

SEPTEMBER 26, 2007

TO: KATE WOOD

FROM: SIMON BERTRANG

RE: CONGREGATION SHEARITH ISRAEL'S SEPTEMBER 2007 BSA APPLICATION

I have reviewed the September 10, 2007 response by Congregation Shearith Israel (CSI) to BSA's June 15 Notice of Objections. Several of CSI's responses are inadequate - they are either incomplete or fail to address the questions raised by BSA in its various objections. I provide detailed analysis of each inadequate response below:

OBJECTION #1. INCOMPLETE RESPONSE

BSA Objection: "(Page 1) Following the first paragraph, please provide a section summarizing salient aspects of the proposed development for Congregation Shearith Israel (CSI) (FAR, square footage, height, number of stories, uses proposed). Follow this information with a summation of underlying zoning and the waivers requested. [Italics added for emphasis]"

Friedman and Gotbaum's letter directs the BSA to Page 1, Paragraph 2 for CSI's response to Objection #1. The response is actually on Page 2, Paragraph 2 through the end of Page 3. There is also an error in CSI's response to the request for salient aspects of the proposed development:

1. They have not mentioned the number of stories, nine, in their summary - BSA had requested this information.

They have also made two errors in their summary of the waivers requested:

1. First, they state that they have a noncompliance because of "rear yard exceedances for the third and fourth floors." This should read "rear yard exceedances for the second, third and fourth floors." The architect's sections on drawing P-3 shows that the second floor also obstructs the Required Rear Yard - although the diagrams do - in another error - leave out a small section of non-complying 2nd floor. (See attached P-3 with mark-up).
2. Second, they state that they have a noncompliance because of "R10A and R8B base and building height exceedances." This should read "R8B base and building height exceedances." Their Proposed Building does not exceed either the maximum base height or maximum height regulations for R10A. Their variance is required for only the R8B portion of the building - as clearly shown on the architect's section on drawing P-4 - although this drawing also makes another error in that it fails to show the "Non-Complying Building Base Height" above 60' in the R8B zone. (See attached P-4 with mark-up).

OBJECTION #4 INCOMPLETE RESPONSE

BSA Objection: "(Page 9) Provided that the proposed scenario calls for an approximate increase in classrooms from 5 to 12, please precisely explain the nature of the "tenant school" and its relationship to CSI and its programmatic needs (please note that the EAS states that the overall number of students will remain the same under the proposed scenario). Specifically state where the tenant school is located today and where it will be located in the proposed building."

CSI states that "the school now occupies the 2nd, 3rd and one-half of the fourth floor and it is anticipated that it will retain *a comparable space* in the New Building [italics added for emphasis]."

BSA called out their estimation of the number of classrooms in their objection and asked CSI to “specifically” state where the tenant school will be located. CSI’s application needs to be more specific about the school’s location, identifying classrooms on every floor of the existing and proposed buildings that will be used by the tenant school. In addition, CSI needs to differentiate clearly between space needed for their own Hebrew School and space dedicated solely to the tenant school. CSI should also identify office and other space dedicated to the tenant school. Their response should leave no confusion as to the total square footage dedicated to the tenant school now and if the proposed building were constructed.

OBJECTION #5. INCOMPLETE RESPONSE

BSA Objection: “(Pages 10 & 11). These pages contain information describing the proposed building. For clarity, this section should be combined with the “New Building Development Program” on Pages 17 and 18. This combined section should provide more detail on the alleged nexus of CSI’s programmatic needs and the proposed waivers requested. The following four objections (#6 - #9) should be address in this combined section.”

