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March 7, 2008 Via E-Mail

Helen Rosenthal, Chair, Community Board 7
Richard Asche, Co-Chair Community Board 7 Land Use Committee
Page Cowley, Co-Chair Community Board 7 Land Use Committee
250 West 87th Street
New York, NY 10024

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

Dear Helen, Richard and Page:

I wish to bring to your attention new information from the most recent Shearith Israel BSA hearing of February 12, 2008 and I wish again to request copies of documents provided in non-public meetings by the Applicant to CB7 and the Land Use Committee.

At this recent hearing, Page Cowley did provide a statement to the BSA, but, I am not sure she was present for all of the proceedings.¹

Perhaps because the first BSA hearing in November was scheduled prior to the full CB7 hearing in December, it would appear that Chair Srinivasan, and presumably the other Commissioners, had been under the misimpression that CB7 had supported some of the proposed variances, when in fact, the full CB7 Board had rejected all proposed variances:

CHAIR SRINIVASAN: Mr. Lebow, didn't the Community Board actually support the variances for the synagogue? The program?

BSA Transcript, February 12, 2008, Page 28. (Tr. at 28).

Shelly Friedman later in that hearing urged the BSA to ignore the findings of the full CB7 Board, and consider only the findings of the Land Use Committee. Tr. at 88. Mr.

¹ The complete transcript is available at <http://www.protectwest70.org/2008-documents/2008-02-12-BSA-Transcript-Shearith-Israel.pdf>. Excerpts from the transcript are attached.

Friedman also stated (Tr. at 88) that he "had two public hearings and a private meeting with them to go over the findings" with the Land Use Committee of CB7.²

At the full CB7 meeting in December, Mr. Friedman elected not to provide a presentation, apparently preferring to rely upon his private undocumented meetings with the Land Use Committee and relying upon "plausible" arguments presented to the Committee in private, rather than facts provided by the Applicant in public testimony.

Community opponents had opposed the scheduling of the initial BSA public hearing and the scheduling of the CB7 meetings on the grounds that the Application was not complete. As it relates to the Applicant's assertions of programmatic needs, it is clear the community opponents were indeed 100% prescient.

This is because the Applicant still has failed to provide evidence to allow the evaluation of its programmatic need assertions concerning the rear yard variances. Ten months after the April, 2007 initial filing by the Applicant (and nearly two years after the LPC approval of the COA), the Applicant has yet to provide understandable tabular and organized descriptions of its programmatic needs as to the variances requested for the rear yards. At the February, 2008 BSA hearing, Vice-Chair Collins and Chair Srinivasan focused on the Applicant's less than cogent or complete presentation:

Page 100.

VICE-CHAIR COLLINS: Actually, I have a request for Mr. Friedman. I know that you've given us this information in several forms, I think, in a pie chart but I'm interested in seeing sort of a daily layout of the usage for both current and proposed usage of the classrooms on a - - you know, you've got proposed classrooms one through fifteen from whatever time in the day you start; from 8:00 in the morning until 9:00 at night, whatever it is. So, what is proposed usage in a - - we're trying to get a better table that's easily referenced. We've had other cases for schools where we've asked for this sort of information. so perhaps someone from our staff could give you an example.

* * *

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CHAIR SRINIVASAN: I think what would be helpful is just building upon this issue of programmatic needs.

* * *

So, I think, again, just to add onto what the Vice-Chair is asking is really do focus on the relief that you're seeking as well. It's not about the circulation. It's really about three floors where you get larger classrooms and the difference is really that, is that if you don't get the variance for the ten feet, you'll have smaller classrooms and, perhaps, some space goes to other floors. I think that would be helpful.

