



Board of Standards and Appeals

40 Rector Street, 9th Floor • New York, NY 10006-1705 • Tel. (212) 788-8500 • Fax (212) 788-8769
Website @ www.nyc.gov/bsa

MEENAKSHI SRINIVASAN

Chair/Commissioner

June 1, 2007

Mr. Alan Sugarman, Esq.
17 West 70th Street, Suite 4
New York, New York 10025

Dear Mr. Sugarman:

This letter is in response to your May 24, 2007 request made under the State Freedom of Information Law ("FOIL"). The date of your last request was April 12, 2007, so the Board searched for records dated between April 12, 2007 and May 24, 2007.

Attached you will find a letter and attachments from the Public Advocate; your faxed correspondence to the Public Advocate; your letter to Roberto Valez, Chief Administrative Law Judge of OATH and his response to your letter; and a letter from Friedman & Gotbaum, LLP to David Rosenberg, Esq.

Based on our review, there are no other documents responsive to our request.

This letter is a final determination of the Board. You have the right to seek review of this determination pursuant to Article 78 of the Civil Law Practice and Rules, and Public Officers Law § 89(4)(b).

Please also be aware that it is the Board's policy to charge 50 cents/page for copies made in response to a FOIL request. Since the attachments total 17 pages, please forward a check or money order to the NYC Board of Standards and Appeals for \$8.50.

Sincerely,



Jeff Mulligan

Executive Director/Records Access Officer



The Public Advocate for the City of New York
Improving Access to City Services

Betsy Gotbaum
Public Advocate

May 9, 2007

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

Re: Mr. Alan Sugarman
17 west 70th Street, Suite 4
New York, NY 10023

Dear Mr. Mulligan:

Public Advocate Betsy Gotbaum received a request for assistance from the aforementioned constituent, regarding his allegation on behalf of himself and his neighbors that your office has not cooperated on the case of BSA 74-07-BZ Congregation Shearith Israel, 6-10 West 70th Street, a/k/a/ 99 Central Park West, Block 1122, Lots 36-37 Manhattan.

Reportedly, your agency representatives met with the applicants without community representatives being invited to attend. Subsequently, a Freedom of Information Law (FOIL) request was submitted for the minutes of that meeting without success. They contend that your agency representatives are not performing their duties according to BSA guidelines, and are having ex-parte meetings with the applicant. They have formally filed a letter of objection, which should also be on file with the NYC Department of Buildings.

Therefore, we are respectfully requesting an investigation of his charges, and a reply to our office with your findings.

Sincerely,

Ralph Perfetto
Ombudsman

cc: Comm. Christopher Santulli, DOB
Mr. Alan Sugarman



FAX COVER SHEET

TO Jeff Mulligan

COMPANY

FAX NUMBER 12127888769

FROM Alan Sugarman

DATE 2007-05-01 19:55:18 GMT

RE Shearith Israel

COVER MESSAGE

This letter details further errors in the Congregation's Application to BSA and requests that the Congregation refile the Application

Alan D. Sugarman
Attorney At Law

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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 70th 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.¹

¹ 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:

8. PROPOSED MAXIMUM BUILDING HEIGHT IN RSB 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.

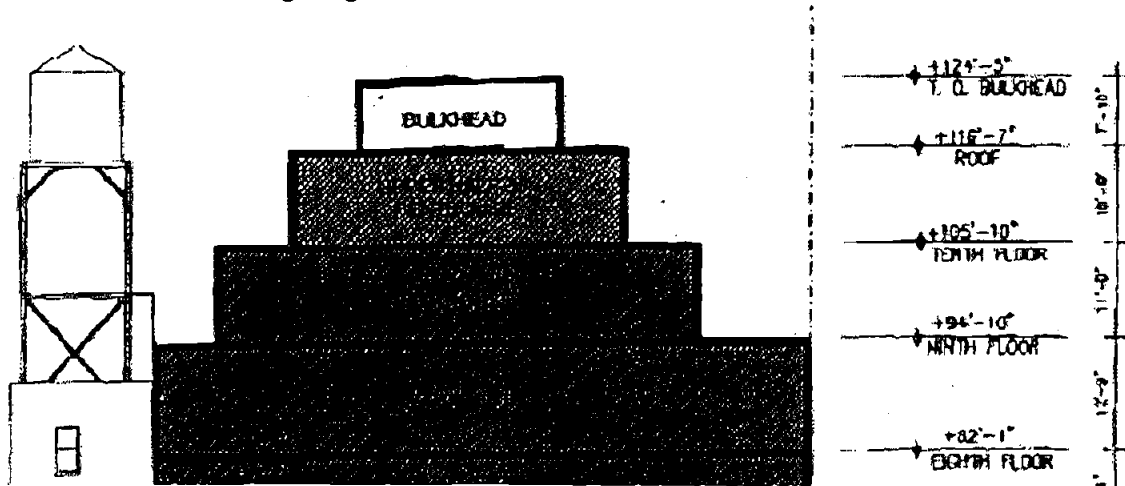


Figure 1 August 15, 2005 Section B 8 stories plus 2 penthouse

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.

