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October 29, 2007

Jeff Mulligan, Executive Director
Jed Weiss, Senior Examiner
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 Messrs. Mulligan and Weiss:

Without providing the community and Community Board 7 any opportunity to consider the merits of the Congregation Shearith Israel's Second Revised Application filed this past Thursday, October 24 at 2:00 PM, the Board of Standards and Appeals is moving forward with a full hearing on Tuesday, November 27, 2007, just after Thanksgiving.

I received a copy of the Notice of Hearing which was dated today. Under the BSA rules, this notice is to be provided 30 days prior to the hearing. Therefore, the notice is untimely and the hearing is improper under BSA rules.

In addition, to hold this hearing so abruptly contravenes the spirit and letter of the BSA rules. Clearly, under the City Charter (Chapter 27 § 668) and under the BSA's own rules of procedure (§ 1-06), the BSA is not supposed to hold its hearing until 60 days AFTER the Community Board receives the entire package of materials. Neither the Congregation nor the BSA had the courtesy to provide CB7 with this full package last week. In fact, the Community Board was not even informed of the filing for over 24 hours. Apparently the package was received today and that means it has 60 days from today to hold its hearings.

In the interim, it appears that within hours of its receipt, the BSA was able to review the new documents – 21 pages of detailed financial numbers and new assumptions, a 41 page new statement in support with changes on every page, and 70 pages of drawings, added to the prior material, all of which was not superseded. And, then, the BSA apparently immediately determined that the new application was substantially complete.

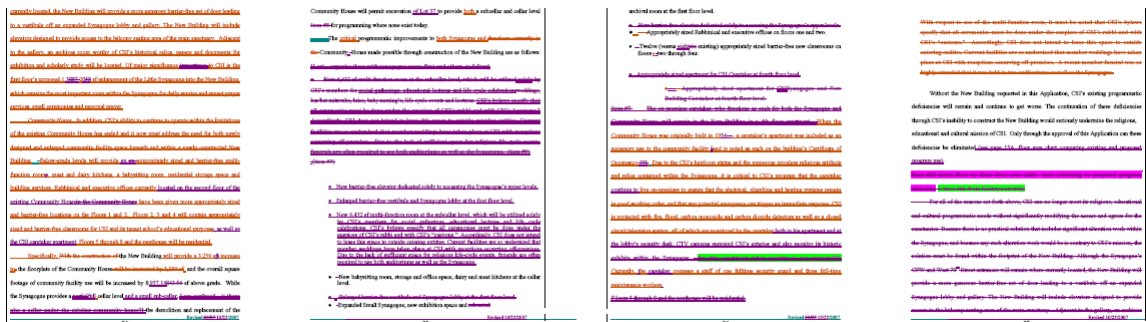
To be clear, all of the problems the Congregation is having is its own doing for having filed incomplete, incorrect, misleading, and indeed duplicitous versions of its application.

What was filed last week by the Congregation is nothing more than a new application package, to which the full 60 day period applies. We cannot understand why BSA is manipulating the rules to accommodate an applicant who ignores the rules.

What is worse, this is the second time that this same lawyer for a similarly positioned synagogue has maneuvered the BSA to prevent a community board from completing the mandated review process – and I refer to the deplorable situation as to the Ramaz project on the East Side.

The BSA must allow CB7 to have an opportunity to give the application the full consideration that it deserves and hold off calendaring this application until CB7 has completed its review process and the community has had an opportunity to review and study, and then comment on the Second Revised Application.

The Second Revised Statement in Support has changes on almost every single page.



Redline of pages from the Second Revised Statement Showing Changes on Every Page

As well, the Second Revised economic feasibility study is a substantial departure from the prior versions and is based upon a completely new methodology with new numbers that vary by millions of dollars with completely different assumptions.

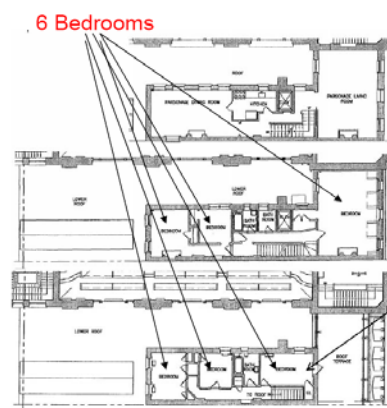
Similarly, the Second Revised Application remains severely deficient, partly as a result of the BSA's failure and refusal to meet its obligations to collect information it knows is relevant to the necessary variance findings.