² The CB7 transcripts show that there were numerous meetings between Shelly Friedman and Community Board members outside of the three formal sessions of the Committee and the Board. At the December 4, 2007 CB7 meeting, Mr. Vitullo-Martin referred (page 90 of the transcript) to visits by CB7 members to the Congregation facilities. At the December 4, 2007 meeting, Mr. Friedman, at page 41, referred to "a significant amount of work with the Land Use Committee. We spent several nights with the lawyers on this application."

Alan D. Sugarman to CB7

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Our position, of course, is that the facts (and the inconsistent, incomplete and varying versions of the Applicant's factual assertions) do not support the Applicant's assertion that programmatic needs compel granting rear yard variances, and, in the absence of such a showing by the Applicant, CB7 appropriately rejected the variances.

We would like to know what documents the Applicant provide to the Committee that led some on the committee to conclude that rear yard variances were compelled by programmatic need, or was it that these members of the Committee believed it proper to rely upon "plausible" assertions, rather than substantiated facts.

In my December 21, 2007 letter, and previously, I requested that CB7 provide community opponents with copies of the documents provided to the Land Use Committee at non-public meetings as referred to by Mr. Friedman on pages 15 and 16 of the transcript of the October 17, 2007 Land Use Committee hearing.

I have yet to receive a response from the CB7 as to that request for documents provided by the Applicant at non-public meetings. We need these documents in order to analyze the conflicting factual representations made by the Applicant at different times and before different bodies and also because even the BSA is unable to ascertain a factual record to evaluate the Applicant's claims.

Thank you very much for the hard work that you all provide to analyze these complex issues and to provide community input.

Sincerely,



Alan D. Sugarman

cc: Hon. Meenakshi Srinivasan, BSA
Jeffrey Mulligan, BSA
Shelly S. Friedman, Esq.
Kate Wood
Mark D. Lebow, Esq.
Bruce Simon, Esq.
Jay Greer, Esq.
David Rosenberg, Esq.

New York City Board of Standards & Appeals

TRANSCRIPTION OF TAPE

Case # 74-07-BZ.

6 through 10 West 70th Street, Borough of Manhattan.

2-12-08.

611 surprise, anyway, because their dream building was, as you know, half luxury
612 condominiums and half their programmatic needs.

613 So, an as-of-right building, I think it's perfectly clear, can hold all their
614 programmatic needs.

615 The second thing that is clear is that Community Board #7 has now weighed in
616 and you will hear that they have rejected all the variances and, you know, I'm a former
617 Community Board Chairman like Mr. Platt is a former member of the Landmarks
618 Commission and I know that the Board of Standards and Appeals doesn't always listen to
619 the advisory opinions of Community Boards.

620 However, when it comes to a (c) or you're supposed to take into consideration the
621 essential character of the neighborhood and whether or not a proposed variance is
622 detrimental to the welfare of the community. This is really the one time when I urge you
623 to listen to the local community.

624 We, of course, are the microcosm, the immediate neighbors, but Community
625 Board #7 is the entire West Side representative.

626 So, I think when you have a conclusion both from the people right in the vicinity,
627 as well as Community Board #7 rejecting the variances, you should really give it great,
628 great deference if conclusary results.

629 Now --

630 CHAIR SRINIVASAN: Mr. Lebow, didn't the
631 Community Board actually support the variances for the synagogue? The program?

632

MR. LEBOW: Well, they did it with respect to

633 Landmarks to say that insofar as Landmarks determined whether it was suitable. They

634 supported some of them.

635 Now, this gets into Mr. Friedman's argument a little bit later that Landmarks has
636 approved this building.

637 The Landmarks Commission and the Community Board, who passed upon it,
638 decided only that this proposed building should be entitled to a Certificate of Suitability.
639 That means, in effect, it's not going to mess up the landmark.

640 But, when it came to zoning, these are separate issues. Whether it's too big and
641 too fat for the neighborhood, that's for you to decide. And, they decided that separately,
642 as they should have done.

