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**JUNE 28, 2007**

**TO: KATE WOOD**  
**FROM: SIMON BERTRANG**  
**RE: CONGREGATION SHEARITH ISRAEL BSA APPLICATION**

I have reviewed the April 2, 2007 BSA application, with supporting drawings, from Congregation Shearith Israel (CSI) as well as the BSA's response: their June 15, 2007 Notice of Objections.

**SUMMARY**

1. CSI submitted a stamped DOB objection sheet that clearly refers to a different set of drawings than the ones submitted to BSA – they will need to resubmit the new set of drawings to DOB, obtain a new objection sheet and then resubmit the drawing set with a corrected P-1 to BSA.
2. The fact that the CSI application calls the 9th floor of its Proposed Scheme a “penthouse” has no material effect on the application – it is a 9-story building, not an 8-story building with penthouse, and should be referred to as such.
3. CSI's claim that Lots 36 and 37 constitute a single zoning lot is central to its argument for both “unique physical conditions” on its property – a prerequisite of any BSA variance – and its use of ZR#77-20 to allow for a greater FAR (8.36 instead of 5.59) on Lot 37. BSA has asked for proof of common ownership before the contextual rezoning in 1984 in order to verify that the two lots can be treated as a single zoning lot.
4. CSI confused the required Rear Yard with the required Rear Setback above the Maximum Base Height – BSA has asked them to correct their error.
5. CSI has exaggerated the non-compliance of the synagogue building – only 7.4% of Lot 36 has a non-compliant Rear Yard and Lot Coverage (25' and 75% respectively) – in order to bolster its “unique physical conditions” argument and to imply that the existing lot coverage and rear yard non-compliance requires an extension of these non-compliances to Lot 37.
6. CSI's As-of-Right Drawings should have shown either the 40' minimum distance between the new residential building and the existing synagogue or shown a new building that did not include the condominium – they have instead shown a Lesser Variance option. Since As-of-Right Drawings are a required part of their application for a BSA variance, CSI will need to submit an actual As-of-Right scenario.
7. The third finding required for a BSA variance deals with the effects on neighboring properties and CSI needs to show more clearly the lot-line windows that will be blocked by the Proposed Building and areas and buildings on West 70th Street that will be cast in shadow.
8. BSA has asked CSI to explore several lesser variance alternatives – a version that does not include the tenant school and that follows the envelope controls of R8B and a version that only allows FAR 4.0 development on the R8B portion of the lot. The fifth finding required by BSA is that the variance sought is the minimum necessary - BSA is asking CSI to prove the Proposed Drawings reflect such a minimum variance.

Detailed comments follow:

**DOB OBJECTIONS:** The drawings submitted by CSI in support of their variance application are a different set than the ones referred to in the DOB Objections sheet. Although the Manhattan Borough Commissioner stamped the drawings on March 27, 2007 as “Denied for Appeal to Board of Standards and Appeals” - thereby fulfilling the BSA requirement that a recent DOB objection sheet be submitted, CSI’s attorneys have made an administrative error. BSA requires any application for a variance include the DOB Objections that refer to the same set of drawings as the ones submitted to BSA. DOB Objection 6 (Proposed Maximum Building Height in R8B does not comply. 113.70’ provided instead of 75.00’ contrary to Section 23-633) refers to the incorrect height. The height of the buildings in the Proposed Scheme submitted to BSA is 105.80’ not 113.70’. CSI must resubmit the current drawings to DOB for a new up-to-date objection sheet. The DOB objections are all the same except for the maximum building height (and the variance is still required) so CSI’s attorneys probably hoped they could slip this past BSA - Objection 34 on BSA’s June 15, 2007 Notice of Objections makes clear BSA has noticed the discrepancy as well.

**PENTHOUSE:** The fact that the CSI application calls the 9th floor of its Proposed Scheme a “penthouse” has no material effect on the application. For the purposes of the Zoning Resolution and the Building Code it is a real 9th floor and it is counted in the total building height. New York City Building Code clearly states in 27-306 that appurtenant structures like roof tanks, bulkheads, four foot parapet walls and penthouses do not count towards height limits “unless the aggregate area of such structures exceeds thirty-three and one-third percent of the area of the roof.” The proposed 9th floor is well above 1/3 of the total roof area and therefore counts towards the maximum building height. Commissioner Gratz of the Landmarks Preservation Commission pointed out this same misstatement of the number of stories in her March 14, 2006 statement in opposition to the proposed building. Since there is no actual benefit to incorrectly identifying the top story as a penthouse, I think the only advantage is in perception: CSI can refer to an 8-story building instead of a 9-story building in its Landmarks and BSA applications and at the Community Board.