Examples:

- The Second Revised Application continues to fail to disclose the facts about the Beit Rabban School. Despite the community having explicitly alerted BSA staff as to this issue, BSA seems to be intimidated from asking o the Congregation to provide a copy of current lease information and future commitments. The school income is part of the major new reworking of the feasibility study. Why will the BSA not ask for the facts?

- The Second Revised Application fails to disclose all relevant information about the renovated six bedroom Parsonage townhouse on Central Park West, which is part of the zoning site and is being rented out at \$18,000 a month or more. This is relevant to the financial need asserted by the Congregation as well as to whether alternatives exist to meet the Congregation's asserted needs.¹ Clearly, many of the urgent needs asserted by the Congregation could be accommodated by the Parsonage space. And, the BSA has never even asked for specific information about the Parsonage even though the community over many months has explicitly informed the BSA of this situation.

CPW Parsonage: 6 br, terrace, living room, dining room



- The Second Revised Application continues to fail to provide any back-up in its narrative as to the supposed access, accessibility and circulation issues that the Congregation claims only a new nine-story building will resolve. Despite having been explicitly alerted by the community as to the gross distortions in the previous application, the BSA continues to avoid requiring any back-up or specificity by the applicant as to its wild conclusory assertions.

¹ At its 17 October preliminary hearing held by CB7 on the incomplete application, the Congregation finally admitted that the Parsonage is being rented out at market rates and was recently renovated:

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9 It did renovate it, it did

10 imply landmarks for facade work and the

11 like, and has again **rented it out and,**

12 at market rate to a tenant who has a

13 family there and can use the building in

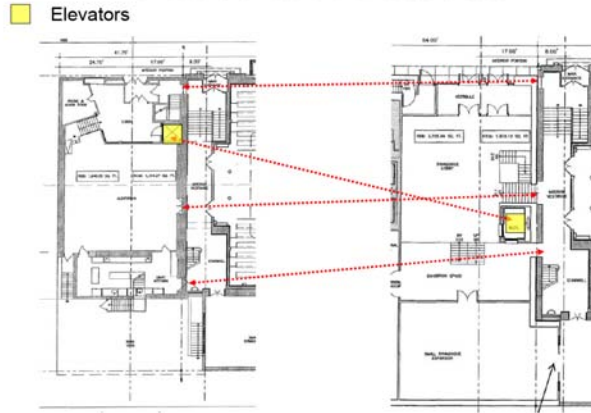
14 which it was built for the purposes it

15 was built as a residential unit. How

16 that might have been different

17 architecturally beyond that tied into

First Floor Access



Identical Access in Existing and Proposed Building

As one example, the latest Second Revised Statement in Support continues with a new narrative that claims multiple new elevators will service the sanctuary, when, in fact there is an elevator working today which is merely being replaced in the new building. But, the BSA stands by in silence.

- The Second Revised Application continues to fail to provide information absolutely required to support findings as to the impact on the community in the form of shadow studies showing the impact on West 70th Street. This is despite the fact that the essential issue in the case is the desire of the Congregation to vitiate mid-block zoning. Intrinsicly, mid-block zoning is about bulk, light and air. The issues of light, air and bulk have not been decided—not by the LPC and not by the CB7. At the landmarks stage of this matter, both the Congregation and the LPC agreed that issues of light, air, and bulk were not matters for consideration by LPC. Now, that we are at the BSA stage, the Congregation, is insisting that issues were resolved by the LPC approval. (See below). Why would the Congregation make such a representation?



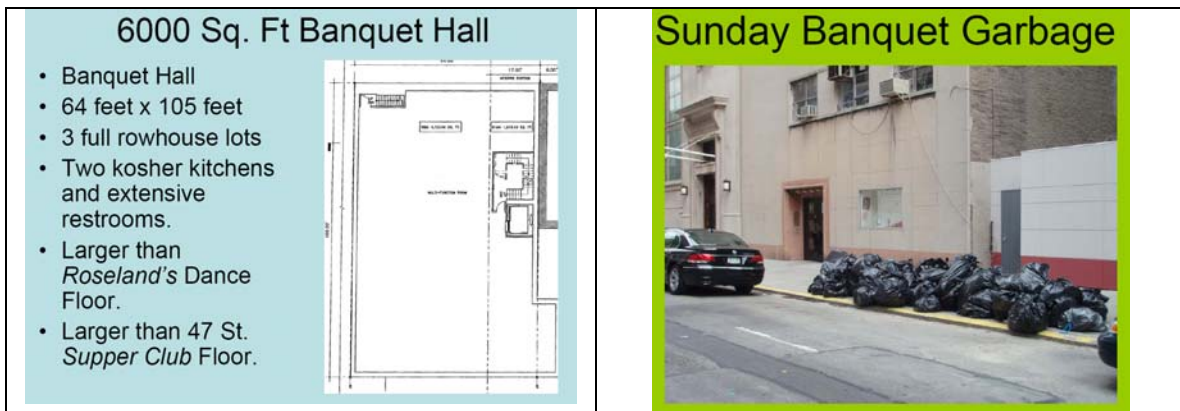
2002-3 Shadow Studies Provided to LPC by CSI

