

MARCUS ROSENBERG & DIAMOND LLP

488 MADISON AVENUE
NEW YORK, NEW YORK 10022

Telephone: (212) 755-7500
Telefax: (212) 755-8713

December 7, 2016

By email to: mperlmutter@bsa.nyc.gov

Hon. Margery Perlmutter
Chair
New York City
Board of Standards and Appeals
250 Broadway, 29th Floor
New York, New York 10007

Re: BSA Cal. No.: 74-07-BZ
August 26, 2008 Resolution of the Board of
Standards and Appeals (“BSA”)
June 16, 2016 Application (“Application”) by
Trustees of Congregation Shearith Israel (“CSI”)
8-10 West 70th Street,
New York, New York, 10023 (the “Property”)
Block 1122, Lots 36 and 37, Zoning Map No. 8C
Our Matter No.: 89628.004

Dear Chair Perlmutter:

My firm represents Landmark West! and community members (together, “Opponents”) opposing CSI’s Application for multiple, extraordinary relief.

Without waiving, but reaffirming and expressly herein incorporating the objections set forth in my December 5, 2016 letter, this is to provide further reasons why BSA must dismiss CSI’s Application.

A. BSA Must Reject CSI's Untimely Submission and November 16, 2016 Materially Different Plans and Other Documents; and Dismiss CSI's Application

For the reasons set forth in my December 5, 2016 letter, a copy of which is attached as Exhibit A, BSA must reject CSI's November 16, 2016 submission and dismiss CSI's Application, at the very least with the right of CSI to make an appropriate submission to and first obtain review and determination by the New York City Department of Buildings ("DOB"), which, if then appropriate, may be reviewed as a full BZ Application.

B. Material Changes in: CSI's Proposal and Market Conditions Both of Which Require A Non-Variance Request, Not an Amendment of BSA's 2008 Resolution

As CSI has acknowledged, much has changed since BSA reviewed and approved CSI's variance application in 2008, including, without limitation, material changes in the New York City Building Code effective as of December 31, 2014.

As set forth in the December 6, 2016 letter from Metropolitan Valuation Services ("MVS") (Exhibit B), CSI claimed, in 2008, that the construction of five floors of luxury condominiums (the "Luxury Condominiums") would result in a net value of \$36,394,399.

In 2012—four years ago—CSI submitted an application to the New York State Attorney General ("AG") that the estimated sales value was \$60 million, almost twice as much.

Applying statistics for the increase in value of similar luxury condominium apartments since 2008, the MVS letter evidences that the sales value of the proposed luxury condominium apartments would be about \$60 million today.

For this reason, alone, BSA must reject CSI's Application, subject to CSI's right, if appropriate, to present to DOB its materially changed plans and, then, if rejected, and if otherwise appropriate, present a BZ application to BSA.

C. CSI's March 7, 2016 AG
Submission—Not Revealed
By CSI—Requires Rejection
of CSI's Application

CSI's Application does not reveal that, in March 2016, it submitted an application to the AG for approval of a \$10 million mortgage loan, secured by the Property.

As evidenced by the copy of the envelope and AG cover letter, attached as Exhibit C, we did not obtain the relevant AG documents, first requested pursuant to a July 11, 2016 Freedom of Information Law ("FOIL") request, until TODAY, December 7, 2016.

The FOIL documents include (Exhibit D):

(1) A proposed petition to the New York State Supreme Court seeking authorization for a \$10 million mortgage loan (the "Loan") secured by the Property;

(2) Of the \$10 million Loan, the use of \$1.1 million to "satisfy a loan from an unrelated party" . . . [and] the remaining \$8.9 million will be used to "begin the construction of the new building" (with no explanation as to the \$1.1 million loan); and

(3) "Congregation Shearith Israel may, in its discretion, place the real property that will secure the mortgage into an existing limited liability company, 8W70LLC, either before or shortly after the clearing of the mortgage."

CSI's draft petition states:

"The Loan includes the right of the Lender to . . . a 10-year right of first refusal on any bona fide offer received by CSI for 1) the sale, development or sponsorship of a condominium plan offering the sale, of the four residential apartments . . ."