**SINGLE ZONING LOT:** The definition of a zoning lot in ZR#12-00 allows “a tract of land consisting of two or more contiguous lots of record, located within a single block, which, on December 15, 1961 or any applicable subsequent amendment thereto, was in single ownership” to be treated as a single zoning lot. If both these lots were owned by CSI in 1961 or at the time of any subsequent rezoning - for example the 1984 contextual rezoning of this area of the Upper West Side - they appear to have the right to treat the two lots (#36 and 37) as one. The purpose of CSI treating it as one zoning lot is twofold. First and foremost it allows the transfer of floor area across the entire expanded zoning lot – allowing an FAR of 8.36 on Lot 37 instead of an FAR of 5.59 that would be allowed if both lots were treated separately. Second, it is CSI’s attempt to satisfy BSA required Finding A (unique physical condition creating a hardship) as otherwise there is nothing unique about Lot 37 that would merit a variance. CSI can point to “the presence of a unique, non-complying, specialized building of significant cultural and religious importance occupying two-thirds of the footprint of the zoning lot” which sounds much better than saying that they intend to develop a “64’ wide by 100.5’ deep interior lot” adjacent to their existing synagogue. Treated individually, Lot 37 is an excellent development site. BSA has asked for evidence of common fee ownership prior to the last rezoning in Objection 15.

**REAR YARD:** Any Residential district requires a 30’ Rear Yard (except within 100’ of a corner and with some exceptions for through lots). DOB Objections 2 and 3 note that the proposed building has a 20’ Rear Yard instead of the required 30’. Please note that a Community Facility Use like the ones proposed for the first floor on the rear of CSI’s lot 37 are a Permitted Obstruction to a Required Rear Yard as long as they are only 1-story and a maximum of 23’ tall (see ZR#24-33(b)). The CSI Proposed building includes such a permitted obstruction (i.e. at ground level the building fills the entire lot because the 1-story, 23’ tall synagogue use in the back is a permitted obstruction

to the Rear Yard). However, they violate the required Rear Yard by expanding Floors 2, 3 and 4 to within 20' of the Rear Lot Line - hence DOB Objections 2 and 3 and their need for a BSA Variance for their proposed scheme.

**REAR SETBACK:** CSI has confused the required Rear Yard with the required Rear Setback above the Maximum Base Height. They need a BSA variance to address DOB Objection 7 which states that "Proposed rear setback in R8B does not comply. 6.67' provided instead of 10.00' contrary to Section 23-663." In their response to this objection in their BSA application (page 23), CSI states that "because the ground floor of the New Building is built fill to the rear property line, an objection was issued." This is absolutely wrong. An objection was issued because ZR#23-663 states that above the maximum base height, a building must provide a rear setback of 10' from the rear yard line (which is itself 30' from the rear lot line). Therefore the CSI building should have provided a 10' setback above 60' - instead they provide a 6.67' setback at 94.8' (Section 1 on Drawing P-3 clearly shows the non-complying setback above base in the rear of the building). The architects understood the objection, but for whatever reason, the attorneys did not. BSA identified this error in their Notice of Objections (#16-19) and has asked CSI to correct their submission.

**EXISTING NON-COMPLIANCE:** CSI's reference to the non-complying nature of the existing synagogue is an exaggeration. It is true that the rear yard requirement and lot coverage of the interior lot portion of Lot 36 is not met, but what this means is that 8' out of the 108' lot depth has a 25' rear yard instead of a 30' rear yard and 75% lot coverage instead of 70% lot coverage... or to put it another way, 7.4% of the lot has a non-compliant rear yard and lot coverage, hardly a major non-compliance. CSI uses this non-compliance to bolster its "unique physical conditions" argument and to imply that the existing lot coverage and rear yard non-compliance requires an extension of these noncompliances to Lot 37. In fact CSI is proposing to increase the existing non-compliance found on the western sliver of Lot 36 - creating a 20' rear yard and 80% lot coverage (instead of the 30' and 70% required by the Zoning Resolution) on all of Lot 37... or to put it another way, 41.9% of the combined zoning lot would have a non-compliant rear yard and lot coverage under the Proposed Building scenario.