643 Now, Community Board #7, I was not the Chairman of Community Board #7. I
644 was the Chairman of Community Board #5, and I thought that we were the most
645 sophisticated when it comes to weighing zoning variances with our expertise and our
646 careful dispassionate and elaborate rituals that we went through, but I was really
647 impressed with Community Board #7. They really have quite a good system of
648 committees.

649 There was elaborate testimony from people all across the neighborhood and
650 experts of all sorts, both at the committee level and at the Board and I have to take my hat
651 off to them. They were dispassionate. They were thorough, and they were very complete
652 when it came to the zoning issues and they were smart enough to distinguish the zoning
653 issues from the landmark issues.

698 places of worship so he is fully familiar with this particular field so I feel badly for Mr.
699 Morrison and he probably is too modest to correct that himself.

700 With that, I think I will let you hear the rest of the speakers, because I know time
701 is getting late the snow is probably increasing.

702 So, I'm not going to really introduce anybody unless we get lost, but Mr. Marcus
703 is next, if you don't mind.

704 CHAIR SRINIVASAN: Why don't we take - - is there
705 someone to speak from Community Board today?

706 SPEAKER: Yes.

707 CHAIR SRINIVASAN: All right. Why don't we take the
708 Community Board's presentation or testimony, first.

709 **MS. COWLEY:** Thank you very much. My name is Page
710 Cowley. I'm Co-Chair of the Land Use Committee for Community Board #7.

711 With all due respect to all of the learned testimony that you've heard, I want to
712 clarify one issue about the - - it would appear that Community Board #7 is attached to
713 one of the respondent's team, and the Community Board may be considered somewhat
714 stubborn but we're a very independent group, and I just want to clarify that we're here to
715 speak about the project.

716 Also, in the interest of time, I've made copies of the statement.

717 I'm here because of the Community Board land use schedule and the full Board
718 don't often coincide with when other meetings are taking place.

719 We felt because this is such an important institution on the West Side - - we love
720 our religious landmarks and places of worship, that we wanted to make sure that you

721 heard our comments, so that is my preamble, as me, as a person representing, because I
722 know that when I get back to Community Board #7, little angles and devils will be
723 talking behind my back over how I represented this:

724 Now, just to clarify, we haven't seen, as you will hear probably from others,
725 today, the current revisions that the architect has been working on, and I have to say, as a
726 Community Board member, we welcome that to keep coming back to the community.

727 And, they have been very responsive to us over time, both in terms of when they
728 were going to Landmarks, which is a completely separate issue, and we're not discussing
729 that forum and also with the land use.

730 So, our statement - - and, if you have this, I will read it in. It's long. It's three
731 pages. I can do the paragraph introduction and then jump to the chase and then I can give
732 you the copies afterwards but I think it's important that you understand that we thought
733 of the different findings in the same way that the applicant had presented them in the way
734 that you had.

735 So, our statement, here, was actually drafted on December 4th, due to various
736 postponements which seem to be appropriate.

737 We're here now to respond to probably a design that is somewhat old, but I think
738 that the issues are still relevant.

739 So, with all due respect, I'd like to continue.

740 "We saw a scheme from the trustees of Congregation Shearith Israel, who have
741 applied for a series of variances pursuant to Section 72-21 of the Zoning Resolution, with
742 respect to the construction of a proposed community facility residential building at 6-10
743 West 70th Street.

744 The proposed building is intended to replace an existing community house; to
745 provide improved circulation for congregants, specifically disabled accessibility; entering
746 and leaving a landmark synagogue building immediately to the east and to provide a
747 catering facility capable of serving some 450 guests; space for the synagogue's activities;
748 archives and five full floor condominium units.

749 The proposed structure would not utilize all of the permitted floor area for the
750 site, but would violate other provisions of the Zoning Resolution.