CSI does NOT provide more detail on the alleged nexus of their programmatic needs and the proposed waivers requested - i.e. how the variances are connected to the fulfillment of its programmatic needs. They do provide a series of arguments as to why their programmatic needs require them to construct a new building, but they never address the key issue: **HOW DOES THE FULFILLMENT OF THEIR PROGRAMMATIC NEEDS REQUIRE ANY OF THE WAIVERS REQUESTED FROM BSA.** Without a serious answer to this question, their application remains severely deficient. CSI repeatedly references how a “New Building” will allow critical programmatic improvements, but they fail to explain why that “New Building” could not be one of the As-of-Right versions. The As-of-Right (Version A and B) and the Proposed Drawings show identical plans for the Sub-Cellar, Cellar and Ground Floor. The only difference in the Second, Third and Fourth Floor plans is that in the As-or-Right versions the rear classrooms and offices are smaller. One interpretation of these drawings (provided as part of their application), is that none of the variances requested would allow CSI to meet its programmatic needs in a manner superior to any of the As-of-Right Buildings. CSI does nothing to disabuse this interpretation. The proposed exceedance of Maximum Height and Maximum Base Height in the R8B zone and the failure to provide required Front and Rear Setbacks in the same (Variances 4-7) do nothing to help satisfy the programmatic needs of the Congregation. These programmatic needs are met in an **IDENTICAL FASHION** in the As-of-Right Buildings Versions A and B - buildings which do not include these particular variances. The Rear Yard and Lot Coverage exceedances (Variances 1-3) do allow larger classrooms and offices in the rear of the new Community House. However CSI never directly addresses why these larger classrooms are necessary and why they cannot be provided on an additional floor (i.e. convert the 5th floor from residential to community facility use). **IN SUMMARY, CSI NEVER ADDRESSES THE CONNECTION BETWEEN THE PARTICULAR VARIANCES REQUESTED AND SPECIFIC PROGRAMMATIC NEEDS.**

OBJECTION #8. INCOMPLETE RESPONSE

BSA Objection: “(Page 10) Within the second full paragraph, it is stated that “...the demolition and replacement of the Community House will permit excavation to provide two cellar levels for programming where none exist today.” Please clarify that no sub-cellar exists today; the existing plans indicate an existing cellar level.”

The new Drawing EC-5A (note: this should have been EX-5A) reveals the existence of an existing sub-cellar. While this drawing therefore clarifies the existing condition for the BSA, the narrative in the Statement remains unclear on this issue. The existence of a sub-cellar needs to be added to the Statement on Page 21, first full paragraph. Where it now says “While the Synagogue provides a full cellar level, the demolition and replacement of the Community House will permit excavation to provide both a subcellar and cellar level for programming where none exists today” it should read

something like “While the Synagogue provides a full cellar level and a small sub-cellar, the demolition and replacement of the Community House will permit excavation under Lot 37 to provide both a subcellar and cellar level for the new Community House.”

OBJECTION #10. INCOMPLETE RESPONSE

BSA Objection: “(Page 17). Please compare the existing CSI program with the proposed scenario by providing a floor-by-floor square footage table for each element of the program.”

CSI provides a table on Page 23 that details their floor-by-floor program for Lot 37. This table is inadequate in three ways:

1. CSI needs to provide a comprehensive program for the ENTIRE zoning lot (i.e. Tax Lots 36 and 37), not just the portion on Tax Lot 37. BSA has asked for a comparison of the CSI program in both scenarios, not just a portion of that program. Office needs for CSI staff for instance are met in both the cellar of the Synagogue and on the various floors of the new Community Houses. Understanding the CSI’s administrative/office program is therefore impossible without seeing the square footage across the whole site.
2. CSI should provide a TOTAL row - providing total square footage for each program element. In the interests of clarity, they should also provide separate SUBTOTALS for program elements in the Community House, Synagogue and Parsonage.
3. CSI should also provide separate columns for the Existing and Proposed numbers for each program element - the table as formatted now does not present the comparison of the two programs clearly

OBJECTION #12. INCOMPLETE RESPONSE

BSA Objection: “(Page 18) Within the second full paragraph, new “administrative” space is described. Please precisely describe the programmatic need for an approximate increase in office space from 4 to 13. To this end, please state the number and type of full-time on-site employees and whether CSI anticipates employee growth.”

CSI addresses this objection in a footnote on Page 23: “Staff is increased from approximately 12 to 16 persons.” This is not enough detail - it states the number but does not describe either the type nor whether they are full-time and on-site. CSI needs to provide a more precise accounting of its anticipated staff needs. They also do nothing to precisely describe the programmatic need for an increase in office space. Without an accurate accounting the number and square footage of office spaces in the existing buildings, including the Synagogue and Parsonage (11 rooms labeled office are shown on the Existing drawings) and in the proposed and as-of-right buildings (13 rooms labeled office are shown on the Proposed and As-of-Right Drawings Versions A and B - although the square footage devoted to office space is clearly larger), BSA cannot assess the need for additional office space and whether that need supports CSI’s request for any of the variances.