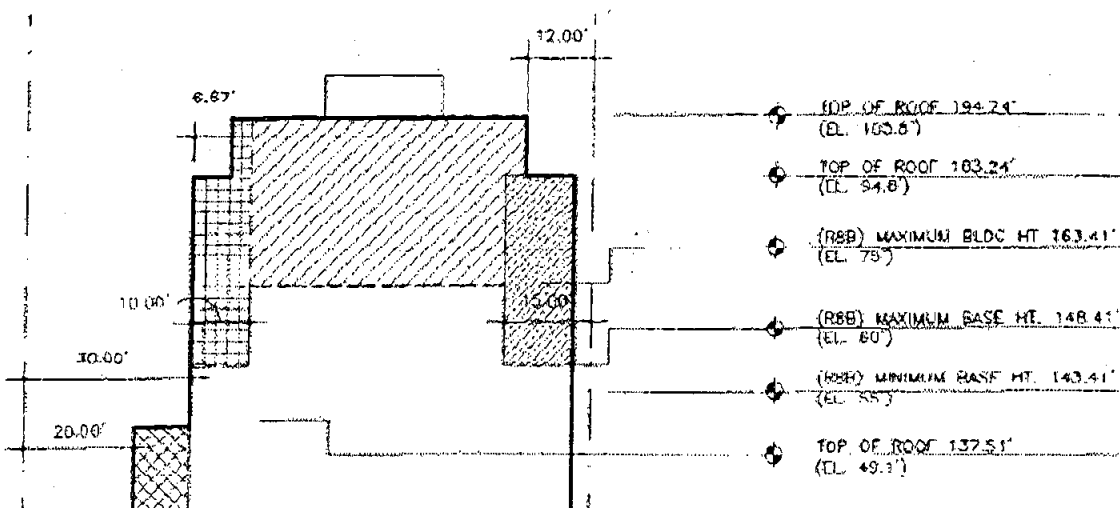


Figure 2 P-4 BSA Application April 2, 2007 8 stories plus 1 penthouse

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 RBE DOES NOT COMPLY. 12.00' PROVIDED INSTEAD OF 15.00' CONTRARY TO SECTION 23-653.

7. PROPOSED REAR SETBACK IN RBE 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 70th 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 70th Street in 1965 and demolished the brownstone in 1970.²

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

² Title acquired under deed dated 52865 in Liber 5327 cp 339.

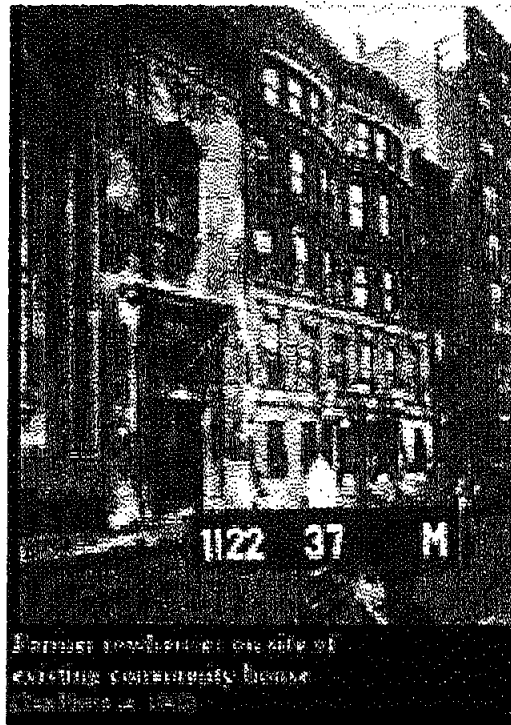
Alan Sugarman to Jeff Mulligan BSA

May 1, 2007

Page 4 of 6

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 1949.³

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



2. Prior Ownership of 8 West 70th 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 70th 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 70th Street

³ 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 70th 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

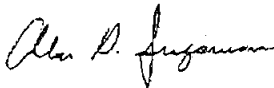
The Congregation has included the Parsonage as being within the Synagogue site, but, strangely, is silent as to the use of the Parsonage space. It is not clear why certain of the essential programmatic needs of the Synagogue are not being accommodated in this building, such as offices and archives. At 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 reject 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.

cc: Office of the Mayor of the City of New York
Hon. Betsy 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

FAX COVER SHEET

TO	Jeff Mulligan
COMPANY	Board of Standards and Appeals
FAX NUMBER	12127888769
FROM	Alan Sugarman
DATE	2007-05-14 16:11:19 GMT
RE	Re Recusal of BSA Commissioners

COVER MESSAGE

Letter of May 14, 2007 to the Honorable Robert Velez,
Chief Judge, Office of Administrative Trials and Hearings,
re request for recusal of BSA Commissioners.

FAX COVER SHEET

TO	Betsy Gotbaum
COMPANY	
FAX NUMBER	12126694701
FROM	Alan Sugarman
DATE	2007-05-14 16:11:19 GMT
RE	Re Recusal of BSA Commissioners

COVER MESSAGE

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Chief Judge, Office of Administrative Trials and Hearings,
re request for recusal of BSA Commissioners.

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May 14, 2007

Fax 212-442-8910

The Honorable Robert Velez
Chief Judge
Office of Administrative Trials and Hearings
City of New York
40 Rector Street
New York, NY 10006

Re: BSA 74-07-BZ
Congregation Shearith Israel
Recusal Request

Dear Judge Velez:

I am enclosing a letter dated April 10, 2007 to Commissioners Meenakshi Srinivasan and Christopher Collins of the Board of Standards and Appeals ("BSA") asking that they recuse themselves from further involvement in the variance application for the community house/condominium project filed by Congregation Shearith Israel, BSA 74-0-BZ.