So, why is it that the LPC, which **has no jurisdiction** over shadows supposedly, receive shadow studies, but, the BSA, which **does have** jurisdiction, did not receive or even ask for shadow studies.

Could it be that the shadow studies they have done but have not provided to either the CB7 or the public disclose the true impact of the proposed luxury condominium project on light and air?

Yet BSA staff adamantly refuses to request that the Congregation provide shadow studies, despite the fact that in 2003, the Congregation did provide limited shadow studies to LPC, studies so damaging to the Congregation, that no further studies every surfaced. Why is the BSA ignoring its responsibilities to gather this information?

There are other issues where large factual gaps exist, including issues relating to the 6000 square foot banquet hall.



But let us assume that finally the BSA insists upon this relevant core information at the BSA hearing – this means that the Community Board will never ever have a chance to review and comment upon core factual matters. This is NOT how the system was intended to work.

Even more troubling, the Congregation announced to the Community Board that this project is all but approved by the BSA and that it has been approved by the Bloomberg Administration. I am sure the BSA will be pleased to know that this matter has already been decided by the Bloomberg administration, and, that its role now is to rubber stamp that decision. As Shelly Friedman stated to CB7's Committee on October 17, 2007:

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3 Tonight we appear before you
4 with the full imprimatur of the
5 Landmarks Commission, **which is approved**
6 on behalf of the Bloomberg
7 administration, everything you see here
8 tonight.

9 At this point, I think it's
10 fair to say that that in and of itself
11 is a big change. We are no longer
12 simply an applicant. We have a design
13 **approved by and supported by the**
14 Bloomberg administration, the Landmarks
15 Commission and we think that's a
16 significant difference that appeared
17 before you last time.

Page 8:

6 [T]he issues regarding scale and
7 appropriateness and historical district
8 are now, as far as the State of New York
9 is concerned, the voice of the Landmarks
10 Commission has been heard.
11 As you know, this was the
12 building you're going to see was
13 unanimously approved by the Landmarks
14 Commission and that is, and that is an
15 important element of any application to
16 the Board of Standard and Appeals with
17 regard to the required findings.
18 **In addition to the imprimatur**
19 of the Bloomberg administration, we have
20 a monitor of the community board in
21 several respect.

For the Congregation and Mr. Friedman, the BSA is an “easy” agency:

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8 So that's why we're at the
9 Board of Standards and Appeals through
10 absolutely no effort of our own to get
11 to the **easier** agency.

That of course brings up the relationship between the Congregation and Mr. Friedman and the BSA. First, the central issue of the role of the economic feasibility study was the

subject of the improper ex parte meeting between Mr. Friedman et al and two BSA Commissioners in November 2005, with the BSA adamantly refusing to disclose what was discussed.

Second, despite repeated FOIL requests, other than the official filings and documents related to scheduling of the 2006 meeting, the BSA has refused to provide even one communication or record concerning communications between the Congregation and the BSA. (We do not suggest that communications with the staff are improper – only that it is improper to withhold records about the communications or to conspire to create records in a way to make them colorably not subject to FOIL.)

But we do know that there have been communications. Mr. Friedman freely admits this:

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1 MR. FRIEDMAN: Well, we have
2 as you know been at a discourse with the
3 BSA for a couple of months with regards
4 to the so-called notice of objections
5 which is a consistent aspect in every
6 application to BSA. They send you a
7 list of things they want you to address
8 and you do it. That question has not
9 arisen in that discussion.