OBJECTION #13. INCOMPLETE RESPONSE

BSA Objection: “(Page 18) The final sentence of the second paragraph states that “... residential floor area uses only 16 percent of the zoning lot’s available zoning floor area.” Please follow this sentence by stating the percentage of the proposed zoning floor area (based on the entire zoning lot) that is residential.

CSI’s response is inaccurate. Its drawings identify several bedrooms in the Parsonage (although the application does not provide any details). The Parsonage clearly includes some kind of residential use. CSI needs to clarify these uses, include the square footage in the chart required by BSA Objection #10 and then provide an updated (accurate) calculation of the percentage of the zoning lot’s available floor area that is residential.

OBJECTION #14. INCOMPLETE RESPONSE

BSA Objection: "(Page 20) Within the first paragraph, one of the elements of the suggested "(a) finding," is "...the dimensions of the zoning lot that preclude the development of floor plans for community facility space required to meet CSI's... programmatic needs." Please specifically explain in what way the site's dimensions hamper CSI's programmatic needs."

CSI argues that the necessity of aligning the building to the western wall of the Synagogue means that it must seek a variance for Rear Yard and Lot Coverage exceedances: "Because the new building must align itself with the west elevation of the Synagogue for its entire width in order to make the necessary programmatic connections, the resulting width of Tax Lot 37 is too narrow to provide compliant lot coverage (in fact the Synagogue already exceeds its permitted lot coverage, making it even more difficult for the New Building to comply) and compliant rear yard conditions." This statement is nonsensical and is not supported by the drawings submitted. All "programmatic connections" between both the As-Of-Right Buildings and the Proposed Buildings are provided well within 70.5' of the front lot line (i.e. well within the area developable as-of-right if the required 30' Rear Yard were provided). The 10' Rear Yard exceedance requested on Floors 2 through 4 (which is also the source of the lot coverage exceedance) does not relate to any additional programmatic connection between the existing Synagogue building and the new Community House. To state it another way, the connections between the Synagogue and the Community House are not substantially different in the Proposed or As-of-Right scenarios. **THE ONLY DIFFERENCE BETWEEN THE AS-OF-RIGHT BUILDINGS VERSION A AND B AND THE PROPOSED BUILDINGS THAT IS CREATED BY THE REQUESTED VARIANCES 1-3, IS THAT THE REAR CLASSROOMS AND OFFICES IN THE PROPOSED BUILDING ARE SLIGHTLY LARGER.** CSI has not explained why the sites dimensions hamper CSI's programmatic needs - they have merely restated that they do without adequate explanation - and their drawings contradict their assertion.

OBJECTION #18. INCOMPLETE RESPONSE

BSA Objection: "(Page 23) Within the second paragraph, please clarify the following statement: "[b]ecause the ground floor of the New Building is built full to the rear property line, an objection was issued." Rather, please clarify that the portion of the building above sixty (60) feet in height violates this section (ZR § 23-663(b))."

CSI still has several errors in their "Rear Setback" Section, related to their initial misunderstanding about the nature of the rear setback objection:

1. In the first sentence, the phrase "rear lot line" should be changed to "rear yard line."
2. CSI states that "This 3.5 ft setback differential resulted in the issuance of DOB objection #7." This is not accurate and should be changed to : "The 34.8 ft exceedance of the maximum base height of 60 ft combined with the 3.5 ft setback differential when a setback is provided at 94.8 ft resulted in the issuance of DOB violation #7." or a similar sentence.
3. The ground floor issue raised in the final sentence has absolutely nothing to do with the issue at hand and the sentence should be removed in the interest of clarity - the full ground floor build-out of a single community facility story up to 23' tall is allowable as-of-right and does not need to be included in the discussion of the rear setback variance.

OBJECTIONS #20, 21 & 25. NOT APPLICABLE - Note: The Department of Buildings removed its initial objection that the Proposed Building did not provide the Standard Minimum Distance Between Buildings as required by ZR § 23-711. It is unclear why DOB "reconsidered" its initial determination and removed this objection.

OBJECTION #23. INCOMPLETE RESPONSE

BSA Objection: "(Page 25) Within the suggested "(c) finding," please discuss the context along the subject blockfronts of West 70th Street and the alleged appropriateness of the proposed building in terms of neighborhood character. Please reference drawing P-17."