The basis for that request is the ex parte meeting held by these Commissioners with the variance applicant on November 8, 2006, as compounded by the failure of BSA to invite known community groups opposing the project to the meeting, the failure of BSA to record or otherwise transcribe the meeting, and the refusal of BSA to disclose notes taken at such meeting.

Since my letter of April 10, 2007, the Executive Director of the Board advised me that the recusal request would not be considered until the first BSA hearing. A hearing has yet to be scheduled. In the meantime, the BSA has decided to stonewall proper Freedom of Information Law requests and refuses to provide documents of any type whatsoever concerning its communications with the applicant. This correspondence may be found on the web site I established for these documents:

<http://www.protectwest70.org/topic-pages/BSA-DOB-FOIL.html>.

The ongoing stonewalling suggest the intention of the Commissioners to not recuse themselves – moreover, the communications with the Applicant are themselves ex parte, in that the BSA keeps no public records of the communication. Accordingly, I will be

Alan Sugarman to Office of Administrative Trials and Hearings
May 14, 2007
Page 2 of 2

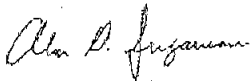
initiating litigation within the next few days. Because the BSA is a part of the Office of Administrative Trials and Hearings, I will also be naming your Office as a defendant.

The Office of Administrative Trials and Hearings of the City of New York has functioned since 1979 as a central tribunal with the authority to conduct administrative hearings for any agency, board or commission of the city. OATH was established by Executive Order No. 32 in 1979, to professionalize the administrative hearing system serving city government. To secure this objective, OATH was meant to function as an independent agency of government so that its judges would not be unduly influenced by the prosecutor or petitioning agency. As stated by OATH, administrative adjudication is a "quasi-judicial" process: that is, a judicial function conducted within the executive branch of government. Variance proceedings consistently have been held to be quasi judicial proceedings. Full administrative due process takes the form of a trial or hearing in which an administrative law judge serves as the trier of fact. And, similar to the role of the courts, independent administrative tribunals like OATH serve as a protective barrier to unwarranted or improvident executive action.

The position of the BSA as to ex parte meetings is improper; moreover, its claims of attorney client privilege to avoid disclosure of the content of communications with applicants in the quasi-judicial proceeding is abusive and improper and further creates ex parte communications.

Please have your office contact me immediately if you believe that this matter can be resolved without initiating a court action.

Sincerely,



Alan D. Sugarman

cc: The Honorable Meenakshi Srinivasan
The Honorable Christopher Collins
Office of the Mayor of the City of New York
Hon. Betsy 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. Patricia J. Lancaster, Department of Buildings
Hon. Robert B. Tierney, Landmarks Preservation Commission
Hon. Sheldon J. Fine, Chair Manhattan Community Board 7
Norman Marcus
Kate Wood, Executive Director, Landmarks West
Shelly Friedman, Esq., Friedman & Gotbaum LLP

FAX COVER SHEET

TO	Betsy Gotbaum
COMPANY	
FAX NUMBER	12126694701
FROM	Alan Sugarman
DATE	2007-04-26 14:44:46 GMT
RE	Incomplete Shearith Israel BSA Application

COVER MESSAGE

This letter to BSA, among other things, describes the fact that the DOB objection letter which is the basis of the BSA filing is dated over 30 days prior to the BSA application, and indeed over one year prior to the BSA application, and, under BSA rules must be rejected.

Moreover, it is interesting that the DOB objection letter is dated prior to three LPC hearings, as to which a different building was described.

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April 26, 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 70th Street.

Later that day, the Congregation provided studies relating to the impact of the proposed building on shadows in Central Park. Those studies miss the point of the issue described in my letter and of concern to the community, which was the absence of shadow studies showing the impact of the proposed building versus an as of right building on the surrounding buildings. Thus, these deficiencies remain.

After further review of the application, I am writing this letter to describe further material non-compliance by the Congregation of requirements established in the BSA "Detailed Instructions for Completing BZ Application." I note again that the Congregation and its counsel, architects, and consultants are highly sophisticated and should be expected to comply with the requirement. If this applicant is not able to comply, one wonders why the instructions even exist.

The responses to my FOIL request (updated as of April 25, 2007) reveal that the BSA has not provided to the Congregation any waivers of the requirements of the Instruction - in fact, the BSA FOIL responses show that there have been no communications between BSA and the Congregation since the application was filed, except for the submission of the shadow studies letter.

1. DOB Objections - Stale and Must be Issued Again

¹ http://www.nyc.gov/html/bsa/downloads/pdf/forms_bz_instructions.pdf

Alan Sugarman to The Honorable Meenakshi
 April 26, 2007
 Page 2 of 5

The DOB objections filed by the Congregation with its application were issued by the DOB on October 28, 2005, and then stamped "Denied" by the Borough Commissioner on March 27, 2007, nearly 17 months later. The Instructions are clear that the Application must be rejected under these circumstances. Item F of the Instructions states that if the DOB objection is more than 30 days old, it is to be rejected.

