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March 25, 2008

The Honorable Meenakshi Srinivasan
Chair
NYC Board of Standards and Appeals
40 Rector Street - 9th Floor
New York, New York 10006

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

Dear Chair Srinivasan:

I am providing these comments in response to the filing by the Applicant of March 11, 2008 on behalf of myself, Nizzam Peter Kettaneh (owner of 15 W. 70th St.,) and other residents of West 70th St. in opposition to the above application for variances.

Standard of Proof

The Applicant and its consultants in their supporting materials frequently note that information is being provided that was "asked" or "requested" by the BSA or its staff. The Applicant seems to suggest that its only obligation is to file an application (however incomplete and misleading), and, that so long as the Applicant responds in some manner (however incomplete and misleading) to the requests of the BSA, then the Applicant is entitled to receive a variance.

In a 2004 study of BSA decisions by The Municipal Arts Society, it was found that in an overwhelming number of variance applications, 93% of the time, the BSA indeed does approve a variance of some type. Our own analysis of recent BSA decisions show that this trend continues. Notwithstanding, under the statutory regime, there is no presumption at all that an applicant for a variance is entitled to the granting of the variance or even to the granting of a "compromise" variance. A variance can only be issued if each of the five conditions is satisfied for each variance.

The BSA is required to make findings based on probative facts, and, not to act as a stenographer for the Applicant - taking assertions not based in fact and contradicted by the Applicant itself, and converting those assertions into findings. The Applicant's assertions and expert opinions are not entitled to any presumptions of validity or

correctness, especially in view of conflicting prior statements and testimony, and certainly not to be accorded any presumptions greater than that accorded to the testimony of community opponents.

The Applicant alone is responsible for supporting its application with substantial probative evidence. The BSA is not a co-applicant; its function is not to collaborate in leading the Applicant through the appeal process, no more than the BSA's should guide the opponents through the appeal. If the BSA once, twice, and even three times asks for information, the BSA has no obligation to continue ad infinitum to advise the Applicant that the information does not suffice. The Applicant here is represented by sophisticated and experienced counsel, architects and consultants, and, even some trustees of the Applicant are experienced real estate developers. If information is submitted in confusing and incomplete manner, then that is what the Applicant here intends.

The statute is specific that the BSA is to make each of the five findings for each of the variances for which waiver is requested.

As to finding (a)[1], before the BSA may address the issues of difficulties and hardship, it must first find "that there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular zoning lot." Even when religious institutions are involved, the statute is quite clear that the BSA must make the finding as the "unique physical conditions."

A split zoning lot is not a physical condition. An allegedly obsolete building is not a physical condition in the zoning lot. Inability to meet programmatic needs within the as of right envelope is not a physical condition.

The BSA cannot make a finding that unique physical conditions exist solely because there are asserted hardships by a religious institution. The Applicant seems to claim that deference should be accorded it because it is a religious institution and it does not need to satisfy the requirement of unique physical condition because it is religious institution. There is not basis for that position if that is what is contended.

The Applicant here is applying for what is known as an area variance as contrasted with a use variance. Although New York State variance law is similar to New York City's law, they are not identical. New York City has crafted its own variance law; for use variances, the law is similar; but, this is not so for area variances. New York State law does not have a requirement to find a "unique physical condition" for an area or bulk variances.

[1] "72-21 (a) that there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular zoning lot; and that, as a result of such unique physical conditions, practical difficulties or unnecessary hardship arise in complying strictly with the use or bulk provisions of the Resolution; and that the alleged practical difficulties or unnecessary hardship are not due to circumstances created generally by the strict application of such provisions in the neighborhood or district in which the zoning lot is located;"

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N.Y. Gen. Cit. Law § 81-b (3)(b)-(c). New York City has imposed a higher standard, and, the BSA acts beyond its authority when it ignores the clear and unambiguous directives of the (a) finding and rewrites the zoning resolution statute.