751 First, instead of the required setback at 60 feet, the first setback from the street
752 wall would be at 95 feet.

753 Number two, the front setbacks would be twelve feet deep, rather than a minimum
754 of 15 feet.

755 The rear setback would be 6.7 feet deep instead of a minimum of 10 feet deep.

756 Four, the rear yard would be 20 feet of unbuilt space instead of a minimum of 30
757 feet.

758 And, five, the height of the building would be 113.7 feet instead of the 75 feet that
759 is the maximum height under the zoning for most of the proposed building.

760 The proposed building has received a Certificate of Appropriateness from
761 Landmarks Commission, which considered non-zoning aesthetic issues associated with
762 the site's proximity to the Landmark synagogue and its inclusion in the Central Park
763 West Historic District.

764 Several community groups, including Landmark West and coalition of residents
765 in nearby buildings have objected to the requested variances on multiple grounds.

766 The Land Use Committee has held a public hearing continued over two sessions.

767 Section 72-21 requires that a variance application on behalf of a non-profit
768 organization may be granted only upon the making of four findings, and I will skip this
769 but, just to say, that we have looked at the required findings, as you have, about the
770 unique conditions of the site, peculiar and inherent in the zoning lot, and we have made a
771 statement about that.

772 We have looked specifically at the lot coverage and rear yard setbacks, the height
773 setbacks.

774 We have looked at finding (c) that the variance, if granted, will not alter the
775 essential character of the neighborhood or district in which the zoning lot is located and
776 will not substantially impair the appropriate uses or development of adjacent property and
777 will not be detrimental to the public welfare.

778 Again, I state these because these are the criteria, at the time, we have been
779 looking at.

780 Finding (d) that the hardship has not been created by the applicant or its
781 predecessor.

782 Frankly, we've heard no persuasive argument that this finding has not been met
783 and we share with you some of your recent questions that we've heard today.

784 Required finding (e), that the variance requested is the minimum variance
785 necessary to afford relief.

786 The applicant contends that the relief requested is the minimum needed to meet its
787 programmatic requirements, as noted above, and, again, you will see our detailed
788 response.

789 This position appears reasonable with respect to lot coverage and rear yard
790 variances but makes little sense with respect to height and setback variance.

791 All of CSI's programmatic needs are proposed to be met on the lower four floors
792 of the building, well within the permitted height and below the first required setback."

793 We go on to discuss the concern that we have of the sale of the residential stories
794 above the community facility space in order to finance the construction and we are
795 equally concerned, and I'm sorry I didn't mention this, this is important - - of the
796 configuration of the building as it affects lot line windows.

797 Jumping ahead, therefore, be it resolved that Community Board #7 disapproved
798 the proposal by Congregation Shearith Israel for variances as follows.

799 Building, height and base setback, 38 in favor 0 against, one abstention, 0 present.

800 Front setback, 37 in favor, 1 against, 1 abstention, 0 present.

801 Rear yard setback, 38 in favor, 0 against, 1 abstention, 0 present.

802 And, rear yard incursion in R-8 (b) and R-10 (a) and lot coverage, 21 in favor, 13
803 against and 2 abstentions, 0 present.

804 It was a very difficult vote and this, I think, reflects the work of a lot committee.

805 So, I'm going leave copies of this with you and if you have questions, I'll be
806 pleased to try to answer some.

807 CHAIR SRINIVASAN: Thank you, Ms. Cowley. Any
808 questions of the Community Board? All right. Thank you.

809 MR. MARCUS: Madam Chair and Commissioners. My
810 name is Norman Marcus. I appreciate the opportunity to speak here this afternoon.

1957 MR. FRIEDMAN: With regard to the testimony of
1958 Community Board #7, that submission was made at the last hearing, as well.
1959 I will only say in the recitation of the process that we worked with the Zoning
1960 Committee of Board #7; had two public hearings and a private meeting with them to go
1961 over the findings.