IF THE DATE OF THE OBJECTION STAMPED "DENIED" IS MORE THAN 30 DAYS OLD, YOU MUST RETURN TO THE BUILDINGS DEPARTMENT OR THE DEPARTMENT OF SMALL BUSINESS SERVICES TO OBTAIN AN UPDATED OBJECTION AND DENIAL

This is hardly a minor issue in this case. The LPC records show that the date of the objection letter, October 28, 2005 was prior to the November 15, 2005 hearings at which a different proposal by the Congregation was considered. The proposal was rejected, another meeting/hearing by LPC held on January 17, 2006, and a further meeting/hearing held by LPC on March 14, 2006. The proposed building presented by the Congregation in this BSA application is different from the proposed building at the November 15, 2005 LPC hearing. Something appears to not be regular – but, it is clear that the DOB objections are completely outdated.

In addition, the Form BZ itself is inaccurate, and misstates the date of the DOB Decision:

Section C Department of Buildings Decision	PER AUTHORIZING ACTIONS: Z.R. § 72-21	DATE: <input checked="" type="checkbox"/> VARIANCE <input type="checkbox"/> SPECIAL PERMIT (including 22-61)
	SETBACK OF ZONING RESOLUTION SOUGHT TO BE VÁLID	Z.R. §§ 24-1177-24-23-633, 23-663
	DOB DECISION (OBJECTION / DENIAL) DATED: March 27, 2007	23-511, 24-51, 24-36
	ACTING ON APPLICATION NO. NB-104250431	

Thus, the Congregation attempted to obfuscate this inconvenient fact.²

2. Statement of Findings – Item H

The Applicant is required to provide a statement of findings which "must explain how the required findings are met." The Congregation here is applying for 8 separate variances and each of the five findings must be met for each variance, thus requiring 40 different findings. What the Congregation submitted was a mush-mash discussion where it merged together the discussion, without connecting each requested variance to each required finding. Moreover, none of the variances in any way seem to be related to the asserted physical conditions on the site – NONE.

² Another irregularity by a city agency was disclosed in the latest April 23, 2007 letter from the Congregation, which shows that on March 21, 2007, the Landmarks Preservation Commission issued a Certificate of Appropriateness, one year after the meeting/hearing where this was approved, the LPC having stated that it only issues a COA after action by BSA. Apparently, this was a highly irregular action by LPC, based on its own statements. See http://www.protectwest70.org/2006-corresp-docs/2006-04-11-Letter-LPC_To_Sugarman_Re_March_Meeting.pdf

Alan Sugarman to The Honorable Meenakshi
April 26, 2007
Page 3 of 5

3. Plans--Adjoining Conditions. Item J

The Instructions are clear that a plan of adjoining conditions are to be provided -- by failing to describe the adjoining conditions in the adjacent east face of 18 West 70th Street, the Congregation failed in a material way to comply with the Instructions.

4. Sections-- Item J

Item J of the instructions require floor plans and sections which must "indicate floor to ceiling height" among other things. The Congregation has asserted that the physical condition justifying the variances (some or all?) related to circulation and accessibility issues, and, so this is a highly material issue in this application. However, the Congregation failed to provide sections of the building, making it impossible to ascertain either the asserted physical condition, or the way in which the proposed building and variances resolve those conditions. The physical conditions are not shown anywhere on the drawings.

5. Permitted (As of Right) Drawings and Conditions

The Instructions require the drawings to show permitted conditions, but the drawings submitted by the Congregation fail to show the impact of all of the 8 variances. For example, the eighth variance request relates to a 40 foot separation between buildings. This is not reflected in the as of right building drawings. Moreover, other variances, including the fourth and seventh variances, are not shown on any of the drawings in a way that provides an understanding of that which is being requested.

6. Photographs -- Item L

The Instructions require that photographs be provided showing the conditions of the side and rear of the lot. As noted in my prior letter, no photographs were provided of 18 West's east façade. This is a material omission. I cannot provide these photographs without entering the Congregation property.

7. Financial Feasibility Study -- Item M

The financial feasibility study provided by the Congregation does not conform to the requirements of the Instructions, Item M:

The financial submission should illustrate the hardship caused by the claimed unique physical conditions present at the site. Financial relief is requested by the Board to explain why a reasonable return on the property is not possible and to demonstrate, in part, why the variance proposed is the minimum variance necessary to provide relief to the property owner.

Alan Sugarman to The Honorable Meenakshi
April 26, 2007
Page 4 of 5

The financial study fails to connect its rate of return analysis to any "physical condition present at the site", and, moreover, groups together all of the requested variances in a way that does not connect the analysis to the site or the requested variances. Nor does the study address the other factors.

The financial submission apparently is provided from the point of view of a hypothetical developer, but the applicant here is not a developer. The analysis is in no way an analysis of the rate of return for or impact upon the Congregation - and, indeed, the financial impact on the Congregation is completely ignored in the study. It ignores, for example, rental revenues anticipated by the Congregation. Since the Congregation intends to rent its school space and perhaps banquet space, it also failed in this analysis to provide rental information required under M-4. It also ignored other financial resources available to the Congregation.

The financial study does not meet this requirement as well:

3. The economic hardship that arises from the unique physical conditions must be quantified and the cost to remedy such hardship should be given in dollar figures.