In its latest feasibility report submission of March 11, 2007, the Applicant attempts to bootstrap support for a finding of "unique physical condition" by creating a convoluted narrative about circulation problems and other problems under a section entitled "hardship premium" which refers to hardship related to "access and egress to the residential portions." This attempt to bootstrap a unique physical condition is ludicrous, and made more ludicrous by the fact that all of these unique conditions exists solely because of the Applicant's desire to integrate a programmatic community house with a hypothetical sliver tower condominium building. The arguments in the "Hardship Premium" have nothing to do with the site physical conditions, and do not even have anything to do with the Applicant's ability to construct an as-of-right building that fully satisfies its asserted programmatic needs.

Assuming that a unique physical condition were to be substantiated with probative evidence, the next requirement for an (a) finding is for the Applicant to show "practical difficulties and unnecessary hardship" arising out of the physical conditions. The Applicant alleges assertions of programmatic need to attempt to establish show "practical difficulties and unnecessary hardship".

The Applicant also uses its programmatic need to claim that an as-of-right building is not sufficient to meet its programmatic needs, disputing the obvious which is that the minimum variance required is no variance.

As to the upper floor variances[2], the Applicant has utterly failed to even assert a plausible claim as to the programmatic needs that create "practical difficulties and unnecessary hardship" because of the lack of a waiver of the DOB objections. These variances requested would authorize the construction of 5 residential condominium floors - floors 5, 6, 7 and 8 and a ninth floor incorrectly described as a penthouse. These floors have nothing remotely related to any programmatic needs and hardships asserted by the Applicant. These are desired by Applicant for one reason only: money.

As to Applicant's request for the lower floor rear variances[3], it is crystal clear at this point in the proceeding that all of the circulation, ADA, and other access issues are addressed completely, not only in an as of right building, but in a very small slice of an

[2] The "upper floor variances" are those relating to the August 24, 2007 DOB objection 4, 5, 6, and 7, relating to adding floor 7, 8, 9, and a penthouse to an as of right building.

[3] The "lower floor variances" are for extension of the building into the rear yards on floors 2- 4, for the purposes of accommodating asserted classroom programmatic needs, and, particular needs relating to toddlers and young children. These lower floor variances are those required by DOB Objections 1, 2 and 3. The upper floor variances are all related to allowing the construction of condominiums to fund the construction of the community house. The upper floor variances relate to DOB objections 4, 5, 6, and 7.

as-of-right building. See Opp. Ex. GG-12. Indeed, these access issues described by the Applicant could be resolved by retrofitting the elevator in the existing building with an ADA compliant elevator.

It is surprising that in the latest March 11 submission, the Board is entertaining a compromise scheme to still allow a tall building, but with a courtyard in the rear so that only three windows in 18 West are bricked up, instead of seven. This is providing a false hope to the Applicant, who, of course, is sophisticated enough to realize that it has no case for "practical difficulties and unnecessary hardship" under (a) and indeed, is in no way reflective at the minimum necessary variance to ameliorate "practical difficulties and unnecessary hardship" under the (e) finding. So no sympathy needs to be extended to the Applicant for wasting its own time by submitting a compromise that has no legitimacy at all. The schemes are subterfuges to divert from the fact that these the variance waivers still are for the sole purpose of providing income to support the religious non-profit's operations.

As to the lower floor variances, Applicant is attempting to show that it faces "practical difficulties and unnecessary hardship" in meeting the educational programmatic needs of the Congregation. Oddly enough, the Applicant is attempting to frame the issue as to whether it can satisfy its education classroom needs solely within floors 2 through 4 of a new building. As described below, Applicant's latest feeble attempt at a chart showing programmatic need is a subterfuge to divert attention the real issues.

As to these lower floor variances, the proper way to frame the issue is whether the programmatic needs can be satisfied anywhere on the zoning lot. Exhibits being filed today by the opponent's show the many areas within the zoning site, but not within floors 2-4, which could be and indeed are being used today by the Applicant for educational programmatic needs. Opp. Ex .GG-4-11.

