

**FRIEDMAN & GOTBAUM LLP**

568 BROADWAY SUITE 505  
NEW YORK NEW YORK 10012  
TEL 212.925.4545  
FAX 212.925.5199  
ZONING@FRIGOT.COM

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June 17, 2008

**BY HAND**

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

**Re: Congregation Shearith Israel ("CSI")  
6-10 West 70<sup>th</sup> Street/99 Central Park West  
74-07-BZ /CEQR No.: 07BSA071M**

Dear Madam Chair:

This letter provides the Applicant's responses and comments to the material submitted on June 10 by various opponents to the subject Application. In general, the Applicant asserts there is nothing new in any of the points raised in this material. The following documents accompany this letter.

- Financial Analysis. A letter from Freeman Frazier Associates dated June 17, 2008 is enclosed. The FFA Letter once again brings to the Board's attention each of the opposition's many errors of judgment and technical information, as well as disregard in the written submission of June 10 for the Board's longstanding financial methodologies.
- Environmental Compliance. A letter for AKRF dated June 17, 2008 is enclosed. The AKRF Letter responds to each of the comments raised at the April 15, 2008 public hearing and subsequently in the opposition's written submissions of June 10.

With respect to the Statement of Findings, the opposition's June 10 submissions are a futile attempt to lead the Board afield of the findings and its responsibility to uphold them. The deluge of charges of supposed inconsistencies and "failings" of the Applicant and Commissioners alike displays a fundamental misunderstanding of these proceedings, which, in the main, consist of a colloquy between the Applicant and the Board, with public input, to explore all aspects of the case. Many of the so-called inconsistencies cited by the opposition represent nothing of the kind, but rather are responses to the Board's requests for alternate reasonings and presentations. By treating these exchanges as if both the Board and the Applicant

were somehow providing depositions in a proceeding of their own making, the opponents have ultimately added nothing to the discourse.

All of the required findings in ZRCNY Sec. 72-21 have been met. Further comments on the “A” and “B” Findings are as follows.

### **Finding “A”**

The Statement adequately explains the unique physical conditions peculiar to the Zoning Lot and the practical difficulties that arise due to them. The Zoning Lot possesses 144,510.96 sf of developable floor area but the position of an individually designated landmark over two-thirds of the Zoning Lot limits development on the Zoning Lot to two small parcels. One parcel, facing Central Park West has a width of 24.4 ft and a depth of 108 ft. It is improved with what was once a 4-storey single family building and is now known as the Parsonage. While this site is capable of significant theoretical development as a matter of right (it is zoned R10A, its streetwall may rise to 125 ft and its building height to 210 ft, subject to the “sliver” limitations in ZRCNY Sec 23-692 that would limit the height of an enlargement or new development to the height of the streetwall at 91 Central Park West), its narrow footprint, after deduction for elevators and stairs, would be useless for residential or community facility uses. In addition, such development would necessitate the blocking of several dozen windows on the north elevation of 91 CPW. Moreover, development of the Parsonage parcel would do nothing to remedy the significant egress and circulation deficiencies in the landmarked Synagogue, a remediation that is at the heart of this Application.

The only other development parcel on the Zoning Lot, the parcel proposed in this Application, which is also theoretically eligible to use as a matter of right a significant amount of zoning floor area, is also small and has become burdened with the relocation of a zoning district boundary that post-dates the establishment of the Zoning Lot and subdivides the parcel into a minor portion of R10A and a major portion of R8B, with resulting disparate height and setback requirements and a “sliver law” condition that preclude as-of-right development. Moreover, in order to remedy the circulation difficulties in the Synagogue, the footprint of the proposed development on its split-lot footprint must be held captive to the necessary physical alignments with the Synagogue. In addition, the dimensions of the parcel and the Applicant’s programmatic needs require that the layout of educational and religious uses at floors 2 through four extend 10 ft into the required rear yard. The resulting configuration of the proposed new residential floor area on the narrow development parcel further requires that such residential uses not begin until elevation 49’1”, and end at elevation 75 ft in an R8B district, which will not allow the residential use as proposed.

Adding to the unique restrictions on this site, the Landmarks Preservation Commission has issued, unanimously, a Certificate of Appropriateness for the proposal contained in the Application. Accordingly, the only reasonable way to proceed with development is to build within the envelope and in accordance with the detailed design drawings that the Commission has approved. This is not the case of an applicant coming to the Board to allege that the existence of the Zoning Lot within a historic district or adjacent to a designated landmark constitutes a recognizable hardship. This Applicant worked with the Commission for several

years in gaining approval of a Certificate of Appropriateness that limits the development envelope to the building before the Board. Its request for Landmarks cooperation on a ZRCNY Sec. 74-711 special permit was denied, thus properly bringing this Application to the Board for relief.