The construction cost estimate was not signed by the person providing the estimate as required by Item M-6. This is important, because there seems to be a disconnect in that there are issues of allocation of costs and, according to the study, not all costs were provided in the study.

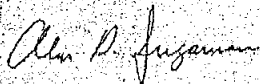
In the end, the report fails to explain how an unremarkable 6000 square foot rectangular lot valued in the report at \$19 million has some type of physical condition that is in any way related to the rate of return analysis or to any need for a variance.

8. Item N - Certificate of Occupancy.

The Certificate of Occupancy provided shows that the property, as used currently, is in violation of the Certificate of Occupancy.

Clearly, the Congregation should prepare all the required elements of its proposal, obtain the DOB letter in a regular fashion, then file a complete application, and then, and only then, should the 60 day period for community review be started.

Sincerely,



Alan D. Sugarman

P.S. Supporting Documents are posted at ProtectWest70Street.org.

Alan Sugarman to The Honorable Meenakshi
April 26, 2007
Page 5 of 5

cc: Office of the Mayor of the City of New York
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Hon. Gail Brewer, New York City Council Member
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Hon. Richard Gottfried State Assembly Member
Hon. Sheldon J. Fine, Chair Manhattan Community Board 7
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Shelly Friedman, Esq, Friedman & Gotbaum LLP

FAX COVER SHEET

TO Betsy Gotbaum

COMPANY

FAX NUMBER 12126694701

FROM Alan Sugarman

DATE 2007-05-01 19:55:19 GMT

RE Shearith Israel

COVER MESSAGE

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RECEIVED
2007 APR 31 PM 4:27
THE PUBLIC ADVOCATE OFFICE

Alan D. Sugarman
Attorney At Law

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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

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Congregation Shearith Israel
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Block 1122 Lots 36, 37 - Manhattan

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¹ 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.

Alan Sugarman to Jeff Mulligan BSA
May 1, 2007
Page 2 of 6

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The October 28, 2005 DOB objections state:

5. PROPOSED MAXIMUM BUILDING HEIGHT IN RRB ZONE NOT COMPLY. 113.70' PROVIDED INSTEAD OF 100' PERMITS TO SECTION 23-653.

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

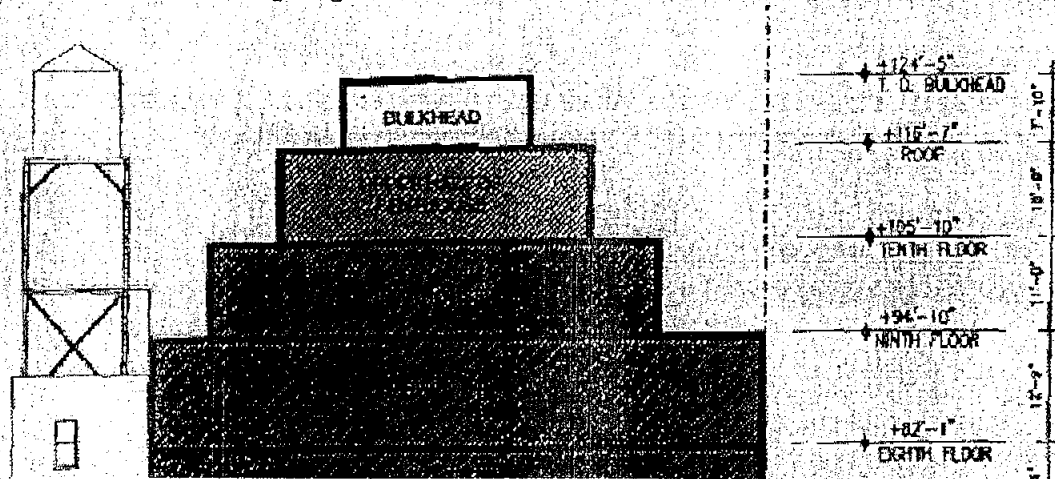


Figure 1 August 15, 2005 Section B. 8 stories plus 2 penthouse.

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.

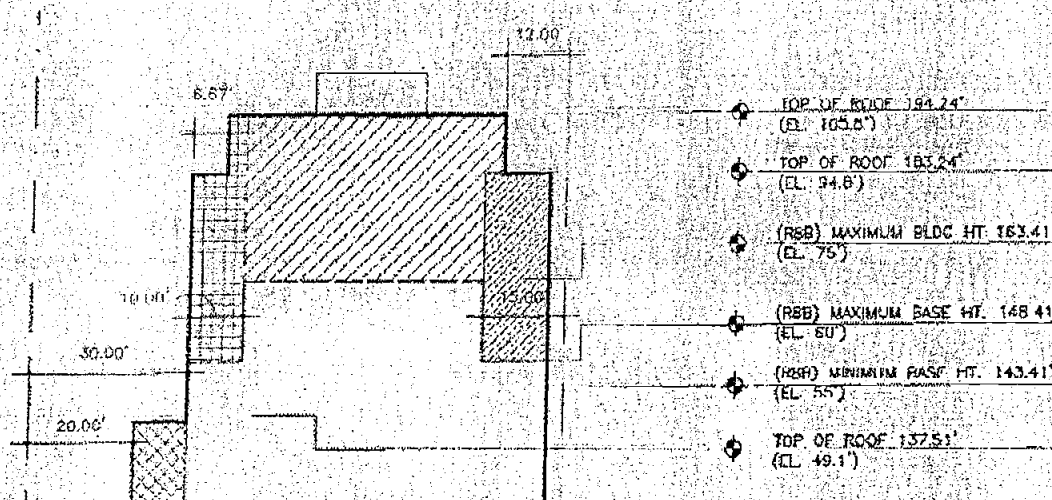


Figure 2 P-4 BSA Application April 2, 2007. 8 stories plus 1 penthouse

Alan Sugarman to Jeff Mulligan BSA
May 1, 2007
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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 RBS DOES NOT COMPLY 12.00' PROVIDED INSTEAD OF 15.00'
CONTRACT 13 SECTION 23-653