At the February 12, 2008 hearing, both the Chair and the Vice-Chair requested a table to present the programmatic need.[4] This was not the first request - this information was

[4] 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 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 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.

requested in the objection letter of October 12, 2007 (objection 3) [5] and again at the November 27, 2007, hearing at page 16 et seq.[6]

In response to these repeated pleas from the BSA, on March 11, 2008, the Applicant finally submitted the three page "CSI PROPOSED PROGRAM USAGE CHART: FLOORS 2 - 4" which is included as Opp. Ex. GG-1-3. This new submission still fails provide the information needed to evaluate programmatic need.

Clearly does not want to provide the information for existing, as-of-right, and proposed schemes, including the tenant school usage, in a coherent understandable manner.

1. Information as to existing usage was not provided, making it impossible to evaluate the representations, even though in other presentations on this issue, such as the December 28, 2007 drawings, existing uses were shown (but not including Beit Rabban).

2, Information as to how the needs would be satisfied in an as-of-right building was not provided, thereby making it impossible for the BSA to evaluate the (e) finding as to the minimum variance required.

3. The usage chart considered only floors 2-4 of the proposed building, omitted consideration of other facilities on the zoning lot that could used to meet the programmatic needs. The Applicant has self-servingly decided to frame the issue as being whether it can meet is programmatic needs within floor 2- 4, and not the legally proper issues for the BSA when considering burden - whether Applicant can meet its programmatic needs in the entire zoning site.

4. The chart then deliberately clouds the facts by adding this note to the chart: "Note: Beit Rabban and CSI will also share classrooms as mutual programs required." Thus, after a year of claiming that Beit Rabban is independent and is only using space at times when not needed by the Congregation's own uses, Applicant now conflates Beit Rabban and CSI usage, and does not even attempt to clarify the Beit Rabban use. It is also noted that in the December 28, 2007 drawings submitted, CSI showed no Beit Rabban use, and, indeed, did not show at all the use by Beit Rabban of the very large temporary trailer structure.

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[5] "Objection 3. Page 13: When describing the existing school space for Beit Rabban , please specifically state how many classrooms and square footage are devoted to this tenant school."

[6] "CHAIR SRINIVASAN: But, I think it relates partially to
whether you can have simultaneous use and, in fact, when the day school is functioning,
does it take away from the congregation in using the spaces for its own needs?
So, if you actually chart it out, we may have a better understanding.
MR. FRIEDMAN: Fine."

5. To further obfuscate, no effort was made to provide a drawing to show the various spaces in a drawing of the spaces referred to on the chart.

A proper analysis, we submit, would show that the overwhelmingly dominant usage of the educational space currently at the zoning site is by the Tenant School. What would be useful is a computation of the "student-hour" uses of the facilities. The Tenant School appears to have over 5000 student hours a week (assume 125 students x 40 hours). This is an order of magnitude larger than the asserted educational uses by the Applicant. The new tables include very vague references to Beit Rabban uses, but other presentations do not.

The drawings provided by the Applicant in its January 28, 2008 filing which had impressive looking color pie charts, but lacked information such as the size of all classrooms, the existence of the trailer prefabricated classroom on the site the use by the just as examples and omitted Beit Rabban information. These drawings confused the Commissioners and would confuse anyone.

We have noted before how the usage the Applicant attributes to these spaces has changed, and, space that is now absolutely needed for "toddlers" was first allocated for offices. It is an evident as ever that the Applicant has contrived its programmatic needs to make a case for the rear yard lower floor variance, and that any clarity would make this even more evident.

In summary, the Applicant's real claim is "we want the biggest building we can get, and we will worry about what we put in the spaces at a later time.

Framing the Issue - What Space is Available to Meet Programmatic Needs:

By attempting to frame the issue of whether the programmatic needs can be met in floors 2-4, the Applicants is materially misleading the BSA. In as of right building, the following spaces are available to meet the educational-classroom needs of the Applicant.