CSI provided a partial context for only one of the West 70th Street blockfronts - both in its narrative response and on drawing P-17. Blockfronts (plural) mean the frontage of both blocks fronting on West 70th Street, and should therefore include the entire frontage of both sides of the street, not just a selected portion of a single blockfront.

OBJECTION #28. RESPONSE INCLUDES ERROR

BSA Objection: "(P-3 & P-4) Please correct the title of the drawings by replacing "street wall sections" with "Areas of Non-Compliance."

There are some errors in the Proposed Areas of Non-Compliance Drawings on drawings P-3 and P-4. See attached diagram showing error in the areas identified as "Non-Complying Rear Yard Setback" and "Non-Complying Building Base Height/Non-Complying Setback Above Base." (See attached P-3 and P-4 with mark-up).

OBJECTIONS #30 & 31. RESPONSE INCLUDES CONFUSING LABELS AND ERROR

BSA Objection: "Please provide a full plan set of lesser-variance drawings that show compliant height and setback (objections for ZR § 23-633 and ZR § 23-663 are removed) that seeks to accommodate CST's programmatic needs and excludes the proposed tenant school space; the remaining floor area shall be used for residential use."

BSA Objection: "Please provide a full plan set for a complying, 4.0 FAR residential building on Lot 36 that includes a BSA waiver for ZR § 23-711 (Standard Minimum Distance Between Buildings)."

CSI uses AOR-1 and up as the identifying code for three separate sets of "As-of-Right" drawings. This is unnecessarily confusing. Each drawing should have its own unique identifier to avoid confusion when referring to it. There are THREE separate AOR-1 drawings! Also there is a small error in the As-of-Right Drawings Versions A and B drawings AOR-3. In the sections provided, the second floor is shown as extending into the Required Rear Yard. ZR § 24-33(b) is clear that only a single story of Community Facility Use is an allowable obstruction. This single story may be up to 23' tall. The plans for the Second Floor appear to be correct - allowing the full 30' Rear Yard, but these sections show an incorrect dimension and would require a variance if the Second Floor were to extend into the 30' Rear Yard (See attached AOR-3 with mark-up).

OBJECTION #34. INCOMPLETE RESPONSE

BSA Objection: "Please provide evidence that the DOB issued their current objections based on the current proposal before the BSA."

The Department of Buildings' Notice of Objections is dated 8/24/07 but the Application's drawings are dated 8/28/07 - suggesting that a different set of drawings was used by DOB to prepare its Notice of Objections. This impression is reinforced by the fact that DOB's Notice references a building height of 113.70' feet instead of the 105.80' shown on the Proposed Drawings. Because of these two discrepancies, the DOB Notice of Objections therefore seems to reference a different proposal. And since DOB has restricted access to CSI's Applications, there is no way to confirm that the Proposed Drawing package is identical to the one submitted to the DOB.