CSI's AG submission includes a draft Appraisal Report, prepared by Goodman-Marks Associates, Inc. (Exhibit E), which calculates the "net proceeds from the sale of the luxury residential condominium units . . . [as] \$61,300,000".

D. CSI's November 16, 2016
"Illustrated Set" of Architectural
Drawings (the "Drawings")
Evidencing Material Changes
From The CSI's Drawings Which
BSA Approved in 2008

Comparing CSI's most recent November 16, 2016 Drawings and "Statement of Facts" with the documents which were the basis of CSI's 2008 Resolution demonstrates:

- (a) material modifications; and
- (b) a gross and material failure to provide:
 - (i) the precise measures of the new installations; or
 - (ii) a full and complete explanation of the changes indicated by the "bubbled" areas on the Drawings.

CSI's new drawings provide no information as to the effect on HVAC and other suppliers of the additional "vault space" shown on the drawings.

CSI's Drawing A.102.01 shows the south roof of the extension of the building, running to the property line, as a terrace and previous drawings expressly showed access to the terrace area.

At the October 14, 2016 BSA hearing you asked CSI: "OK, my other question was – in the prior, or the approved drawings, wasn't the rooftop to be used for the toddlers play?" Samuel White, CSI's PBDW architect responded: "Well, it was never going to be used."

LPC Resubmission Set Drawing A.001.01 "Building Code Compliance" exhibits figures showing a change expressly labelled much of the community facility space as "offices". Responding to a question about this, Mr. White stated:

"You know, I regret using the word offices when I filled out and stamped those plans and will be washing my hands for a long time to come. When I say office I'm really referring to the size of a room, not the function of a room. A classroom, I can see above as the room with windows, it holds 18 people. A room that is 8 feet by 10-feet is an office."

But in Jewish education, they need rooms of all sizes. I mean, working with these schools what I've found is every square foot is an educational space. And sometimes you want a space that is small because you're just having lessons between a candidate for a Bar-Mitzvah. And they have to learn something that they really need to learn, just the two of them. And you don't want to tie up a classroom

for 18 people because 2 people are trying to learn how to sing from script.

And so those little rooms I called offices. Although the idea that we're not planning a fortune 500 corporation in those. We're planning intimate teaching spaces. So every square foot of this building in every one of its iterations has been dedicated to education."

Mr. White's statement was an intentional, deliberate misrepresentation.

The Certificate of Occupancy for CSI's proposed building, Schedule A to the DOB filing by Mr. White, expressly describes the use of space as "offices" in contrast to similar size space used as "classrooms".

Schedule A also describes the roof of the rear extension as "Outdoor Terrace", with a 60 person occupancy.

CSI's Proposed "Doghouses" Violate the Building Code

CSI's November 16, 2016 PBDW drawings show that the vent enclosures on the roof of the rear yard extension (which are called "Doghouses") will be 7.46 feet above the roof of the rear yard extension (enclosure height 111.79 – roof height 104.33).

CSI's Statement of Facts states that the "doghouses" will be 10 feet from the southern property line and 3 feet from the rear façade of the building, which contains many windows.

Section 502.7.3.6 of the 2008 Mechanical Code requires that such vents be at least 10 feet from the property line and 10 feet from any exterior walls containing windows.

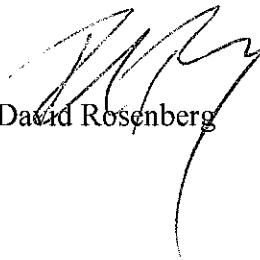
While the PBDW drawings omit material measurements, it would be impossible for the “doghouses” to comply with these regulations since the terrace depth is less than 20 feet.

Conclusion

These comments are no more than the “tip of the iceberg”, due to the fact that it has not been possible to fully evaluate and respond to CSI’s late submission of materially different plans and drawings, omitting measurements crucial to BSA’s determination of CSI’s Application.

CSI’s Application must be dismissed or, at the very least, Opponents must be offered a fair amount of time to respond.

Respectfully submitted,



David Rosenberg

DR/cac

cc: Loreal Monroe, Esq.
Ryan Singer
Zachary Bernstein, Esq.
Landmark West!
Alan Sugarman, Esq.
Michael Hiller, Esq.