Floors 5 and 6 for any type of classroom or meeting use, Opp. Ex. GG-9.
The Levy Auditorium in the cellar for meeting and large classroom use. Opp. Ex. GG-6.
The Elias Room (1-E) for meeting and large classroom use. Opp. Ex. GG-7.
The Synagogue Extension (1-C) , to which temporary partitions could be added, for meeting and large classroom use. Opp. Ex. GG-7.
The new banquet hall for large meetings and large classes (also sub dividable by temporary partitions). Opp. Ex. G-6.
The Rabbi's study (1-F) in the Parsonage for tutoring of up to a few students. Opp. Ex. GG-7.
The numerous other offices for tutoring of up to a few students.
The space occupied by the caretaker's apartment (4-a) , if moved to the Parsonage residence. Opp. Ex. GG-8.

> The space in the basement (Cel-E) clearly marked as Babysitting Room." Opp. Ex. GG-6.

These are shown in Opp. Ex GG-5 as submitted by Craig Morrison.

Of course, the BSA should not engage in micromanaging and programming the Applicant's facilities, but, it cannot ignore the fact that the Applicant is not programming thousands of square feet of excellent facilities so as to meet its programmatic needs. That the Applicant chooses to use space for income producing activities rather than programmatic needs is its own choice.

As noted by LPC Commissioner Robert Brandes Gratz in her March 14, 2006 statement explaining her negative vote for the Applicant's proposal, the proposed building "will still add generously to the already generous space that the synagogue enjoys." Opp. Ex. DD.

The Toddler Program and Younger Children

Carefully examination of the Applicant's claim for a need for the lower floor rear yard variances are, if believed, compelling only as it applies to toddlers and young children. Spaces for such uses do have special requirements and the spaces are not easy to reprogram for adults.

The December 28, 2007, drawings Prog E-7 shows that on Monday, Wednesday, and Friday, 20 children use the auditorium for the Toddler program. However, at this same time, the Beit Rabban School is meeting and Beit Rabban also has enrolled a number of very young children. Although the March 11, 2008 chart depicts Beit Rabban use, the December 28, 2007 drawings, however, do not show any usage by Beit Rabban, nor do the drawings even depict the modern space in the temporary classrooms.

The December 28, 2007 Drawing Prog. P-9 is the second floor of the Proposed Building and shows six toddler classroom in blue and the chart shows that this is to accommodate 20-60 children, which is ten children per classroom. However, there is no mention of the Beit Rabban young children in the December 28 drawings - how will they be accommodated and how are they being accommodated now?

To fully understand the toddler program, information can be gleaned from the Congregation's web site - the toddler program is a day care center open to members for $2700 a year for non-members and $2230 for members for a year of two hour per day twice a week day care. Caregiver attendance is required. Most respectfully, this day care operation is not a programmatic need related to the mission of the synagogue so as to justify the minimum variance required when the other conditions for a zoning variance are met.

Interestingly, the plans show a babysitting room in the basement, yet, even there, the Applicant did not program this ideal space as "Toddler" space. Opp. Ex. GG-6.

Similarly, the non-denominational independent tenant school Beit Rabban's usage is not a programmatic need related to t to the mission of the synagogue so as to justify the minimum variance required when the other conditions for a zoning variance are met.

To be clear, the Tenant School is driving the process and the Applicant's intention is to maximize leasing revenue. See the discussion below re the finances of Beit Rabban.

The So-Called "As-Of-Right" Sliver Building

The Applicant submitted as an attachment to Freeman Frazier letter, as page 24, a drawing shown as "Existing As Of Right Zoning Envelope @ Development Site (Based on Height and Setback Limitations." and prepared by the Applicant's Architect Platt Byard Dovell White. Unlike all other drawings submitted in this proceeding, this drawing is not stamped nor is the name of PBDW spelled out. A set of drawings have been submitted for this scheme, which we describe as the "Sliver Tower Scheme."

First, we should observe the qualification in the title " Based on Height and Setback Limitations"

The New York City Zoning Glossary defines : As-of-right Development as follows:

> "An as-of-right development complies with all applicable zoning regulations and does not require any discretionary action by the City Planning Commission or Board of Standards and Appeals."