7. PROPOSED REAR SETBACK IN RBS DOES NOT COMPLY 6.67' PROVIDED INSTEAD OF 10.00'
CONTRACT 13 SECTION 23-653

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 70th 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 70th Street in 1965 and demolished the brownstone in 1970.²

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

² Title acquired under deed dated 52865 in Liber 5327 cp 339

Alan Sugarman to Jeff Mulligan BSA
May 1, 2007
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owned by CSI, presumably numbered Nos. 16 and 14 West 70th Street, were demolished in 1950³ is totally inaccurate, and serves to perpetuate the mistaken claim that the Congregation owned 12 West prior to 1949.³

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



2. Prior Ownership of 8 West 70th 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 70th 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 70th Street

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

Alan Sugarman to Jeff Mulligan BSA
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limiting the height of any building on 8 West 70th 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.

Alan Sugarman to Jeff Mulligan BSA

May 1, 2007

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6. Uses of the Parsonage

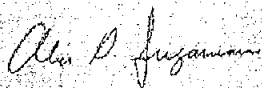
The Congregation has included the Parsonage as being within the Synagogue site, but, strangely, is silent as to the use of the Parsonage space. It is not clear why certain of the essential programmatic needs of the Synagogue are not being accommodated in this building, such as offices and archives. At 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 reject 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.

cc: Office of the Mayor of the City of New York
Hon. Betsy 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

Office of the Public Advocate for the City of New York
Betsy Gotbaum



1 Centre Street, 15th floor, North, New York, NY 10007
(212) 669-7200 phone (212) 669-4701 fax
www.pubadvocate.nyc.gov



FACSIMILE TRANSMISSION

To:	MR. MULLIGAN	From:	RALPH PERFETTO
Fax:	212-788-8807	Pages:	
Phone:		Date:	5/18/07
Re:		CC:	

As Requested ☒

For Review ☐

Please Comment ☐

URGENT ☐

FAX DID NOT GO THROUGH

Confidentiality Notice: This facsimile communication and any attachments may contain confidential and privileged information for the use of the designated recipients named above. If you are not the intended recipient, you are hereby notified that you have received this communication in error and that any review, disclosure, dissemination, distribution or copying of it or its contents is prohibited. If you have received this communication in error, please contact above number immediately. Thank you.



The Public Advocate for the City of New York

Betsy Gotbaum
Public Advocate

May 3, 2007

Alan Sugarman
17 West 70th Suite 4
New York, NY 10023

Case #: 22593

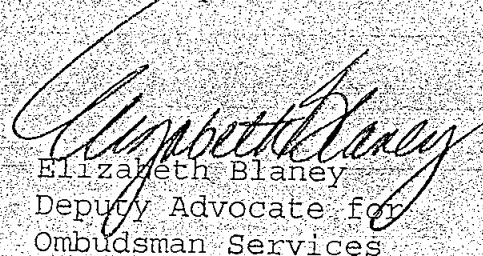
Dear Mr. Sugarman:

Public Advocate Betsy Gotbaum has asked me to acknowledge receipt of your recent letter. We are currently investigating your inquiry and will write you as soon as our review is complete. Your letter has been assigned to Ralph Perfetto who will be in contact with you directly. In the interim you may call Mr. Perfetto at 212-669-4092.

As you know, Betsy Gotbaum has pledged to be a watchdog over city government and is committed to working in partnership with all levels of government and others to improve the delivery of city services in every neighborhood. We hope you will continue to forward your concerns and ideas to our office.

Thank you for writing to the Public Advocate.

Sincerely,


Elizabeth Blaney
Deputy Advocate for
Ombudsman Services





The Public Advocate for the City of New York

Improving Access to City Services

Betsy Gotbaum
Public Advocate

May 9, 2007

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

Re: Mr. Alan Sugarman
17 west 70th Street, Suite 4
New York, NY 10023

Dear Mr. Mulligan:

Public Advocate Betsy Gotbaum received a request for assistance from the aforementioned constituent, regarding his allegation on behalf of himself and his neighbors that your office has not cooperated on the case of BSA 74-07-BZ Congregation Shearith Israel, 6-10 West 70th Street, a/k/a/ 99 Central Park West, Block 1122, Lots 36-37 Manhattan.

Reportedly, your agency representatives met with the applicants without community representatives being invited to attend. Subsequently, a Freedom of Information Law (FOIL) request was submitted for the minutes of that meeting without success. They contend that your agency representatives are not performing their duties according to BSA guidelines, and are having ex-parte meetings with the applicant. They have formally filed a letter of objection, which should also be on file with the NYC Department of Buildings.