1962 The Committee, itself, issued a resolution which supported the variances with
1963 regard to the programmatic need of the synagogue. That was overturned by the full
1964 Board, but I did want to indicate that I thought that's also relevant that after hours of
1965 testimony and work with the Co-Chairs of the land use - -

1966 MS. MATIAS: Please turn that off.

1967 CHAIR SRINIVASAN: I'm sorry - - Mr. Friedman.

1968 MS. MATIAS: I'm sorry, Mr. Friedman.

1969 MR. FRIEDMAN: No problem. Thank you. That after
1970 several hours of work with them, the Community Board that met - - members that met
1971 with us over a long period of time did, in fact, pass an equally articulate eloquent
1972 resolution supporting several of the variances with regard to Shearith Israel's
1973 programmatic need.

1974 We have had discussion, again, about the lot line windows but now we enter into
1975 new evidence regarding 91 Central Park West.

1976 With regard to the location of the building to the wall of 91 Central Park West, we
1977 will supply you with a diagram but you have HP 16 which shows you the distance from
1978 our façade; does not show you the ten foot request that we're looking for but it shows you
1979 the clear distance between our site and 91.

2226 And, you've put the burden on us. We've tried to find this out, this information,
2227 at the Buildings Department. We can't.

2228 There's a submission here that gives gross apartment perimeters, a good first step
2229 and we appreciate it but I think, as Commissioner Hinkson knows, we can't get to your
2230 bottom line without knowing the apartment layouts and, somebody, if it's going to be a
2231 relevant issue, has to help us get those.

2232 CHAIR SRINIVASAN: All right. This is what I suggest.

2233 The Board will review this material. Our staff will reach out to both parties and
2234 we'll see if we need to supplement this with additional information and we can do that by
2235 letter so that both parties will know what we're asking for and of whom, all right. Yes.
2236 Vice-Chair.

2237 VICE-CHAIR COLLINS: Actually, I have a request for
2238 Mr. Friedman.

2239 I know that you've given us this information in several forms, I think, in a pie
2240 chart but I'm interested in seeing sort of a daily layout of the usage for both current and
2241 proposed usage of the classrooms on a - - you know, you've got proposed classrooms one
2242 through fifteen from whatever time in the day you start; from 8:00 in the morning until
2243 9:00 at night, whatever it is.

2244 So, what is proposed usage in a - - we're trying to get a better table that's easily
2245 referenced.

2246 We've had other cases for schools where we've asked for this sort of information
2247 so perhaps someone from our staff could give you an example.

2248 It's a pretty straight forward, easy to read thing, but I'm still grappling a little bit
2249 with all of the proposed classroom uses.

2250 MR. FRIEDMAN: By the way, with regard to the
2251 testimony about the trailers, those trailers are there because the synagogue is using more
2252 and more of these spaces and the tenant isn't finding - - the conflicts are growing to the
2253 point where the tenant finally had to move a portion of its educational facilities out of the
2254 building so we could accommodate the synagogue's needs.

2255 I mean, that hadn't been in the record before. I appreciate the mention of the
2256 trailers but I think that's an indication that there is a squeeze in this building that simply
2257 is now driving the occupants to extraordinary lengths.

2258 CHAIR SRINIVASAN: I think what would be helpful is
2259 just building upon this issue of programmatic needs.

2260 We've heard testimony where the opposition has gone through everything you've
2261 said in your program needs and said all of it can be taken care of under an as-of-right
2262 scheme. That's true because you've talked about many things that are not related to the
2263 variance. However, they are rightfully a part of your program needs.

2264 All the space that's below grade, you can do as-of-right.

2265 Almost all the spaces you can accommodate with an as-of-right envelope.

2266 So, I think, again, just to add onto what the Vice-Chair is asking is really do focus
2267 on the relief that you're seeking as well. It's not about the circulation. It's really about
2268 three floors where you get larger classrooms and the difference is really that, is that if you
2269 don't get the variance for the ten feet, you'll have smaller classrooms and, perhaps, some
2270 space goes to other floors. I think that would be helpful.