Applying this definition to the Sliver Tower Scheme:

1. This is not an as of right building because such a building will not be approved by Landmarks Preservation as indicated in prior LPC proceedings as to this site, and, the Department of Buildings cannot approve without the approval of LPC.

2. This building has not been approved by the DOB and would likely run afoul of one or more of the following:

23-71	Minimum Distance Between Buildings on a Single Zoning Lot
23-692	Height limitations for narrow buildings or enlargements

In view of the DOB earlier enforcement of the minimum distance in a building rising only 105 feet and the surrounding mysterious circumstances of the disappearance of the eighth variance, there is nothing to indicate that this sliver building would be accepted.

> 3. A complicating issue exists as to legal windows may impact the approval of such a building as a condominium as to all of the east facing windows, for all of these windows are effectively lot-line windows. Unless the Congregation provides an air and light easement to the prospective owners of the condominiums, issues may exist as to the incorporation of windows overlooking Central Park as legally required windows. We note as well, that absent an easement to the condominium owners which would prevent the Applicant from any future development, the land valuation obviously would be less.[7]

The Applicant suggest this sliver proposal for two reasons as a legal maneuver, not having raised this scenario until December, 2007, 9 months after filing its application:

First, Applicant is in a sense arguing that the split zoning lot creates a right to transfer bulk for the sliver to the R8B site.

Second, Applicant seems to be arguing that the split lot zoning creates as a matter of law a unique physical condition so as to attempt to satisfy the a finding, something which Applicant plainly cannot establish.

As to the first argument re the absolute right for the transfer of rights, one looks in vain for an analysis under the Zoning Resolution including Article VII: Administration Chapter 7 - Special Provisions for Zoning Lots Divided by District Boundaries. Applicant cannot show the provisions under Article VII to support its position that it has an absolute right to build higher on the R-8B section of a lot, because part of the lot is R-10A.

What Applicant is asking for is a do-over of the 1984 rezoning wherein the R10A depth from Central Park West was reduced from 200 feet to 125 feet, leaving this split zoning lot. When the Applicant's argument is deconstructed, Applicant is arguing that because it was left with a narrow 17 foot segment of the lot that could only be built to a height of 75 feet, that the zoning for all of lot 37 should be readjusted. In other words, Applicant want to partially reverse the rezoning of the remaining 47 feet frontage of Lot 37. At the same time, the effect desired by the Applicant is compensation for the taking by the Landmark laws which in effect prohibit the construction of the sliver tower, a claim that is at odds with the case law.

Feasibility Study

We will discuss here just a few of the aberrant statements in the Freeman Frazier March 11, 2008 analysis. Clearly, Freeman Frazier does not see itself as a valuation expert utilizing generally accepted valuation and economic concepts in its presentations to the BSA. Instead, Freeman Frazier is more than willing to provide conclusions that do not

[7] The lot line nature of the condominiums in the sliver tower also impacts the valuation of these units.

meet such standards, merely because its client or the BSA has asked for certain computations.

Freeman Frazier specifically refuses to opine as to whether such presentations are consistent with generally accepted valuation theory and economics and certainly does not see its role as guiding the BSA into the use of proper principles. Thus, the BSA should provide no presumption to the accuracy of the Freeman Frazier reports or to the propriety of its analytic technique. When it is observe that Freeman Frazier increased the R8B sq. foot valuation by nearly 20% between April 2007 and December 2007. the BSA should view all Freeman Fraziers conclusions with great wariness.

As to providing comparables, again, Freeman Frazier believes that it is acceptable as to real estate transactions to utilize incorrect information, and has no obligation to exercise due diligence to investigate whether such information is inaccurate or misleading, even when the information is an outlier and has been challenged by a reputable valuation firm. Freeman Frazier sees its responsibilities not as a valuation expert and not having due diligence obligations, but as a scribe with a calculator.

A key conclusion of the fifth version of the Freeman Frazier analysis appears on Page 6 where Freeman states:

> "We disagree with MVS's statement that the 'As Of Right Scheme C' alternative is feasible."