ADDITIONAL ERRORS AND EXAGGERATIONS IN BSA APPLICATION

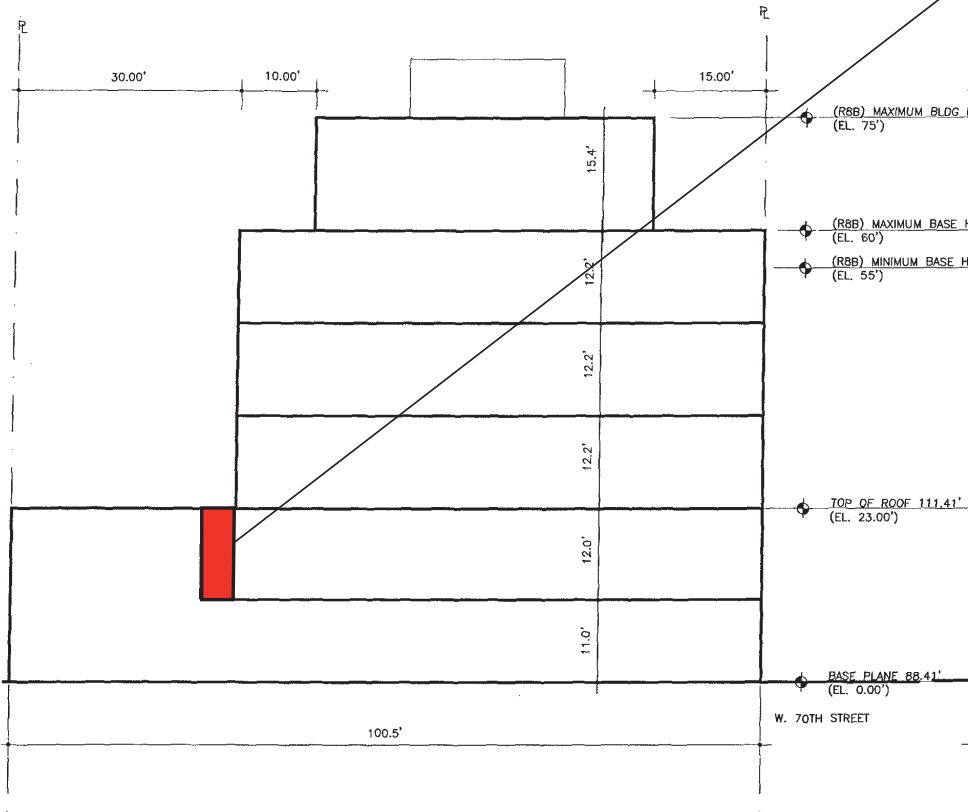
I also want to note two outstanding errors and exaggerations that remain in CSI's September 2007 BSA Application. These two issues were not addressed by BSA in its Letter of Objection, but, in the interests of clarity, CSI should modify its application to respond to these issues.

PENTHOUSE: The CSI application calls the 9th floor of its Proposed Scheme a "penthouse." 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. This error should however be corrected in the interests of clarity and truthfulness.

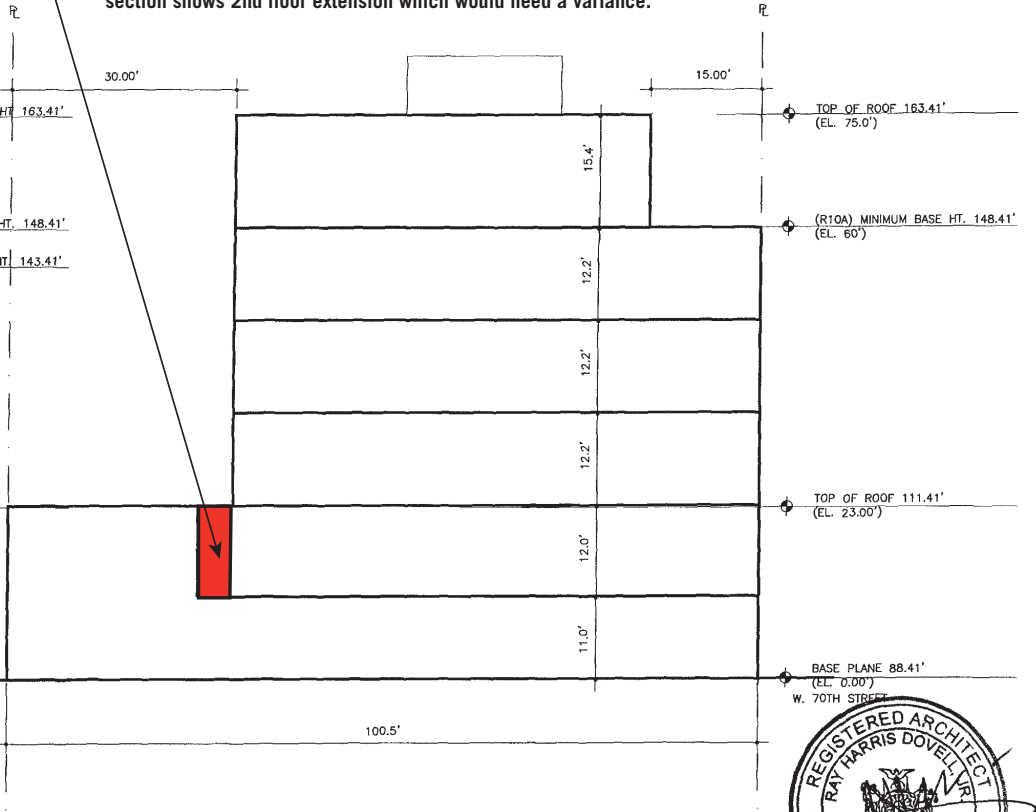
EXISTING NON-COMPLIANCE: CSI's references to the problems created by the non-complying nature of the existing synagogue on Page 5 and 18 of their September 2007 Application are exaggerations. It is true that the rear yard requirement and lot coverage of the interior lot portion of Lot 36 are not met by the current Synagogue building, but what this actually 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, only 7.4% of tax lot 36 (and 4.7% of the proposed zoning 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 then have a non-compliant rear yard and lot coverage under the Proposed Building scenario.