The Board has asked for and received an unprecedented amount of material on the educational and religious uses which must be included in the new development. It has heard the religious and educational leaders of the Synagogue attest to the need and the configuration of the new community facility space requested in the Application. It has received material in several formats regarding the utilization of this space, down to each hour of each day, which is a degree of submission beyond the experience of practitioners who routinely have represented or currently represent hospitals and schools before the Board. It has asked for and received detailed information on a tenant school notwithstanding that the Applicant has stated on numerous occasions without condition or qualification that the tenant's programmatic needs bear no relationship to this Application. It has heard testimony from the Synagogue's Rabbi and its chief educator that were there no tenant the religious and educational needs of the Synagogue would still require that it apply for the classroom space requested in this Application.

The Board has requested and received detailed information, both graphically and in site-specific narrative, traveling up and down the length of Central Park West to demonstrate conclusively that there are no other sites that can reasonably be considered development sites that share the specific and unique properties of this Zoning Lot.

The Applicant hopes that the Board can return to the basic elements of this Application, shorn of all the digressions and canards associated with non-existent catering halls, profit-motivated schemes and conspiratorial tenants to the basic elements of the submission, which are in accord with the Board's past practices and its present approach to considering the "A" Finding in applications based on educational and religious purposes, including those applications that propose mixed-uses on their Zoning Lot.

### **Finding "B"**

ZRCNY Sec. 72-21 states in part: "this finding shall not be required for the granting of a variance to a nonprofit organization . . . ."

Notwithstanding the clear language of the Zoning Resolution, the Board has requested and received substantial financial information, near or at a level of specificity that it would require from a profit-motivated applicant. We have been pleased to comply with the Board's interests, but not to the extent of waiving our right to observe with all due respect that consideration of a B Finding in this case, or any semblance of consideration of reasonable return in determining the outcome of this Application, especially given the educational and religious purposes of the Applicant, would exceed the Board's authority. We understand that the Board believes it can legitimately delve into an analysis of reasonable return in this Application because of the mixed-use nature of the Application, and we done our utmost to cooperate with the Board's interests. We further appreciate that it has done so in four cases which it has subsequently approved. However, we understand that the Board believes there is a distinction

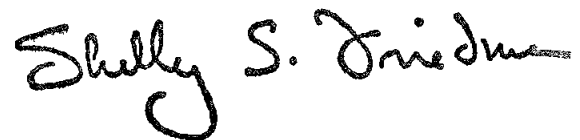
between cases such as this where the requested zoning waivers apply to the residential portion of the development on the Zoning Lot, and other cases where the requested zoning waivers apply only to the community facility portion of the mixed-use application, in which case it asks for no financial information whatsoever. We cannot find such a distinction recognized in either the Zoning Resolution or judicial doctrine. The meaningfulness of the distinction disappears altogether with the observation that by simply modifying our Application to put floors of the community house at the top of the proposed building, thereby assigning the height and setback waivers to the community facility, this Application would have been able to pass from one side of the distinction to the other and would not have been asked to provide any of the financial information already in the record.

As you can see from our submission today of more financial information related to reasonable return, we affirm our willingness to cooperate with the Board. We question only the uses such information will be put to in your deliberations of this Application in this and, by extension, how and when such information is used in other applications.

Please note that we accept the error noted by an opponent with respect to page 43 of our Statement of Findings we had compared the rate of return that could be expected from a new building with 15,243 sf of residential floor area with "two hypothetical as-of-right mixed building scenarios." In fact the second scenario was not as-of-right but required a lesser variance.

On behalf of the Trustees of Congregation Shearith Israel, we appreciate the time and attention and Board and Staff have accorded this Application. We respectfully request that the record be closed and that a date for a positive decision can be set.

Very truly yours,



Shelly S. Friedman

Enclosures

cc: Hon. Helen Rosenthal, CB 7  
Hon. Gail A. Brewer, City Council Member  
Hon. Scott Stringer, Manhattan Borough President  
Mr. Christopher Holme, Department of City Planning, BSA liaison  
Mr. Ray Gastil, Director, Manhattan Office, Department of City Planning  
David J. Nathan, Esq.  
Peter Neustadter  
Dr. Alan Singer  
Landmarks West!  
Mark Lebow, Esq.  
Alan D. Sugarman, Esq.  
David Rosenberg, Esq.  
Jack Freeman  
Ray Dovell

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