Therefore, we are respectfully requesting an investigation of his charges, and a reply to our office with your findings.

Sincerely,

Ralph Perfetto
Ombudsman

cc: Comm. Christopher Santulli, DOB
Mr. Alan Sugarman



THE CITY OF NEW YORK
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

40 RECTOR STREET • NEW YORK, N. Y. 10006-1705
212-442-4900 FAX 212-442-4981 TDD 212-442-4939
NYC.GOV/OATH • RVELEZ@OATH.NYC.GOV

ROBERTO VELEZ
CHIEF ADMINISTRATIVE LAW JUDGE
212-442-4911

May 16, 2007

Alan D. Sugarman, Esq.
17 West 70th Street – Suite 4
New York, NY 10023

Re: Recusal Request

Dear Mr. Sugarman,

This is in response to your letter dated May 14, 2007, concerning procedures followed by the Board of Standards and Appeals in processing a variance application. You ask whether I can address your concerns without the need for litigation because the Board is part of this tribunal.

Although section 659 of the City the Charter establishes BSA within OATH, the Charter clearly states that BSA is an independent body. As such, I exercise no oversight authority with respect to the Board's processing of variance applications or its variance procedures.

Sincerely,

Roberto Velez

c: Hon. Meenakshi Srinivasan
Hon. Christopher Collins

Jeffrey Mulligan

From: Kate Wood [katewood@landmarkwest.org]
Sent: Monday, April 30, 2007 6:13 PM
To: Jeffrey Mulligan
Subject: Congregation Shearith Israel

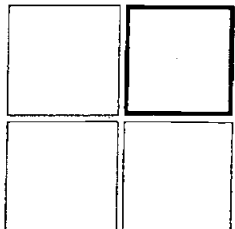
Dear Jeff:

I heard from the applicant that Congregation Shearith Israel will not present its proposal to Community Board 7 until June. Since they submitted their application to BSA on April 2, I had thought that CB7 only had until June 1 (60 days) to vote on the application. Has another arrangement been made?

Thanks,
Kate

Kate Wood
Executive Director
Landmark West!
45 West 67th Street
New York, NY 10023
Phone: 212-496-8110
Fax: 212-875-0209
katewood@landmarkwest.org
www.landmarkwest.org

5/10/2007



FRIEDMAN & GOTBAUM LLP

568 BROADWAY SUITE 505
NEW YORK NEW YORK 10012
TEL 212.925.4545
FAX 212.925.5199
ZONING@FRIGOT.COM

May 21, 2007

BY HAND AND TELEFAX 212-755-8713

David Rosenberg, Esq.
Marcus Rosenberg & Diamond, LLP
488 Madison Avenue
New York, NY 10022

Re: 74-07-BZ
Congregation Shearith Israel
Block 1122 Lots 36 & 37
Manhattan

Dear Mr. Rosenberg:

This letter responds to your letter dated May 9, 2007 on behalf of your clients "Landmark West and various Upper West Side residents" conveying a number of requests with regard to documents relating to the subject Variance application, which proposes replacement of Congregation Shearith Israel's ("CSI's") current community house with a new community house and four floors of condominium units.

First permit me to say that CSI's Trustees wholeheartedly support the Department of Building's ("DOB's") policy of requiring an owner's consent prior to the release of sensitive structural information regarding synagogues and other similar sacred and public sites. If it is the combined and apparently uniform opinion of Mayor Bloomberg's Administration and federal agencies that sensitive construction and structural information should not be disseminated to the general public, the Trustees would consider it imprudent to disregard that opinion. Accordingly, the Trustees will not provide their wholesale consent to the release of such material to Landmark West! and certainly not to "various" unnamed persons but will take such requests under consideration on a case-by-case and need-to-know basis.

In light of the above, the responses to your specific requests are as follows:

On page two of your letter you state:

[I]t would be unfair to force our clients – and the members of Community Board 7 – to attempt to respond to your Application without having access to the documents filed with and produced by DOB. Under the circumstances, this is to

request that you immediately provide CSI's written authorization for my firm to access and obtain copies of all records relating to the Property and the New Building in DOB's possession, custody or control.

With all due respect, the Community Board and others in the community received full copies of the application and therefore have all the documents necessary to inform themselves and others of the contents of the application under consideration. Accordingly, the Trustees are not prepared to act on your omnibus request. Moreover, you have not indicated what documents you believe DOB is holding or has produced and for what purpose and by whom they are going to be reviewed. Please identify the documents or types of documents you believe are in "DOB's possession, custody or control." Access to documents is also a much different issue than dissemination of copies. There is a strong predisposition due to security concerns against providing consents for any copies whatsoever, so it would be helpful to understand why whatever materials you are seeking need to be released and disseminated as opposed to reviewed *in situ*. Finally, please provide the names and addresses of the individuals who would review any shared documents. Confidentiality agreements with named individuals appropriate to the obvious security concerns will be required.

On page two of your letter you state:

The only DOB documents we have seen indicate that plans and applications for the New Building were filed on October 7, 2005, objections were issued by the DOB on on [sic] October 28, 205 [sic] and the application was disapproved on November 10, 2005. Then, on March 28, 2007, CSI apparently obtained a DOB stamp which sated [sic]: "Denied for appeal to the Board of Standards and Appeal" and indicated that it had been signed by the Borough Commissioner.