Because it is of critically important to the Applicant that the BSA be misled to believe that the site cannot be profitably developed even if all residential, Freeman to satisfy his client has specifically denied the profitability of this As-Of-Right C Scheme. The statement by the opposition expert filed today effectively rebuts this incorrect statement.

How can it be in the real world that a profitable all residential building could not be constructed on a rectangular 64 x 100 foot site on West 70th Street in Manhattan. The answer is that it cannot be.

Basic economics leads to the conclusion that the value of the development rights (cost of land) is directly related to the ability to earn a profit for a site such as this. If profit cannot be earned, then the land is not worth what Freeman claims. All Freeman has done is engage in a voodoo economic exercise to increase the cost of land so that it looks like the building is not profitable, which, of course is absurd. Using per square foot comparables is merely a technique to obtain a valuation benchmark; they are not an end in and of themselves, and must be tested against the real world.

Rather than defend or rationalize its methodology, with no citation at all to authority, Freeman Frazier's meek defense is that its methodology conforms to BSA practices, whether or not the methodology make economic sense and whether or not it meets the

intention of the statute, 72-21. Freeman Frazier does not dispute the challenges by opposition expert MVS, and, thereby concedes to the challenges by MVS.

Sliver Proposal.

The Freeman valuation approach is to use the so called As of Right Development With Tower to first establish a comparable value per square foot, and, then to use the area available in the Sliver Tower as the multiplier, even though the actual buildings do not include the sliver tower.. Not only is this approached flawed and irrational, the errors are exaggerated even more by the failure to properly evaluate comparable sites.

Freeman states at page 8:

> MVS's report takes the position that there are no direct views of Central Park except for the As of Right Development with Tower. In response, we note two things - the As of Right Development with Tower has been used to estimate the property value, therefore, for purposes of such valuation there are direct unobstructed views of Central Park; and a more careful look by MVS at the Proposed Development would have clearly informed them that, in fact, the upper floors of the Proposed Development will have direct views of Central Park.

This is very cute, for, there is actually no basis, as shown above for even characterizing the scheme as As Of Right. Since the building could never be approved by DOB, it is not as of right. So, all Freeman is doing is to goose up the value of square footage - claiming a $724- sq foot value of development rights in a 17 foot sliver building, rights that are not being transferred to the developer.

Let's be clear: behind all of the verbiage, the value of the site on the market is what a developer would pay for this particular site, and not for some imaginable site which could not be built for regulatory as well as practical reasons. Further, in the prior submission by Freeman Frazier submitted by Applicant on April 2, 2007, September 10, 2007, and October 27, 2007, Freeman Frazier with the same claims of credibility consistently valued these very same development rights at $500 a square foot. See Freeman Frazier Economic Analysis Report dated March 28, 2007 filed April 2, 2007. Only when it became apparent that the valuation would not provide his client with the Applicant's expected results did Freeman Frazier suddenly discover a new valuation technique yielding $750 a square foot.

In addition, as to Central Park views, there is indeed a question as to claimed unobstructed views from the condominiums; all of the east facing windows in the condominiums would abut the Sanctuary land site. A condominium owner would own the east facade, but on the other side of the window would be property still owned by the Applicant. Thus all east facade windows would be subject to being bricked up. The Applicant has disclosed a no intention to provide air and right easements to the

condominium owners, and, indeed, the Applicant has always been clear at the LPC proceedings that it was not and would not give up its air rights over the Sanctuary.

Freeman Frazier states at Page 10:

> The MVS Report questions who the developer would be.
> The FFA Reports does not make any assumption as to whom the developer might be.

This is of course a question that the Applicant has responded to repeatedly in testimony before the LPC and CB7: there will be no developer. The Applicant will be its own developer. FF should not hide behind the Applicant here - why did it not ask its client before providing this disrespectful response.