Even the red-lined version of the Second Revised Statement in Support suggests the continued communications, in referring to Jed Weiss:

~~Page 23 or Redlined Second Revised Statement:~~

~~per item #5 / must address obj 6-9 below (I will speak w/ jed mon be we address them later. Maybe he wants something brief..).~~

But, the BSA has NO records of any communications with the Congregation whatsoever. Amazing, is it not?

[This letter constitutes one more FOIL request for all communications between the Congregation and the BSA –other than the 3 versions of the application, which we have already. We specifically request a copy of the deeds and any communications which accompanied the deeds]

For your review and information have posted a PowerPoint presentation made by me the past CB7 preliminary discussion, which may be downloaded from www.protectwest70.org/powerpoint.pdf. The presentation touches on some of these issues.

Community Requests for Further Information

The Congregation has been less than cooperative when approached by the community with requests for information and less than forthcoming when making presentations to city agencies. I believe that it is crucially important that the BSA insist on direct and complete responses to the following questions. These questions relate to the Revised Application – so far I have not completed a review of the Second Revised Application. We have also been unable to make any sense at all as to the Feasibility Study second supplement which we just received.

These questions are indicative or more to come after we review the new material.

1. What is the rent being paid on the Parsonage?
2. What renovations were performed on the Parsonage within the last 4 years, and how much was expended?
3. As to the “Hebrew School” operated by the Congregation and stated as part of its program, please provide a schedule showing when the school meets with detail as to the number of students actually attending the sessions and the specific classrooms utilized by this “Hebrew School.”
4. What is the rent being paid by the tenant Beit Rabban School?
5. Provide a copy of the lease with the Beit Rabban School?
6. What is the tuition range for students at the Beit Rabban School?
7. Who paid, and how much, for the renovations in the Community House and vacant site for improvement for the Beit Rabban School – including window openings and the trailer?
8. Is there a memorandum of understanding or lease as it would apply to the new Beit Rabban School?
9. How many of the students of the Beit Rabban School live within 1 mile of the school?
10. How many of the directors of the Beit Rabban School live within 1 mile of the school?
11. Please provide a shadow study showing the impact of shadows on West 70th Street and show at least 50 percent of the West 70th block.
12. What is the proposed use and permitted occupancy that will be in the Certificate of Occupancy for the Banquet Hall?
13. How does the Congregation propose to provide adequate exits for the subterranean banquet hall, especially for a building which the NYC Department of Buildings has designated as sensitive: i.e., a potential terrorist target?

14. What will be their impact on traffic by banquet hall use? (If each member of the Congregation holds one event every 15 years, then there will be an event every single weekend with traffic related to 6000 square feet.)
15. What accommodations are made for garbage generated by banquet events?
16. Page 11 of the revised Application, it states that: "Its primary sanctuary cannot be reached without great labor." Please provide a drawing showing exactly where members face "great labor" entering the sanctuary and provide photographs of the specific areas.
17. On page 11 of the revised Application, it states that "These access deficiencies can only be addressed by demolishing the Community House and replacing it with a new contiguous building designed with circulation systems ..." Please mark clearly on drawings exactly where these circulation systems are improved and show the difference between the current and proposed building as to the circulations systems. Also, please provide a copy of the studies referred to on page 11. Please mark the multiple elevators claimed to service the upper floors of the synagogue. Please show the handicapped ramps to provide accessibility between the lower levels of the sanctuary and the new building, and show how this accessibility is different from that in the current building.
18. Please provide an existing conditions drawing showing the entire eastern face of 18 West 70th Street as requested previously.

Please adjourn the scheduled BSA meeting, require complete information from the Applicant, and then provide the Community Board with the 60 day review period allowed under the City Charter and BSA rules.

Sincerely,



Alan D. Sugarman

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

cc:

Hon. Betsy Gotbaum, Public Advocate of the City of New York
Hon. Gale A. Brewer, New York City Council Member
Hon. Scott M. Stringer, Manhattan Borough President
Hon. Richard N. Gottfried, State Assembly Member, District 64
Hon. Thomas K. Duane, State Senator, District 29
Hon. Sheldon J. Fine, Chair, Manhattan Community Board 7
Hon. Helen Rosenthal, Chair-elect, Manhattan Community Board 7
Alan Geiger, Department of City Planning
Kate Wood, Executive Director, LANDMARK WEST!

Alan Sugarman to Jeff Mulligan BSA

October 29, 2007

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Shelly Friedman, Esq. and Lori Cuisinier, Friedman & Gotbaum LLP