Since it had not been possible to obtain the New Building filings from DOB and since I also have been advised that they are not obtainable from the BSA, this is to request that you immediately provide me full and complete copies, including evidence of filing and objections issued.

The materials requested have already been provided to your client. Consistent with a commitment I made to Landmark West! over a year ago, I provided Kate Wood with a complete set of our application on April 3, 2007, the day after it was filed at the BSA. The application includes copies of the complete set of plans filed at DOB and the Objections Sheet issued with regard thereto.

There is certainly no procedural mystery regarding these filings. It is common knowledge that the Landmarks Commission requires an Objections Sheet in connection with a review of an application for which its form of application indicates the project will require land use discretionary approvals. This accounts for the 2005 Objections Sheet, which remains in the Landmarks Commission's publicly accessible files. For BSA purposes, an Objections Sheet must be dated within thirty (30) days of the submission of an application, thus accounting for the more recent Objections Sheet. The subsequent Objections Sheet was also required because the New Building approved by the Landmarks Commission was smaller and shorter than the building associated with the earlier Objections Sheet.

On page three of your letter you state:

It is also my understanding that DOB's rules require that a request for a reconsideration be filed in order to obtain a determination by the Borough Commissioner. Under the circumstances, I request a copy of the submission by CSI to obtain the denial and the dates of any meetings held, with the identity of the participants, in connection therewith.

Once again, the "submission by CSI to obtain the denial" is already in your client's possession, being the plans and the Objections Sheet included in the application and provided to Kate Wood on April 3, 2007. A copy of the Objections Sheet is once again enclosed. Complete disclosure on this point having already been provided, I see no relevance between the stated purpose of your letter and the further submission to you of names and dates of meetings.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shelly S. Friedman", with a long horizontal flourish extending to the right.

Shelly S. Friedman

Enclosure

cc: Hon. Scott Stringer
Hon. Betsy Gotbaum
Hon. Richard Gottfried
Hon. Jeff Mulligan
Hon. Sheldon Fine
Kate Wood
Norman Marcus, Esq.
Rabbi Marc Angel
Peter Neustadter
David Nathan, Esq.

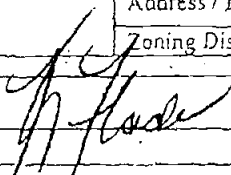


THE CITY OF NEW YORK
DEPARTMENT OF BUILDINGS

http://www.nyc.gov/buildings

X
MANHATTAN (1) 280 BROADWAY 3RD FLOOR New York, NY 10007
BRONX (2) 1932 ARTHUR AVENUE BRONX, NY 10457
BROOKLYN (3) 210 JORGELOMON STREET BROOKLYN, NY 11201
QUEENS (4) 120-55 QUEENS BLVD. QUEENS, NY 11424
STATEN ISLAND (5) BORO HALL - ST. GEORGE STATEN ISLAND, NY 10301

DOB Application # 104250481	Examiner: Application Type: XXX NB Address / Location: 10 West 70th Street Zoning District: R8B; R10A	Date: 10/28/05 Doc(s): Block: 1122 Lot: 37
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Examiners Signature: 

To discuss and resolve these objections, please call 311 to schedule an appointment with the Plan Examiner listed above. You will need the application number and document number found at the top of this objection sheet. To make the best possible use of the plan examiner's and your time, please make sure you are prepared to discuss and resolve these objections before your scheduled plan exam appointment.

Obj. #	Doc #	Section of Zoning/ Code	Objections	Date Resolved	Comments

REQUIRED ACTIONS BY THE BOARD OF STANDARDS & APPEALS

1. PROPOSED LOT COVERAGE FOR THE INTERIOR PORTIONS OF R8B & R10A EXCEEDS THE MAXIMUM ALLOWED. THIS IS CONTRARY TO SECTION 24-11/77-24. PROPOSED INTERIOR PORTION LOT COVERAGE IS .80.
2. PROPOSED REAR YARD IN R8B DOES NOT COMPLY. 20.00' PROVIDED INSTEAD OF 30.00' CONTRARY TO SECTION 24-36.
3. PROPOSED REAR YARD IN R10A INTERIOR PORTION DOES NOT COMPLY. 20.00' PROVIDED INSTEAD OF 30.00' CONTRARY TO SECTION 24-36.
4. PROPOSED INITIAL SETBACK IN R8B DOES NOT COMPLY. 12.00' PROVIDED INSTEAD OF 15.00' CONTRARY TO SECTION 23-633.
5. PROPOSED BASE HEIGHT IN R8B DOES NOT COMPLY. 94.80' PROVIDED INSTEAD OF 60.00' CONTRARY TO SECTION 23-633.
6. PROPOSED MAXIMUM BUILDING HEIGHT IN R8B DOES NOT COMPLY. 113.70' PROVIDED INSTEAD OF 75.00' 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.
8. PROPOSED SEPARATION BETWEEN BUILDINGS IN R10A DOES NOT COMPLY. 0.00' PROVIDED INSTEAD OF 40.00' CONTRARY TO SECTION 24-67 AND 23-711.

DENIED
FOR APPEAL TO BOARD OF
STANDARDS AND APPEALS

MAR 27 2007

BORO COMMISSIONER

C.