These two areas should be included in the Ground Floor. The As-of-Right 2nd Floor Plan (AOR-9) is correct - but this section incorrectly shows a 2nd floor which extends into the Required 30' Rear Yard. Without a correction, this section shows 2nd floor extension which would need a variance.

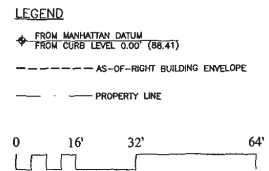
◆ (R10A) MAXIMUM BLDG HT. 273.41' (EL. 185')
 ◆ (R10A) MAXIMUM BASE HT. 213.41' (EL. 125')



1 SECTION R8B
 THRU WEST 70TH SCALE: 1/16" = 1'-0"



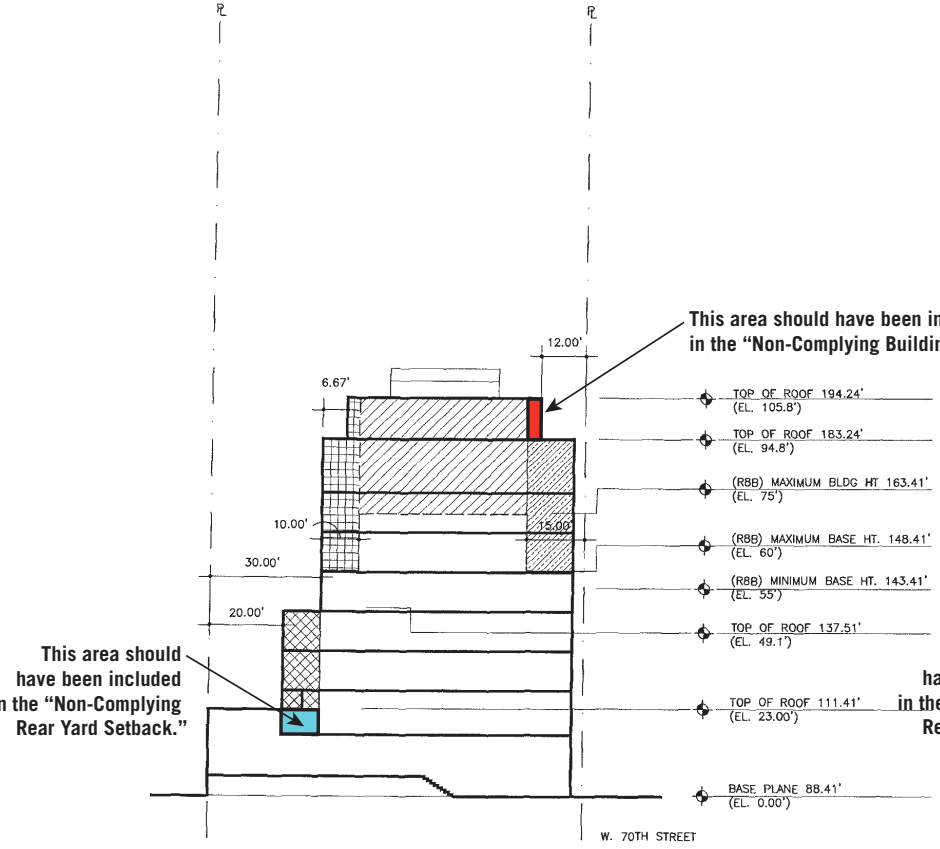
2 SECTION R10A
 THRU WEST 70TH SCALE: 1/16" = 1'-0"