Freeman Frazier states on page 11:

> The MVS Report states that charging a developer for the full site area regardless of the scenario is a major conceptual disconnect.
> This practice is consistent with that used in similar Economic Analysis submissions to the BSA. However, at the request of the BSA, the submission of 12/21/2007, we only valued the residential development area, and revised the analyses of all alternative scenarios to reflect this adjusted property valuation.
>
> Soft Costs
> The MVS Report states that charging a developer for not unusable area results in substantial additional soft cost charges.
> As discussed above, this practice is consistent with that used in similar Economic Analysis submissions to the BSA. However, at the request of the BSA, the submission of 12/21/2007, we only valued the residential development area, and revised the analyses of all alternative scenarios to reflect this adjusted property valuation.

This is another absurd proposition. Just because others might have provided an analysis using conceptual disconnects is no justification for Freeman Frazier doing the same.

Further, Freeman Frazier misleads when it says it "we only valued the residential development area, and revised the analyses of all alternative scenarios to reflect this adjusted property valuation.

But, on Page 11 of it December 21, 2007 submission, Schedule A1, Freeman Frazier is seen continuing to do exactly what is claimed not be doing, valuing the land cost the same whether the residential development rights are 7,594 sq.ft. or 28,724 sq.ft.

SCHEDULE A1: ANALYSIS SUMMARY - CONDOMINIUM USE

		REVISED AS OF RIGHT CF/RESIDENTIAL DEVELOPMENT		LESSER VARIANCE CF/RESIDENTIAL DEVELOPMENT		AS OF RIGHT WITH TOWER DEVELOPMENT (Residential Only)		REVISED PROPOSED DEVELOPMENT (Residential Only)		ALL RESIDENTIAL F.A.R. 4.0
BUILDING AREA (SQ.FT.)										
BUILT RESIDENTIAL AREA		7,594		12,575		20,019		20,863		28,724
SELLABLE AREA	70%	5,316	68%	8,593	76%	10,345	52%	15,799	62%	17,780
CAPITAL INVESTMENT SUMMARY										
ACQUISITION COST		$14,816,000		$14,816,000		$14,816,000		$14,816,000		$14,816,000
HOLDING & PREP. COSTS		$0		$0		0		$0		$0
BASE CONSTRUCTION COSTS		$3,722,000		$4,339,000		$8,056,000		$7,488,000		$11,808,000
SOFT CONSTRUCTION COSTS		$4,337,000		$4,525,000		$6,274,000		$6,434,000		$6,847,000
		$22,875,000		$23,680,000		$29,146,000		$28,738,000		$33,471,000

Freeman Frazier states on page 10:

> The conclusion of these analyses was that neither of these two alternatives is viable, as a result of the affect of the unique site conditions on costs and income and the inability to meet the programmatic requirements of Congregation Shearith Israel.

As noted above, Freeman Frazier is plainly not qualified to provide an opinion as to the (a) finding as to unique physical conditions of the site. It has identified none and none exist.

18 West Windows

Another barrier to the upper floor variances is the 18 West 70th Street windows.; Applicant wishes a waiver of law that Applicant may brick up windows that violate no laws.

In the March 11, 2008 submission, the Applicant has provided drawings for two new courtyard schemes by which the three of the windows in 18 West would not be bricked up. Fundamentally, these two new courtyard proposals are a red herring, since the record is unequivocal that the condominiums created thereby and for which waivers are requested are unrelated to any programmatic need of the Applicant (even assuming the finding of unique physical condition were satisfied).

Nonetheless, the Applicant fails to provide with these new submissions a description of the impact of the proposals on the 18 West buildings, in repetition of its continued failings in every proposal and submission since April, 2007. Applicant itself has brought up the subject of the possibility of forcing the occupants in 18 West to screen the windows or install sprinklers. But, this new proposal ignores these impacts: clearly, Applicant must provide this impact information, and not provide it after the fact. It is not the responsibility of 18 West to show how the courtyard will impact on the nearby windows in 18 West.

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Applicant, wishes to be applauded for this "compromise proposal;" yet, these non as-of-right courtyard schemes still brick up and block other windows in 18 West. The owners of the cooperatives in the front of 18 West are still adversely affected by the courtyard proposals.

What is worrisome, of course, is that the BSA would seriously entertain these new proposals when it is firmly established that the sole purpose is to build income producing condominiums to fund the Congregation, when all programmatic needs are generously accommodated in the as-of-right building and other buildings on the zoning site.