**BUILDING SEPARATION AND AS-OF-RIGHT DRAWINGS:** ZR#23-711 requires a minimum distance between a residential building and any other building on the same zoning lot - in this case, with both buildings over 50' tall and with blank wall facing blank wall, the minimum distance is 40'. The As-of-Right drawings submitted by CSI in support of their BSA application are not as-of-right since the new building shown there would need a variance. Since As-of-Right drawings are a required part of any BSA submission, CSI's application is currently incomplete. A truly as-of-right building would either show the separation (40' minimum distance) or not include residential so that such a minimum distance was no longer required (a new community facility building would not trigger the requirement). Another way of avoiding the need for a 40' separation between the residential building on Lot 37 and the synagogue on Lot 36 would be to continue to treat them as separate zoning lots (i.e. not combine them in the way that CSI is proposing). Of course, as stated above, this would mean that their as-of-right FAR would be much lower: 5.59 instead of 8.36.

**LOT-LINE WINDOWS AND SHADOW STUDIES:** The third required BSA finding (i.e. Finding C) states that any granted variance cannot "alter the essential character of the neighborhood or district in which the zoning lot is located," "substantially impair the appropriate use or development of adjacent property" or "be detrimental to public welfare." The Proposed Building will block several lot-line windows in 18 West 70th and will cast additional shadows on West 70th Street and nearby buildings. It is entirely within BSA's discretion whether blocking the lot-line windows of an adjacent property and casting shadows on adjacent buildings would prevent the finding, but the CSI application needs to show the effects on both lot-line windows and shadows. Objections 22 and 23 seem

to indicate that BSA is willing to require that they accurately show the impact – ideally in every development scenario CSI would show (1) the affected windows on a separate drawing, (2) shadow studies that illustrate the effects on nearby buildings and on West 70th Street (not just Central Park) and (3) any proposed building in the context of the entire block (so as to avoid reference to only the few tall buildings along Central Park West - the R8B Zoning District is clearly about maintaining the mid-block character, not matching the density and bulk of CPW and its R10A zoning).

**LESSER VARIANCE - REAR YARD AND LOT COVERAGE:** One of the arguments made is that the Rear Yard variance is needed to line up with the synagogue - this is accomplished in an as-of-right manner on the ground floor, but on the 2nd, 3rd and 4th floors the Proposed Building is extended approximately 5' beyond the existing Synagogue building to its west. There is no reason inherent in the design of the synagogue or the new building that requires a violation of the rear yard and lot coverage regulations. Access to the synagogue and its upper levels can be provided from a new building that is only 70.5' deep (i.e. that provides the required 30' rear yard at all levels and therefore the required 70% lot coverage). In the name of "matching" the synagogue, the CSI proposal provides a greater degree of non-compliance than is provided by the existing synagogue building. If a "match" were desired the new building would be approximately 75' deep instead of 80' - thereby only requiring a variance for a 25' rear yard and 75% lot coverage. But again, there is no design reason that CSI cannot meet the existing regulations. It may be more difficult to provide adequate classrooms for the tenant school, but the CSI application seems to include more classrooms than are necessary if the tenant school is to remain the same size - and given that the tenant school, like the new condominiums, is a revenue generating component of the plan and not a critical piece of CSI program, its place in the proposed building and the economic feasibility of the project needs to be clarified. Could a lesser variance be required for the CSI project if the tenant school were not included and if all additional FAR beyond the amount needed to meet the CSI's program needs were used for condominiums? BSA seems to be interested in this question in its Objection 30 – where they have asked for a Lesser Variance version that fills the maximum allowable building envelope (i.e. does not require Variances for DOB Objections 1-7) with CSI program use below and residential use above. Such a version would still allow more than FAR 4 development on the R8B portion of Lot 36.

**LESSER VARIANCE - ONLY BUILDING SEPARATION:** In Objection 31, BSA asks for the even more restricted version of a Lesser Variance: a building which only uses FAR 4.0 on the R8B portion of Lot 37 (it would still require one variance – the minimum distance requirement between the residential building and the existing community facility building would be waived). This Lesser Variance option assumes that the bulk cannot be moved across the zoning district boundary – and that CSI must use FAR 4.0 as the maximum on that portion of Lot 37.