the Congregation obtained a permit for \$350,00 of interior demolition and construction in the Parsonage. DOB Job No 103500329.

### Conclusion

The BSA should rejecting the application, and requiring the Congregation to submit a new application in conformance with BSA requirements and without these errors and omissions.

The Community Board and the Community must have a complete and accurate Application sufficiently in advance of any Community Board meetings and of course prior to the BSA hearing. The public should not be subjected to a moving target, which could easily be remedied before the beginning of the hearing process. The Zoning Resolution is clear that the Applicant must establish a factual, not rhetorical, basis for each of the five findings for each of the 8 requested variances. It is improper for the Applicant to so confuse the facts with incomplete drawings, missing drawings, misstated facts, and assertions unsupported by facts. Moreover, if one assumes the accuracy of DOB files, the representations of DOB officials, and the dates on the DOB objections, resubmission to DOB is required.

Sincerely,



Alan D. Sugarman

P.S. Supporting Documents are posted at [ProtectWest70Street.org](http://ProtectWest70Street.org).

cc: Office of the Mayor of the City of New York  
Hon. Betsty Gotbaum, Public Advocate of the City of New York  
Hon. Gail Brewer, New York City Council Member  
Hon. Scott Stringer Manhattan Borough President  
Hon. Richard Gottfried State Assembly Member  
Hon. Sheldon J. Fine, Chair Manhattan Community Board 7  
Norman Marcus  
Kate Wood, Executive Director, Landmarks West  
Shelly Friedman, Esq, Friedman & Gotbaum LLP