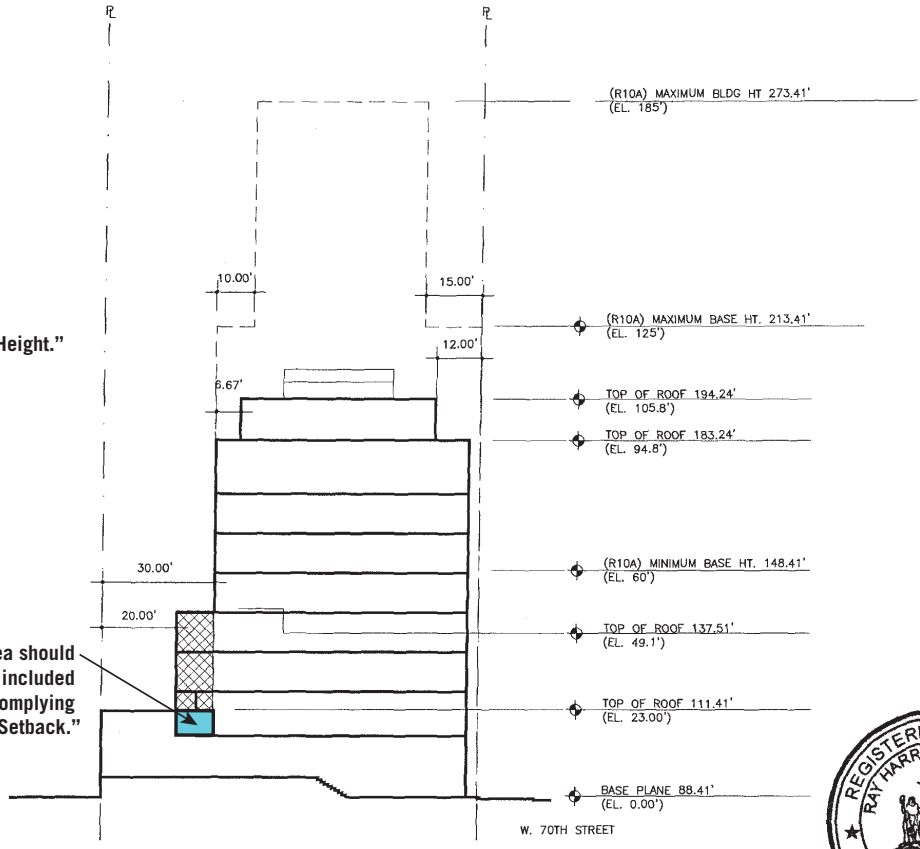
AS-OF-RIGHT STREET WALL SECTIONS		Platt Byard Dovell White Architects LLP 20 West 22nd Street New York, NY 10010 212.681.2440 212.683.0144 fax	
CONGREGATION SHEARITH ISRAEL		6-10 WEST 70TH STREET NEW YORK, NY	08.28.07 #02350

CAL. NO. 74-07-BZ

AOR-3



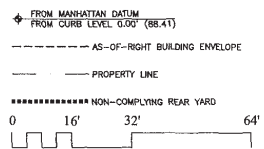
1 SECTION R8B
 THRU WEST 70TH SCALE: 1/32" = 1'-0"
 NOTE: REFER TO SHEET P-15A FOR SECTION SHOWING FLOOR-TO-FLOOR HEIGHTS