Shadow studies - review environmental standard.

The Applicant has yet to provide any meaningful shadow studies of the impact of their proposed building, as compared to the as-of-right Scheme A building, notwithstanding that the zoning law for which waiver is requested was intended to protect the scale and light of the narrow mid-blocks.

The Applicant misinterprets the CEQR which only state that which is "generally" required to be provided as part of the Environmental Review, something clearly not to be restrictive under this type of waiver request.

Moreover, the CEQR is not a limitation upon the obligation of the BSA to be provided with substantial evidence to support its findings under 72-21 (c). Whatever the requirements of the CEQR, the BSA is not authorized to waive these requirements for finding (c).

Discussion of Beit Rabban

The issue of Beit Rabban as the tenant school and it relationship to the Congregation has not been fully explained, and the BSA has shown a complete lack of interest in pursuing the issue, notwithstanding that all indications show that the Beit Rabban school is a commercial tenant of the Applicant. We believe the BSA acts capriciously in not obtaining this information.

As a non-profit organization, Beit Rabban is required to file an annual tax return (Form 990) with the IRS, which returns are publicly available on the IRS web site as well as sites such as that run by the Foundation Center at http:// http://tfcny.fdncenter.org. We have obtained the Form 990s for the fiscal years ending June 2005, June 2006, and June 2007, the latter obtained directly from the school.

These records provide the following information for rent:

	Rent:	
2006-2007	$441,998	HH-1-2

2005-2006	$308,049	HH-3-4
2004-2005	$114,368	HH-5-6

The 2006-2007 Form 990 show that in the last 3 years, Beit Rabban has invested nearly $350,000 in leasehold improvements to provide a modern interior and the temporary trailer. HH-7. Because it was anticipated that the current building would be demolished in 2008, it would be fair to state that these records show annual leasehold expenses in excess of $600,000.

The 2005-2006 Form 990 shows the addresses of the board members. Most board members do not live in the West 70th St. community. Opp. Ex. HH-8-9. Many live on the East Side and the Bronx.

The Applicant has stated that it is building an enlarged school building for Beit Rabban and the financial analysis submitted by the Applicant shows that it intends to rent the school for in excess in $1,000,000 a year. These projections are consistent with the amounts currently paid by Beit Rabban and Beit Rabban's annual income which is close to $2 million, an amount to increase as the number of students increase and facilities improve.

Requests:

The Opposition has the following requests for the BSA:

1. We wish to file a post hearing brief in the nature of a trial brief to summarize the proceedings and to apply legal analysis as to the Application.

2. We wish to review proposed finding of facts from the Applicant to provide comments as to whether such proposed findings are supported by substantial evidence in the record.

3. We ask that the BSA act upon the request for an inspection of the site by the Opposition's Architect - there is more than sufficient time for such an inspection prior to the hearing scheduled a month from today. If no inspection is authorized or permitted, then the BSA should strike from the record all statements by the Applicant as to interior conditions or usage on the site, and may not use any such statements in support of any findings, for to do so would be arbitrary and capricious.[8]

4. We further ask that the BSA obtain information and related documents from the Applicant as to the following:

[8] Yesterday, when I was invited by the school director to visit the Beit Rabban's office on the second floor to obtain the Form 990 required to be maintained at the office of a non-profit under IRS rules, I was directed to use the elevator. The elevator was reasonably large, had two doors and had intermediate floor stops and seemed to function well. The second floor appeared to be recently renovated and appeared to be in excellent condition,.

- Beit Rabban lease
- Information as to future arrangements with Beit Rabban
- Parsonage income and leases.
- Cost Projections for the Entire Project for the AOR Scheme A and AOR Scheme C including all community space.
- By-Laws prohibiting use of banquet hall by outsiders.
- Financial information for last year showing all contributions to the Applicant and endowments and other funds for which the Applicant is a beneficiary.
- Total membership income including building and building fund payments and pledges.

Sincerely,

Alan D. Sugarman

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

cc:

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