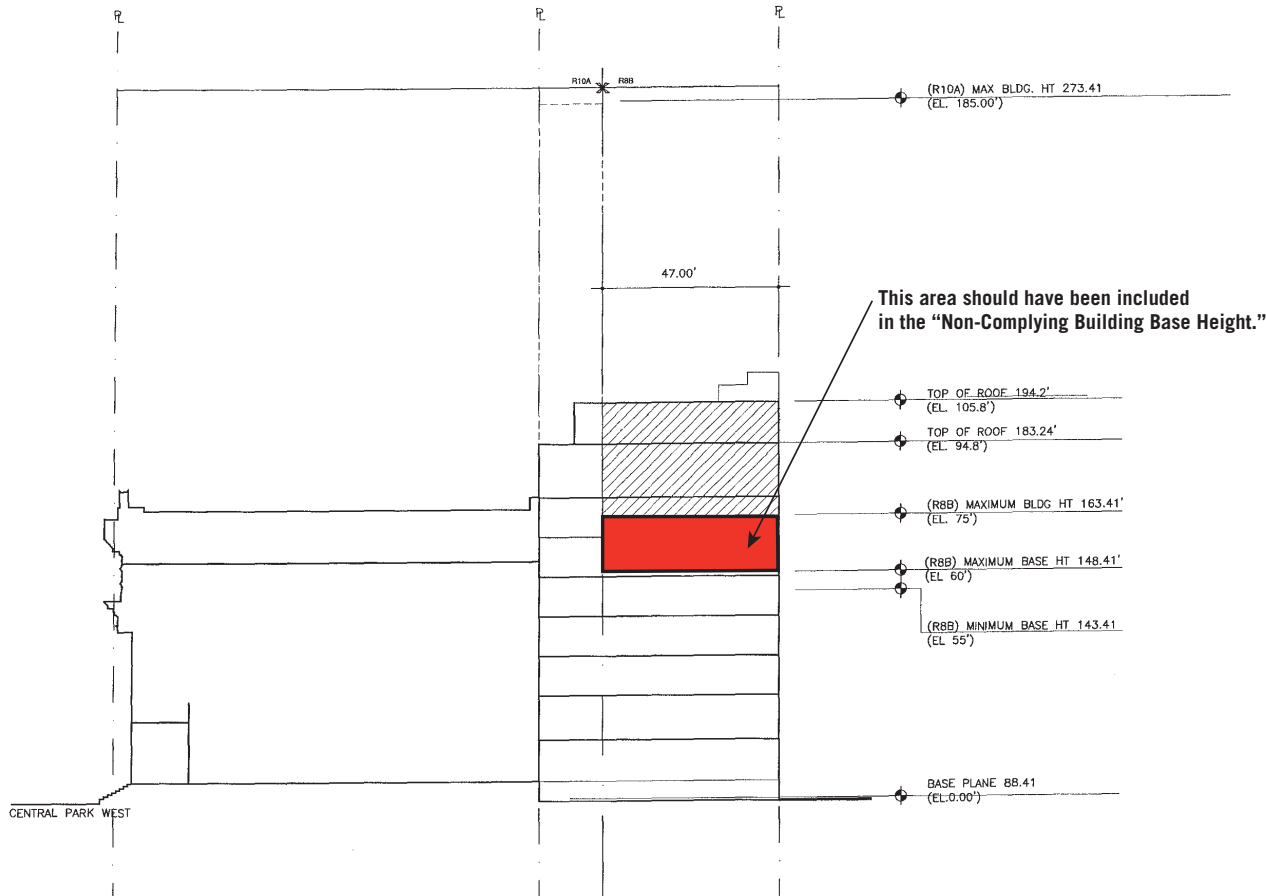
2 SECTION R10A
 THRU WEST 70TH SCALE: 1/32" = 1'-0"

LEGEND

	NON-COMPLYING BUILDING HEIGHT
	NON-COMPLYING BUILDING BASE HEIGHT
	NON-COMPLYING REAR YARD SETBACK
	NON-COMPLYING SETBACK ABOVE BASE



PROPOSED AREAS OF NON-COMPLIANCE CONGREGATION SHEARITH ISRAEL		CAL. NO. 74-07-BZ Platt Byard Dovell White Architects LLP 20 West 22nd Street New York, NY 10010 212.691.2440 212.693.0144 fax
6-10 WEST 70TH STREET NEW YORK, NY	08.28.07 #02350	P-3







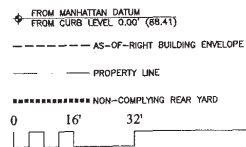
CENTRAL PARK WEST

1 SECTION @ R8B & R10A
THRU CENTRAL PARK WEST SCALE: 1/32" = 1'-0"



LEGEND

-  NON-COMPLYING BUILDING HEIGHT
-  NON-COMPLYING BUILDING BASE HEIGHT
-  NON-COMPLYING REAR YARD SETBACK
-  NON-COMPLYING SETBACK ABOVE BASE



PROPOSED AREAS OF NON-COMPLIANCE		Platt Byard Dovell White Architects LLP 20 West 22nd Street New York, NY 10011 212.691.2440 212.633.0144 fax	
CONGREGATION SHEARITH ISRAEL		6-10 WEST 70TH STREET NEW YORK, NY	08.28.07 #02350 P-4

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